



**State of Louisiana**  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF THE SECRETARY

November 22, 2016

Mr. Ron Curry  
Regional Administrator (6RA)  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

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Re: Louisiana State Implementation Plan (SIP) Update  
Response to EPA's SSM SIP Call

Dear Mr. Curry:

On June 12, 2015, the U.S. Environmental Protection Agency (EPA) promulgated a rule entitled "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction."<sup>1</sup>

This action concluded that several Louisiana air quality regulations are "substantially inadequate to meet [Clean Air Act] requirements" because they provide "automatic exemptions" or "impermissible discretionary exemptions" from "otherwise applicable SIP emission limitations." Consequently, EPA issued a "SIP call" directing the state to submit corrective SIP revisions by November 22, 2016.

In response to the aforementioned federal rule, the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), transmits to EPA for incorporation into the state's SIP the following regulatory actions.

Rule	Title	Proposed	Public Hearing	Promulgated
AQ360	Repeal of LAC 33:III.1507.A & B	June 20, 2016	July 27, 2016	<Insert Date>
AQ361	Repeal of LAC 33:III.1107.A	April 20, 2016	May 25, 2016	<Insert Date>
AQ362	Repeal of LAC 33:III.2153.B.1.i	April 20, 2016	May 25, 2016	<Insert Date>
AQ363	Repeal of LAC 33:III.2307.C	June 20, 2016	July 27, 2016	<Insert Date>
AQ364	Work Practice Standards During Start-up and Shutdown	June 20, 2016	July 27, 2016	<Insert Date>

<sup>1</sup> 80 FR 33840

LDEQ's submittal includes:

- a general discussion of sections 110(l) and 193 of the Clean Air Act (Act);
- a description of each impacted rule, the basis for the proposed rule amendments, and an analysis demonstrating how such amendments comply with sections 110(l) and 193 of the Act, as applicable;
- copies of each proposed rule (as published on LDEQ's website<sup>2</sup> and in the *Louisiana Register*) as Attachment A;
- copies of the public hearing transcripts, any public comments received, and LDEQ's Comment Summary Response & Concise Statement (if necessary) as Attachment B; and
- copies of each final rule (again, as published on LDEQ's website and in the *Louisiana Register*) as Attachment C.

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,

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Chuck Carr Brown, Ph.D.  
Secretary

CCB:BDJ

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<sup>2</sup> <http://www.deq.louisiana.gov/portal/DIVISIONS/LegalAffairs/RulesandRegulations/MonthlyRegulationChanges/2016Rules.aspx>

**Sections 110(l) and 193 of the Act**

Section 110(l) of the Act reads, in relevant part:

The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.<sup>3</sup>

Section 193 of the Act reads:

Each regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this chapter, as in effect before November 15, 1990, shall remain in effect according to its terms, except to the extent otherwise provided under this chapter, inconsistent with any provision of this chapter, or revised by the Administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.<sup>4</sup>

According to EPA, Section 110(l) is primarily an “antibacksliding” provision, meant to assure that if a state seeks to revise its SIP to change existing SIP provisions that the EPA has previously determined did meet CAA requirements, then there must be a showing that the revision of the existing SIP provisions would not interfere with attainment of the national ambient air quality standards (NAAQS), reasonable further progress, or any other requirement of the Act.<sup>5</sup>

Section 193 prohibits states from modifying regulations in place prior to November 15, 1990, unless the modification ensures equivalent or greater reductions of the pollutant.<sup>6</sup>

Applicability of sections 110(l) and 193 to the regulatory actions promulgated by LDEQ in response to EPA's SSM SIP call is addressed in the following table.

Rule	Affected Citations	Promulgated	Section 110(1)	Section 193
AQ360	LAC 33:III.1507.A.1	December 1987	✓	✓
	LAC 33:III.1507.B.1	December 1987	✓	✓
AQ361	LAC 33:III.1107.A	December 1987	✓	✓
AQ362	LAC 33:III.2153.B.1.i	September 1995	✓	
AQ363	LAC 33:III.2307.C.1.a	December 1987	✓	✓
	LAC 33:III.2307.C.2.a	December 1987	✓	✓
AQ364	LAC 33:III.2201.C.8	February 2002	✓	

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<sup>3</sup> 42 U.S.C. § 7410(l)

<sup>4</sup> 42 U.S.C. § 7515

<sup>5</sup> 80 FR 33941

<sup>6</sup> 80 FR 33982

The nature of the technical demonstration needed under sections 110(l) and 193 to support approval of a SIP revision depends on the facts and circumstances of the SIP revision at issue. However, EPA has provided "general guidance on the considerations and the nature of the analysis" for "several common scenarios." The two examples repeated below are relevant to the regulatory actions promulgated by LDEQ in response to EPA's SSM SIP call.<sup>7</sup>

*Example 1:*

A state elects to revise an existing SIP provision by removing an existing automatic exemption provision, director's discretion provision, enforcement discretion provision or affirmative defense provision, without altering any other aspects of the SIP provision at issue (e.g., elects to retain the emission limitation for the source category but eliminate the exemption for emissions during SSM events). Although the EPA must review each SIP submission for compliance with section 110(l) and section 193 on the facts and circumstances of the revision, the Agency believes in general that this type of SIP revision should not entail a complicated analysis to meet these statutory requirements. Presumably, removal of the impermissible components of preexisting SIP provisions would not constitute backsliding, would in fact strengthen the SIP and would be consistent with the overarching requirement that the SIP revision be consistent with the requirements of the CAA. Accordingly, the EPA believes that this type of SIP revision should not entail a complicated analysis for purposes of section 110(l). If the SIP revision is also governed by section 193, then elimination of the deficiency will likewise presumably result in equal or greater emission reductions and thus comply with section 193 without the need for a more complicated analysis.<sup>8</sup>

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*Example 2:*

A state elects to revise its SIP provision by replacing an automatic exemption for excess emissions during startup and shutdown events with an appropriate alternative emission limitation (e.g., a different numerical limitation or different other control requirement) that is explicitly applicable during startup and shutdown as a component of the revised emission limitation. Although the EPA must review each SIP revision for compliance with section 110(l) and section 193 on the facts and circumstances of the revision, the Agency believes in general that this type of SIP revision should not entail a complicated analysis to meet these statutory requirements. Presumably, the replacement of an automatic exemption applicable to startup and shutdown with an appropriate alternative emission limitation would not constitute backsliding, would strengthen the SIP and would be consistent with the overarching requirement that the SIP revision be consistent with the requirements of the CAA. The state should develop that alternative emission limitation in accordance with the EPA's guidance recommendations for such provisions to assure that it would meet CAA requirements. In addition, that alternative emission limitation would both need to meet the overarching CAA applicable requirements that the emission limitation is designed and intended to meet (e.g., RACT-level controls for the source category in an attainment area for a NAAQS) and need to be legally and practically enforceable (e.g., have adequate recordkeeping, reporting, monitoring or other features requisite for enforcement). If a state has developed the alternative emission limitation consistent with these criteria, then the EPA anticipates that the revision of the emission limitation to

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<sup>7</sup> Example 1 is relevant to AQ360, AQ361, AQ362, & AQ363; example 2 is relevant to AQ364.

<sup>8</sup> 80 FR 33975

replace the exemption with an alternative emission limitation applicable to startup and shutdown would not be backsliding, would be a strengthening of the SIP and would be consistent with the requirement of section 110(l) that a SIP revision be consistent with the requirements of the CAA. Similarly, if section 193 applies to the emission limitation that the state is revising, then the replacement of an exemption applicable to emissions during startup and shutdown with an appropriately developed alternative emission limitation that explicitly applies during startup and shutdown would presumably result in equal or greater emission reductions and thus should meet the requirements of section 193 without the need for a more complicated analysis.<sup>9</sup>

### **AQ360 – Repeal of LAC 33:III.1507.A & B**

LAC 33:III.1507.A & B apply to existing sulfuric acid plants (i.e., those constructed or last modified on or before August 17, 1971, and therefore not subject to 40 CFR 60.82 and 60.83 of Subpart H).

LAC 33:III.1507.A states, in relevant part, that a “four-hour (continuous) start-up exemption from the [SO<sub>2</sub> and sulfuric acid mist] emission limitations of LAC 33:III.1503.A will be authorized by the administrative authority for facilities not subject to 40 CFR 60.82 and 60.83.” LAC 33:III.1507.B provides a similar exemption “where upsets have caused excessive emissions and on-line operating changes will eliminate a temporary condition.” These provisions were approved by EPA into Louisiana’s SIP on July 15, 1993.<sup>10</sup>

Based on a review of effective permits, LDEQ has determined that no sulfuric acid plants are eligible for the aforementioned exemptions because 40 CFR 60 Subpart H (Standards of Performance for Sulfuric Acid Plants) applies to each such facility located in the state. Therefore, in response to EPA’s SIP call, LDEQ proposed to repeal LAC 33:III.1507.A & B.

AQ360 will not result in an increase in SO<sub>2</sub> or sulfuric acid mist emissions or otherwise interfere with attainment of the NAAQS, reasonable further progress, or any other requirement of the Act. Therefore, the proposed regulatory action is not prohibited by sections 110(l) or 193 of the Act.

### **AQ361 – Repeal of LAC 33:III.1107.A**

LAC 33:III.1105 (Smoke from Flaring Shall Not Exceed 20 Percent Opacity) provides, in relevant part, that the “emission of smoke from a flare or other similar device used for burning in connection with pressure valve releases for control over process upsets shall be controlled so that the shade or appearance of the emission does not exceed 20 percent opacity ... for a combined total of six hours in any 10 consecutive days.”

LAC 33:III.1107.A allows LDEQ to grant an exemption from the provisions of LAC 33:III.1105 “during start-up and shutdown periods if the flaring was not the result of failure to maintain or repair equipment.” This exemption was approved by EPA into Louisiana’s SIP on July 5, 2011.<sup>11</sup>

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<sup>9</sup> 80 FR 33975-6

<sup>10</sup> 58 FR 38060

<sup>11</sup> 76 FR 38977

In response to EPA's SIP call, LDEQ proposed to repeal LAC 33:III.1107.A for two primary reasons. One, there is incongruity between the provisions of LAC 33:III.1105 and LAC 33:III.1107.A – §1105 applies to flaring in connection with process upsets, whereas §1107.A addresses startup and shutdown periods (not malfunctions or upsets). Two, other commonly applicable standards for flares, such as 40 CFR 63.11(b)(4), require the control device to “be designed for and operated with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.”

AQ361 will not result in an increase in smoke (i.e., particulate emissions) or otherwise interfere with attainment of the NAAQS, reasonable further progress, or any other requirement of the Act. Therefore, the proposed regulatory action is not prohibited by sections 110(l) or 193 of the Act.

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### **AQ362 – Repeal of LAC 33:III.2153.B.1.i**

LAC 33:III.2153 (Limiting VOC Emissions from Industrial Wastewater) requires “affected VOC wastewater streams” to be controlled. More specifically, LAC 33:III.2153.B.1.d.i requires vents on covers and on certain junction boxes to be “equipped with either a control device or a vapor recovery system that maintains a minimum control efficiency of 90 percent VOC removal or a VOC concentration of less than or equal to 50 parts per million by volume.”

LAC 33:III.2153.B.1.i provides that the requisite control device or recovery device is “not ... required to meet the 90 percent removal efficiency or 50 ppmv concentration during periods of malfunction or maintenance on the devices for periods not to exceed 336 hours per year.” This exemption was approved by EPA into Louisiana's SIP on July 5, 2011.<sup>12</sup>

An LDEQ query of effective air permits returned no documents identifying LAC 33:III.2153.B.1.i as an applicable requirement. In order to ensure that any affected VOC wastewater streams were not inadvertently overlooked, LDEQ engaged the regulated community, inquiring if any affected source relied upon this exemption as a means to comply with LAC 33:III.2153. No affirmative responses were received. Therefore, in response to EPA's SIP call, LDEQ proposed to repeal LAC 33:III.2153.B.1.i.

AQ362 will not result in an increase in VOC emissions or otherwise interfere with attainment of the NAAQS, reasonable further progress, or any other requirement of the Act. Therefore, the proposed regulatory action is not prohibited by section 110(l) of the Act.

### **AQ363 – Repeal of LAC 33:III.2307.C**

LAC 33:III.2307.C applies to nitric acid plants that are not subject to 40 CFR 60 Subpart G (Standards of Performance for Nitric Acid Plants).

LAC 33:III.2307.C.1.a states, in relevant part, that a “four-hour start-up exemption from [the NO<sub>x</sub>] emission [limitation of LAC 33:III.2307.D] may be authorized by the administrative authority for plants not subject to 40 CFR Part 60, Subpart G.” LAC 33:III.2307.C.2.a provides a similar exemption “where upsets have caused excessive emissions and on-line operating changes will eliminate a temporary condition.” These provisions were approved by EPA into Louisiana's SIP on July 5, 2011.<sup>13</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

Based on a review of effective permits, LDEQ identified only one nitric acid plant not subject to 40 CFR 60 Subpart G, that being Nitric Acid Train 4 (NNA4-1, EQT 0007) located at PCS Nitrogen Fertilizer's (PCS's) Geismar Agricultural Nitrogen & Phosphate Plant (Agency Interest No. 3732). Nitric Acid Train 4 is currently operating under Permit No. 2240-V8, issued February 6, 2015.

A Consent Decree between EPA, LDEQ, and PCS (Civil Action No. 14-707-BAJ-SCR), entered February 26, 2014, requires PCS to install NO<sub>x</sub> control equipment (i.e., selective catalytic reduction, or SCR) on Nitric Acid Train 4 as a supplemental environmental project by no later than February 26, 2017. Based on discussions with representatives of PCS, LDEQ understands that after the SCR control device is installed, the exemptions provided by LAC 33:III.2307.C will no longer be needed. Therefore, in response to EPA's SIP call, LDEQ proposed to repeal LAC 33:III.2307.C.

AQ363 will not result in an increase in NO<sub>x</sub> emissions or otherwise interfere with attainment of the NAAQS, reasonable further progress, or any other requirement of the Act. Therefore, the proposed regulatory action is not prohibited by sections 110(l) or 193 of the Act.

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#### **AQ364 – Work Practice Standards During Start-up and Shutdown**

LAC 33:III.2201 establishes NO<sub>x</sub> standards for certain boilers, process heaters/furnaces, stationary gas turbines, and stationary internal combustion engines located at affected facilities in the following nine parishes: Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, and West Feliciana.

LAC 33:III.2201.C.8 provides an exemption from Chapter 22 “during start-up and shutdown ... or during a malfunction.” Notably, this exemption does not apply to units that are shut down intentionally on a routine basis (i.e., more than once per month). This provision was approved by EPA into Louisiana's SIP on July 5, 2011.<sup>14</sup>

According to EPA's “SSM SIP Policy as of 2015,”<sup>15</sup> SIP emission limitations “must be applicable to the source continuously,” but

- do not need to be numerical in format;
- do not have to apply the same limitation (e.g., numerical level) at all times; and
- may be composed of a combination of numerical limitations, specific technological control requirements and/or work practice requirements, with each component of the emission limitation applicable during a defined mode of source operation.

In response to EPA's SIP call, LDEQ proposed to repeal the exemption set forth in LAC 33:III.2201.C.8 and amend Chapter 22 to allow the owner/operator of an affected point source to comply either with the emission factors imposed by LAC 33:III.2201.D at all times (including periods of startup and shutdown) or with newly-established work practice standards designed to minimize NO<sub>x</sub> emissions during periods of startup and shutdown.

As shown in the table below, each legally and practically enforceable work practice has as its basis a federal provision that serves to limit emissions of NO<sub>x</sub> (and other criteria and hazardous air pollutants as well).

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<sup>14</sup> *Id.*

<sup>15</sup> 80 FR 33976

LAC 33:III.2201.K.3	Federal Basis
a	40 CFR 63.6(e)
b	Table 3 of Subpart DDDDD; Table 3 of Subpart UUUUU
c	Table 3 of Subpart DDDDD; Table 3 of Subpart UUUUU
d	40 CFR 63.6625(h) and Tables 1a, 2a, 2c, & 2d of Subpart ZZZZ
e	40 CFR 63.7555(d)(9) of Subpart DDDDD
f	40 CFR 63.7555(d)(10) of Subpart DDDDD; 40 CFR 63.10032(i) of Subpart UUUUU

With respect to proposed LAC 33:III.2201.K.3.a, EPA's "SSM SIP Policy as of 2015" notes that general duty provisions as generally "[in]sufficient as an alternative emission limitation for any type of event."<sup>16</sup> However, the agency has also recognized that:

- states are free to include general-duty provisions in their SIPs as separate additional requirements, for example, to ensure that owners and operators act consistent with reasonable standards of care;<sup>17</sup> and
- [t]o the extent that such other general-duty requirement is properly established and legally and practically enforceable, the EPA would agree that it may be an appropriate separate requirement to impose upon sources in addition to the (continuous) emission limitation. The EPA itself imposes separate general duties of this type in appropriate circumstances.<sup>18</sup>

AQ364 will not result in an increase in NO<sub>x</sub> emissions or otherwise interfere with attainment of the NAAQS, reasonable further progress, or any other requirement of the Act. Therefore, the proposed regulatory action is not prohibited by section 110(i) of the Act.

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<sup>16</sup> 80 FR 33979

<sup>17</sup> 80 FR 33904

<sup>18</sup> 80 FR 33890; 80 FR 33979