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# Title 33

# ENVIRONMENTAL QUALITY

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# Title 33

# ENVIRONMENTAL QUALITY

## Part I. Office of the Secretary

## Subpart 1. Departmental Administrative Procedures

## Chapter 1. Public Notification of Contamination

### §101. Purpose

A. The purpose of this Chapter is to establish procedures for notifying those members of the public whom the department determines are likely to be adversely affected by a release that poses a significant risk of adverse health effects. This Chapter is in addition to any other requirements to provide notice, and nothing in this Chapter shall be construed to relieve the department or any other person from any other requirement set forth in *Louisiana Administrative Code*, Title 33. Furthermore, nothing in this Chapter shall prevent the responsible party, or the department, from providing additional means for public information and participation consistent with the provisions of this Chapter or any other Chapter of the *Louisiana Administrative Code*, Title 33.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:2039 (October 2003).

### §103. Applicability

A. This Chapter applies to releases that exceed the applicable federal or state health and safety standard and pose a significant risk of adverse human health effects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:2039 (October 2003).

### §105. Effective Date

A. These regulations shall become effective on October 20, 2003. These regulations are only applicable to releases that occur on or after October 20, 2003.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:2039 (October 2003).

### §107. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

*Administrative Authority*—the Secretary of the Department of Environmental Quality or his designee or the appropriate assistant secretary or his designee.

*Applicable Federal or State Health and Safety Standard*—those health and/or safety standards promulgated under federal or state health or safety laws or other universally accepted health or safety standards that the department, based on its knowledge and expertise, reasonably determines are applicable to a particular release and release site. Examples of *applicable federal or state health and safety standards* include, but are not limited to:

a. USEPA maximum contaminant level (MCL) in a drinking water well or aquifer. MCLs are not applicable for non-potable groundwater or surface water;

b. Louisiana primary ambient air quality standards (LAC 33:III.Chapter 7); and

c. Agency for Toxic Substances and Disease Registry (ATSDR) minimal risk levels (MRLs) for air.

*Corrective Action*—activities conducted to protect human health and the environment.

*Department*—the Department of Environmental Quality.

*Off-Site*—areas beyond the property boundary of the release site.

*Person*—any individual, municipality, public or private corporation, partnership, firm, the state of Louisiana, political subdivision of the state of Louisiana, the United States government, and any agent or subdivision thereof or any other juridical person, which shall include, but not be limited to, trusts, joint stock companies, associations, commissions, and interstate bodies.

*Release*—the accidental or intentional spilling, leaking, pumping, pouring, emitting, escaping, leaching, or dumping of hazardous substances or other pollutants into or on any land, air, water, or groundwater. A release shall not include a federal or state permitted release or other release authorized by the department.

*Release Site*—area within the property boundary of the site where the release has occurred.

*Responsible Party*—any person required by law or regulation to undertake corrective action at a site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:2039 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1887 (September 2008).

### §109. Notification Requirements

A. The department shall provide notification to the public for sites within the department's regulatory jurisdiction, as reasonably determined by the department to

be appropriate in accordance with the considerations identified in this Chapter.

B. The department shall issue notice of a release that poses a significant risk of adverse health effects to persons whom the department reasonably determines are likely to be adversely affected by the release.

C. The department may prioritize sites for provision of notice, as appropriate, according to the factors identified in this Section, although notice should in all events be given as soon as reasonably practicable.

D. The following chart provides the content and time frame for providing notification.

| | Public Notice No. 1 | Public Notice No. 2 |
|---|---|---|
| **Triggering Event** | When the department becomes aware of information and determines that a release is likely to have off-site impacts that exceed the applicable federal or state health and safety standard and pose a significant risk of adverse health effects. | When the department confirms off-site impact that exceeds the applicable federal or state health and safety standard and the department determines that the off-site impact poses a significant risk of adverse health effects. |
| **When to Provide Public Notice** | When an emergency or exigent circumstance exists, notice shall be given as soon as practicable under the circumstances by using any reasonable means or, otherwise, within 30 days of the triggering event. | When an emergency or exigent circumstance exists, notice shall be given as soon as practicable under the circumstances by using any reasonable means or, otherwise, within 30 days of the triggering event. |
| **Contents of Public Notice** | 1. Physical address of the release site.<br>2. Description of the contaminant.<br>3. Corrective action efforts.<br>4. Name, phone number, and address of contact person for both the responsible party and the department.<br>5. Other information the department determines is necessary to protect human health and the environment. | 1. Physical address of the release site.<br>2. Description of the contaminant.<br>3. Corrective action efforts.<br>4. Any potential adverse health effects.<br>5. Name, phone number, and address of contact person for both the responsible party and the department.<br>6. Other information the department determines is necessary to protect human health and the environment. |

E. Procedure for Providing Notice to the Public

1. The public notice required by this Chapter must be:

a. communicated in plain language;

b. printed and formatted in a manner that promotes the purpose of the notice when the notice is printed or posted;

c. free of language that nullifies the purpose of the notice;

d. displayed in a conspicuous way when printed or posted; and

e. sized 3 inches x 5 inches, at a minimum, in newspapers, parish journals, etc., when published in such publications.

2. The public notice shall be provided by means reasonably calculated to reach those members of the public directly affected by the release, as determined by the department, and may include, but not be limited to:

a. public notice in local newspapers;

b. block advertisements;

c. public service announcements;

d. direct mailings;

e. personal contacts;

f. press releases;

g. press conferences; and

h. posting on the department's website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:2040 (October 2003).

# Chapter 3. Adjudications

## §301. Purpose

A. This Chapter establishes procedures for regulating adjudications when a request for an adjudicatory hearing has been granted or an adjudicatory hearing has otherwise been scheduled by the administrative authority. All adjudications shall be governed by the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., the Administrative Procedure Act, R.S. 49:950, et seq., and this Chapter. This Chapter also establishes procedures for related matters such as, but not limited to appeals and denials of requests for hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:555 (June 1995).

## §303. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

*Adjudication*—the agency process for the formulation of a final decision or order when a request for an adjudicatory hearing has been granted or an adjudicatory hearing has otherwise been scheduled by the administrative authority.

*Adjudicatory Record*—all pleadings, documents, correspondence and other items filed with the administrative hearings clerk in connection with an adjudication, including those items specified in R.S. 49:955(E).

*Administrative Authority*—the Secretary of the Department of Environmental Quality, or his or her designee.

*Administrative Hearings Clerk*—the person who, directly or through his/her designee(s), maintains custody of and receives filings to the adjudicatory record or the record on appeal following final agency action.

*Administrative Record*—any and all documents, testimony, records, files, or materials submitted to the administrative authority or compiled by the administrative authority concerning an adjudication or upon which a decision or order is based.

*Aggrieved Person*—a person who has a real and actual interest that is or might be adversely affected by a final action of the department under the Louisiana Environmental Quality Act, R.S. 30:200l et seq.

*Applicant*—a person formally seeking a permit action.

*Assistant Secretary*—the assistant secretary of any office of the department.

*Department*—the Louisiana Department of Environmental Quality.

*Interlocutory Decision, Order, or Ruling*—one that determines only preliminary matters in the course of an adjudication, and does not determine the merits of the adjudication.

*Party*—the state (through the Department of Environmental Quality), a respondent, applicant, permittee, intervenor, or other person who is formally participating in an adjudication before the department.

*Permittee*—a person to whom the department has issued a permit.

*Person*—any individual, municipality, public or private corporation, partnership, firm, the United States government and any agent or subdivision thereof, or any other juridical person, which shall include, but not be limited to, trusts, joint stock companies, associations, the state of Louisiana, political subdivisions of the state of Louisiana, commissions, and interstate bodies.

*Pleading*—a petition, motion, response, request, or any statement of position filed with the administrative hearings clerk in connection with an adjudication or appeal of a final agency decision or order.

*Presiding Officer*—the secretary, an assistant secretary, an administrative law judge, or a hearing officer.

*Respondent*—a person to whom an enforcement action is directed.

*Secretary*—the Secretary of the Department of Environmental Quality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:555 (June 1995).

## §305. Rescission

A. The following portions of the Rules of Procedure of the Louisiana Environmental Control Commission dated July 22, 1980, and effective August 20, 1980, are hereby rescinded:

1. Sections 5.0 through 5.8;
2. Sections 6.0 through 6.5;
3. Section 7.0; and
4. Sections 8.0 through 8.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:556 (June 1995).

## §307. Severability

A. If any provision of these rules and regulations, or the application thereof, is held to be invalid, the remaining provisions of these rules and regulations shall not be affected, so long as they can be given effect without the invalid provision. To this end, the provisions of these rules and regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:556 (June 1995).

## §309. Conflicts

A. Except as otherwise required by statutory law, this Chapter shall exclusively govern procedures used in adjudications. This Chapter supersedes all rules in conflict herewith.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:556 (June 1995).

## §311. Hearing Officers: Delegation of Authority

A. Unless otherwise directed by the secretary in writing, when hearing officers hired pursuant to R.S. 30:2018 are assigned a matter, they are hereby delegated the authority to perform the functions of the presiding officer and hearing officer as set forth in this Chapter, the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq. Except as provided in Subsection B of this Section, hearing officers are authorized to conduct hearings, issue interlocutory rulings, make findings of fact and conclusions of law, and render decisions on the merits.

B. In permit actions the hearing officers are authorized to conduct hearings, issue interlocutory rulings, and make findings of fact, conclusions of law, and recommendations on the merits for submission to the administrative authority for a decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:556 (June 1995).

### §313. Presiding Officer: Regulating Adjudications

A. The presiding officer shall have the authority to regulate the course of the proceedings and maintain order.

B. If any party fails to file briefs, memoranda, pleadings, or other documents as required; fails to appear at or participate in any conference, hearing, or other proceeding; fails to comply with the rules of this Chapter; or fails to comply with an order of the presiding officer, the presiding officer may take such appropriate measures in response to the party's action or omission as are necessary to maintain order and regulate the course of the proceedings, including but not limited to such measures as are specifically provided elsewhere in this Chapter.

C. The time and place for adjudicatory proceedings shall be fixed by the presiding officer and reasonable notice thereof shall be provided to all parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:556 (June 1995).

### §315. Administrative Hearings Clerk

A. The administrative authority shall designate a person to serve as the administrative hearings clerk who shall be the official custodian of adjudicatory records. The clerk shall maintain the adjudicatory records separately from other records of the department.

B. The administrative hearings clerk, or his/her designee, is authorized to:

1. certify copies of official documents in his/her custody;

2. ensure distribution of all decisions, recommendations, orders, subpoenas, and notices issued by the presiding officer or secretary; and

3. perform other duties as assigned by the administrative authority and the administrative hearings division administrator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:557 (June 1995).

### §317. Requests for Adjudicatory Hearings

A. Requests for Adjudicatory Hearings Pursuant to R.S. 30:2024(A).

1. An applicant or respondent may request an adjudicatory hearing on a permit or enforcement action under R.S. 30:2024(A) by filing the request with the administrative hearings clerk within the time period allowed by R.S. 30:2024(A).

a. Failure to file a hearing request timely shall result in summary dismissal of the request.

b. Failure to file a hearing request directly with the administrative hearings clerk shall not invalidate the filing, provided the item is filed timely with the administrative authority.

2. A request for an adjudicatory hearing shall specify the provisions of the order, penalty assessment, or other action on which the hearing is requested, and briefly describe the basis for the request.

3. Upon timely filing of the request, the administrative authority shall either grant or deny the request within 30 days.

B. Requests for Adjudicatory Hearings by Aggrieved Persons

1. An aggrieved person may request an adjudicatory hearing by filing a written request with the administrative hearings clerk before the action becomes final. Failure to file a hearing request directly with the administrative hearings clerk shall not invalidate the filing, provided the item is filed timely with the administrative authority. A copy of the request shall be served upon the assistant secretary of legal affairs and enforcement and on any applicant, permittee and respondent involved in the matter.

2. The aggrieved person shall state in the request all facts necessary to demonstrate that he is or might be aggrieved by the action and that a hearing should be granted.

3. Upon receipt of notice that a request for hearing under this Subsection has been filed, the department and any applicant or respondent involved in the action shall file their response within the time fixed by the administrative authority.

4. The aggrieved person may apply for a stay of the action pending the decision to grant or deny the request for hearing. The stay shall be granted or denied in the discretion of the administrative authority.

5. The administrative authority shall grant or deny the request for hearing in writing within 30 days after the request is filed, unless it determines that additional time is necessary. If the request is denied, written reasons shall be given for the denial.

6. Except for good cause shown, this Subsection shall not apply to an aggrieved person who intervened or had the right to intervene in an evidentiary hearing held pursuant to LAC 33:V.709.

C. Adjudicatory Hearings Initiated by the Administrative Authority

1. The administrative authority shall hold an adjudicatory hearing when required by regulations of the department or by law.

2. The administrative authority may hold an adjudicatory hearing upon its own motion where required by equity and justice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:557 (June 1995).

### §319. Docket Number

A. At the time a request for hearing is filed, it shall be assigned a docket number by the administrative hearings clerk. The docket number shall be used on all subsequent pleadings filed in the case. The fact that a request for hearing is docketed does not constitute a determination as to whether the request is granted nor as to its sufficiency or validity.

B. Any amendment or supplement of an agency action on which a request for hearing has been granted becomes a part of the original action, and a new request for hearing is unnecessary. The amendment or supplement shall bear the same docket number as the original action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:557 (June 1995).

### §321. Parties

A. Parties in adjudications may include:

1. the department;
2. the respondent, applicant, or permittee; and
3. an intervenor or other aggrieved person.

B. Parties shall have the right to retain counsel to represent them but shall not be required to do so. Any retained counsel not licensed to practice in Louisiana shall comply with the provisions of R.S. 37:214. No counsel of record may withdraw without leave of the presiding officer, upon motion and order. Leave to withdraw shall not be withheld unreasonably.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:557 (June 1995).

### §323. Intervention

A. An aggrieved person has the right to intervene as a party in an adjudicatory hearing, provided the proper petition for intervention is filed at least 15 days prior to the adjudicatory hearing and such intervention is not likely to create an undue broadening of the issues or otherwise unduly impede the resolution of the matter.

B. If more than one person or entity with the same or similar interests seeks to intervene, the presiding officer may require them to designate a representative to participate on their behalf. If, during the course of an adjudication, the interest of an intervenor diverges from that of the designated representative, the presiding officer may allow that intervenor to participate through a separate representative.

C. A petition for intervention shall comply with the requirements of LAC 33:I.331 and shall also state all facts necessary to demonstrate that the petitioner is an aggrieved person.

D. Upon good cause shown and with permission of the presiding officer, persons with timely and properly pending petitions for intervention may be considered parties for the limited purposes of discovery, exchanges of information, prehearing conferences, service of pleadings, and other such purposes as allowed by the presiding officer, provided no prejudice is shown to existing parties.

E. Unless otherwise ordered by the presiding officer, opposition by parties to a petition for intervention must be filed with the administrative hearings clerk within 10 days after service on the parties of the petition and shall be served on the petitioner and all parties in accordance with these rules.

F. In those cases where any conference or preliminary hearing was held prior to the intervenor's petition, the presiding officer shall require that the intervenor be bound by any previously issued orders or schedules unless the intervenor can show good cause for modification of such orders or schedules or the presiding officer determines that justice requires modification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:558 (June 1995).

### §325. Consolidation

A. When two or more adjudications involving a common issue or issues of law or fact are separately pending before the department, the presiding officer, upon his own motion or that of any party, at any time prior to the adjudicatory hearing, may order the consolidation of the matters or may order a joint hearing on any of the common issues. If the matters are pending before two or more presiding officers, the approval of each presiding officer is required. The matter with the higher docket number shall be transferred to the presiding officer to whom the matter with the lower docket number was assigned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:558 (June 1995).

### §327. Separation of Actions

A. Upon his own motion or that of any party, the presiding officer may separate actions which were cumulated or consolidated if he finds that separation would simplify the proceedings, would permit a more orderly disposition of the matter, or would otherwise be in the interest of justice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division LR 21:558 (June 1995).

## §329. Ex Parte Communication and Recusation

A. Ex parte communication is governed by R.S. 49:950 et seq.

B. Recusation

1. Recusation of a Presiding Officer

a. Any motion by a party requesting recusal of a presiding officer pursuant to R.S. 49:950 et seq., shall be filed in the adjudicatory record promptly upon discovery of the alleged disqualification with a copy served personally or by mail upon the presiding officer. The motion shall be accompanied by an affidavit (with any supporting documentation) stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. This motion shall be filed prior to the adjudicatory hearing unless the party discovers the facts constituting the grounds for recusation thereafter, in which event it shall be filed immediately after the facts are discovered, but prior to a decision or recommendation.

b. If a valid ground for recusation is set forth in the motion and supporting affidavit and documents, the presiding officer shall either promptly recuse himself or refer the motion to the secretary for a decision, notwithstanding the requirements of LAC 33:I.361. The issue shall be determined promptly by the secretary.

c. Upon the entry of an order of disqualification affecting a presiding officer, the secretary shall assign another presiding officer or conduct the hearing himself.

2. Recusation of the Secretary

a. Any motion to recuse the secretary shall be filed into the adjudicatory record promptly upon discovery of the alleged disqualification with a copy served personally or by mail upon the secretary. The motion shall be accompanied by an affidavit (with any supporting documentation) stating with particularity the grounds upon which it is claimed that a fair and impartial decision cannot be accorded. This motion shall be filed prior to a final decision by the secretary.

b. If a valid ground for recusation is set forth in the motion and supporting affidavit and documents, the secretary shall either promptly recuse himself or hold an evidentiary hearing on the issue of his recusal.

c. If the secretary determines that he is to be a witness at the recusal hearing, then he shall recuse himself from said hearing and ask the governor to appoint a secretary ad hoc to preside at the recusal hearing. The secretary ad hoc shall promptly render a decision on the recusal following the hearing. If the secretary is not to be a witness, the secretary shall promptly render a decision on his recusal following the hearing. If the ultimate decision is to recuse the secretary, the secretary shall promptly request the governor to appoint a secretary ad hoc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:558 (June 1995).

## §331. Pleadings: Form and Content

A. Pleadings shall:

1. state the name, mailing address, and telephone number of the person causing the pleading to be filed. In instances where the person filing a request for a hearing is represented by another person, that person's name, address, and telephone number shall be included in the request;

2. be legibly written in ink, typewritten, or printed with 1-inch top, bottom, and side margins and shall be on strong durable white paper, no larger than 8 1/2 by 11 inches;

3. be divided into separate numbered paragraphs and double-spaced;

4. state clearly, concisely, and particularly all relevant facts which give rise to and support the relief sought;

5. when appropriate, identify any statute, rule, written statement of law or policy, decision, order, permit, license, or any other regulatory mechanism and the particular aspect of each upon which the pleading relies;

6. state clearly and concisely the relief or action sought;

7. be signed in ink by the party filing same or by his or her duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he or she has read the document and that, to the best of his or her knowledge, information, and belief, every statement contained in the document is true; and

8. certify that service has been made in accordance with LAC 33:I.335.

B. The heading shall be similar in format to and shall include the information contained in the following example.

| STATE OF LOUISIANA<br>DEPARTMENT OF ENVIRONMENTAL QUALITY | | |
|---|---|---|
| IN THE MATTER OF | * | |
| | * | |
| (Name of Respondent, Permit | * | DOCKET NUMBER |
| Applicant, or Other Matter) | * | |
| (Enforcement Tracking Number) | * | |
| | * | |
| PROCEEDINGS UNDER THE | * | |
| LOUISIANA ENVIRONMENTAL | * | |
| QUALITY ACT | * | |
| R.S. 30:2001 ET SEQ. | * | (Date Filed and |
| | * | Clerk's Stamp or |
| | * | Signature) |
| * * *

C. Failure to comply with this Section shall not invalidate the pleadings, but the presiding officer shall have discretion to rule whether pleadings are in substantial compliance with this Section, to require the amendment or supplementation of any pleading, or to take such other action as may be appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:559 (June 1995).

### §333. Filing of Pleadings and Documents

A. Any pleading, document, or other item which is being filed into the adjudicatory record shall be filed by mail, telephonic facsimile, or other method of delivery with the administrative hearings clerk, Louisiana Department of Environmental Quality, Administrative Hearings Division.

B. All pleadings, documents, or other items shall be deemed filed on the date received by the administrative hearings clerk. Receipt of a filing by telephonic facsimile equipment on or before the due date shall be considered as timely filed, provided the original document is filed into the adjudicatory record within five working days of receipt of the telephonic facsimile.

C. An original and one copy of all pleadings and documents shall be filed unless otherwise specifically provided by a particular regulation, or order of the presiding officer.

D. Discovery requests and responses thereto shall be served upon a party, his counsel of record, or other designated representative, but shall not be filed in the record of the proceedings. The party responsible for service of the discovery materials shall retain the original and become the custodian of such materials. The provisions of this Section shall not be construed to preclude the filing of any discovery materials as exhibits or as evidence in connection with a motion or hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:559 (June 1995).

### §335. Service

A. Except where otherwise required by law, on or before the day that a pleading is filed with the administrative hearings clerk, service of same shall be made upon all parties, attorneys, or designated representatives by mail or any other method of delivery, including telephonic facsimile equipment, provided the receiving person maintains such equipment at his office and it is operating at the time the service is made.

B. Unless otherwise provided herein, service by mail or by telephonic facsimile equipment is effective on the date mailed or transmitted. Personal or domiciliary service is effective when delivered or tendered, even if delivery is refused.

C. When a party is represented by an attorney or other designated representative or has appointed an agent for service of process, notice may be given to the party through said attorney, other designated representative, or agent.

D. Notice to a party or person seeking to achieve party status shall be given at the last address filed into the adjudicatory record. Any party or person seeking party status shall timely file into the adjudicatory record notice of any change of address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:559 (June 1995).

### §337. Computation of Time

A. In computing any period of time prescribed or allowed in this Chapter or the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the day on which the designated period begins shall not be included. The last day of the designated period shall be included unless it is a Saturday, Sunday, or a legal holiday as provided in R.S. 1:55, in which event the designated period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:560 (June 1995).

### §339. Conferences

A. When a request for hearing is granted, the presiding officer shall notify the parties of the date, time, and location of the initial status conference.

B. The purpose of the initial status conference shall be to:

1. enroll counsel of record or other official representative;

2. discuss the nature of the proceedings, contentions of the parties, contested issues, stipulations, pleadings, discovery, motions, settlement possibilities, estimated time to try the case, and other matters; and

3. establish hearing dates and prehearing deadlines.

C. The presiding officer may order additional conferences as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:560 (June 1995).

### §341. Failure to Appear

A. If a party fails to appear at or participate in a conference or hearing the presiding officer may:

1. proceed with the conference or hearing;

2. continue the conference or hearing;

3. limit the party's participation at a hearing; or

4. terminate the adjudication pursuant to LAC 33:I.365.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:560 (June 1995).

## §343. Motions

A. Any party may file motions relating to an adjudication.

B. Except as otherwise permitted by the presiding officer, all motions, other than those made orally on the record during a hearing, shall be submitted in writing and shall comply with LAC 33:I.331, with copies served on all parties.

C. The parties may request oral argument or a hearing, but it will be allowed only when ordered by the presiding officer. All other motions will be decided by the presiding officer on the basis of the adjudicatory record.

D. Untimely filing of motions or failure to file or untimely filing of supporting memoranda, without good cause, may result in the denial of the motion or delay in consideration of it. Untimely filing of opposition to motions or failure to file or untimely filing of supporting memoranda in opposition to motions, without good cause, may result in the granting of the motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:560 (June 1995).

## §345. Continuances

A. Any proceeding may, for good cause, be continued by the presiding officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:560 (June 1995).

## §347. Discovery

A. Prehearing Exchange

1. Prior to completing discovery, all parties shall exchange or allow inspection of the items listed below:

a. all exhibits to be offered during the adjudicatory hearing except those to be offered solely for purposes of rebuttal or impeachment;

b. lists of witnesses to be called at the adjudicatory hearing (except those for purposes of rebuttal or impeachment) designating fact and expert witnesses and a concise statement of the nature of each witness's testimony;

c. lists of matters to be officially noticed; and

d. curriculum vitae for expert witnesses listed.

2. The duty imposed by this Subsection shall be ongoing; the parties shall supplement the exchange as may be necessary.

3. Failure to participate in said exchange in the manner required may result in limitation of use of the witnesses or other items at a hearing.

B. In the interest of administrative economy, the parties shall first attempt to obtain discovery by agreement or through the Public Records Act, R.S. 44:1 et seq.

C. Subject to the provisions of this Section, discovery shall be only by depositions of witnesses, within or without the state, and requests for production of documents and things. These forms of discovery may be utilized in the same manner as provided by law for civil actions regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action or which appears reasonably calculated to lead to admissible evidence.

D. A request for a subpoena duces tecum or for production of documents and things shall describe with reasonable particularity the items requested. The requesting party shall provide written reasons why the burden of obtaining the items through R.S. 44:1 et seq., outweighs the burden to the department in producing the items pursuant to the discovery request.

E. Notwithstanding any other provisions of this Section, upon application of any party, the presiding officer, for good cause, may:

1. issue any order necessary to protect a party or person from annoyance, embarrassment, oppression, disclosure of confidential information, or undue burden or expense; and

2. allow forms of discovery other than depositions and requests for production of documents and things.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:560 (June 1995).

## §349. Confidentiality

A. All portions of adjudicatory records are subject to review by all parties and the general public unless a written request for confidentiality under R.S. 49:950 et seq., or R.S. 30:2030 is granted by the presiding officer.

B. A motion for protective order, or other request to limit discovery, may be considered as a request for confidentiality. In the event a protective order is issued, or discovery is otherwise limited, the presiding officer may designate in writing as confidential that portion of the adjudicatory record necessary to enforce the provisions of the protective order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:561 (June 1995).

## §351. Subpoenas

A. The issuance of a subpoena shall be by order of the presiding officer and upon written request of a party directed to the administrative hearings clerk, whose duty and function it shall be to process all subpoenas.

B. Failure of a witness to appear or respond to a subpoena will not be grounds for a continuance unless:

1. the testimony of the witness is shown to be material, relevant, and not merely cumulative to the proceeding; and

2. the request for the subpoena was received by the administrative hearings clerk at least 15 days prior to the date required for appearance or return on the subpoena, or for good cause shown.

C. To request the issuance of a subpoena, the following procedure shall be followed:

1. unless otherwise ordered by the presiding officer, the subpoena shall be prepared by the requester;

2. the subpoena must include the heading contained in LAC 33:I.331.B and contain the name of the party and the representative requesting the subpoena; the complete name of the person being subpoenaed; the specific service address (with directions if necessary); whether personal service is necessary; a sufficient description of any document or item to be produced; and the date, time, place, and proceeding for which the subpoena is requested;

3. a subpoena adapted from the Louisiana Code of Civil Procedure formulary is acceptable. Sample subpoena forms are available from the administrative hearings clerk; and

4. a request on behalf of any party other than the department shall state the number of miles between the witness's address and the place where the appearance and/or return is to be made and be accompanied by a check made payable to the department in the amount to cover costs, including the following:

a. service fees due whenever a private process server or any other person authorized by law is utilized to obtain service; and

b. and an amount sufficient to cover witness fees pursuant to R.S. 49:956(5).

D. The presiding officer may fix expert witness fees in accordance with R.S. 49:950 et seq.

E. For good cause the presiding officer may issue any order necessary to protect a party or person from a subpoena which may cause disclosure of confidential information, undue burden or expense, annoyance, embarrassment, or oppression.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:561 (June 1995).

## §353. Prehearing Order

A. The presiding officer may require, prior to the adjudicatory hearing, that the parties submit a joint proposed prehearing order approved and signed by all parties or their counsel of record. Except as otherwise ordered by the presiding officer, the proposed prehearing order shall set forth the following:

1. a brief but comprehensive statement of the factual and legal contentions of each party;

2. a list of the legal authority (including statutes, code articles, regulations, and cases) to be relied upon by each party at the adjudicatory hearing;

3. a detailed itemization of all pertinent uncontested facts established by pleadings, stipulations, and admissions;

4. a detailed itemization of all contested issues of fact;

5. a list of all contested issues of law;

6. a list and brief description of all exhibits to be offered in evidence by each party. Exhibits to be used solely for impeachment or rebuttal need not be included on the list;

7. a list naming the fact witnesses and the expert witnesses each party may call and a short statement as to the nature of their testimony. Witnesses to be called solely for impeachment or rebuttal need not be included on the list;

8. a list of all matters to be officially noticed;

9. a statement by each party as to the estimated length of time necessary to present its case;

10. all other stipulations;

11. a list of all pending motions;

12. a statement as to any other matters not included in any of the previous headings which may be relevant to a prompt disposition of the case;

13. the following certification:

"We hereby certify that we have conferred for the purpose of preparing this joint proposed prehearing order and that we have no objections to the contents of this prehearing order other than those attached hereto pursuant to LAC 33:I.353.B;" and

14. this order:

"IT IS ORDERED that this matter be set for hearing at _____ o'clock _____.m. on the _____ day of _____, 20_____ and to continue thereafter until completed."

_____

PRESIDING OFFICER

B. In the event that the representative or counsel of any party disagrees with the proposed prehearing order, or any part thereof, he shall attach to the order a signed statement of

his opposition and reasons therefor but shall, nevertheless, sign the joint proposed prehearing order which shall be deemed to be approved in all respects except those covered in the statement of opposition.

C. The representative or counsel who has certified the prehearing order as submitted to the presiding officer shall attend the prehearing conference and the adjudicatory hearing unless permission is granted by the presiding officer for a substitute to appear. Any counsel or other representative attending the conference shall be knowledgeable of all aspects of the case and shall possess the necessary authority to commit his client, associate counsel, and witnesses regarding changes, stipulations, and hearing dates.

D. At the conclusion of the prehearing conference, the presiding officer shall sign the order setting the case for the adjudicatory hearing, and it shall thereafter be filed in the adjudicatory record. No amendments to the filed prehearing order shall be made prior to the hearing except at the discretion of the presiding officer based upon consent of the parties or for good cause shown.

E. If a party fails to cooperate in preparing or filing a prehearing order, the presiding officer may proceed with the prehearing conference, sign the prehearing order as drafted, continue the prehearing conference, continue the hearing, or limit the party's right to introduce evidence, cross-examine witnesses, argue, or otherwise participate in the adjudicatory hearing.

F. The presiding officer may order such other action as he deems necessary to facilitate the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:561 (June 1995).

## §355. Evidence

A. Adjudications are governed by R.S. 49:950 et seq. Although adjudications are not bound by the formal rules of evidence prescribed for civil actions, the Louisiana Code of Evidence may be used as a guide in evidentiary determinations.

B. The presiding officer may call and question a witness or elicit evidence on his own motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:562 (June 1995).

## §357. Exhibits

A. Maps, drawings, and other exhibits should not exceed 8 1/2 by 14 inches unless they are folded to the required size. Exhibits not conforming to this rule may be excluded.

B. Prior to use of exhibits at a hearing, copies shall be furnished to the presiding officer and all parties, unless the presiding officer shall rule otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:562 (June 1995).

## §359. Record; Transcripts

A. The adjudicatory record may, for good cause shown, be left open or reopened for the receipt of additional evidence, subject to the right of traversal by other parties and provided that a copy of such evidence is mailed or an opportunity to inspect it is provided to the parties at or before the time it is offered for introduction into the adjudicatory record.

B. It shall be the responsibility of the administrative hearings division to have all adjudicatory hearings recorded, and such recordings shall be the official recording of the hearing. A verbatim transcript shall be made when required by law, requested by a party or the presiding officer, or requested for appeal. Any person requesting that a transcript be made shall pay the estimated costs in advance, unless exempt.

C. Upon notice of appeal and after payment of the estimated transcription costs in advance by the appellant, the presiding officer shall order that the designated portions of the record be transcribed and that this transcript be included in the record for appeal.

D. When a transcript of any part of the proceeding has been made, the original shall be filed into the adjudicatory record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:562 (June 1995).

## §361. Interlocutory Review

A. A party seeking review by the secretary of an interlocutory order, decision or ruling shall file a motion for review of the order with the administrative hearings clerk, who shall forward the motion to the secretary.

B. The presiding officer may stay further proceedings to allow a party to seek review of the interlocutory order, decision or ruling.

C. Within five days of receipt of the motion from the administrative hearings clerk, the secretary shall:

1. affirm the interlocutory order, decision or ruling;

2. modify or overrule the order, decision or ruling, stating the factual and legal reasons for his action;

3. remand the matter with instructions to the presiding officer;

4. decline to review the order, decision or ruling; or

5. file with the administrative hearings clerk written notice extending the five-day period.

D. If the secretary fails to act on the motion within the five-day period, or within any extension, as provided in Subsection C of this Section, he shall be deemed to have declined to review the matter.

E. If the secretary declines to review an interlocutory order, decision or ruling, this shall not preclude the mover from raising the matter later in a motion for review by the secretary of a decision on the merits under LAC 33:I.369.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:562 (June 1995).

### §363. Briefs, Proposed Findings of Fact, and Conclusions of Law

A. The presiding officer may:

1. require any party to file briefs, proposed findings of fact, and/or proposed conclusions of law;

2. require rebuttal and/or traversal of the briefs and/or proposals; or

3. require that any briefs, proposed findings of fact, or conclusions of law include references to those parts of the record, transcript, or exhibits that support them and that any rebuttal or traversal responds to and correlates with the briefs, proposals, and traversals filed by other parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:563 (June 1995).

### §365. Termination of Adjudications

A. Except where a decision is rendered on the merits, the presiding officer shall issue an order terminating an adjudication:

1. upon written motion, accompanied by an unconditional withdrawal of the request for a hearing filed with the administrative hearings clerk;

2. upon written motion, accompanied by a rescission by the department of the underlying action;

3. upon joint written motion signed by the department and the applicant, permittee, or respondent, accompanied by a stipulation, agreed settlement, or consent order; or

4. by any other procedure allowed by law.

B. The presiding officer may also terminate an adjudication upon the default of the person requesting the hearing if:

1. that person fails to appear at the hearing;

2. the department moves for a default; and

3. the adjudicatory record contains proof that notice of the date, time, and place of the hearing was provided to that person.

C. Upon the default of the person requesting a hearing, the request shall be deemed withdrawn and the action of the department shall become final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:563 (June 1995).

### §367. Presiding Officer's Decision

A. When a presiding officer renders a decision on the merits in an adjudication, a copy thereof shall be filed with the secretary. It shall also be served by certified mail or by hand upon each party to the proceedings.

B. A decision on the merits by the presiding officer shall become final and effective as to any party 30 days after service unless said 30-day period is interrupted by the filing of:

1. a petition for reconsideration, reopening, or rehearing pursuant to Subsection C of this Section; or

2. a motion for review by the secretary pursuant to LAC 33:I.369.

C. Pursuant to R.S. 49:959, any party may request a rehearing, reopening of the record, or reconsideration of a decision on the merits (in whole or in part) of the presiding officer if such request is filed with the administrative hearings clerk within 10 days from the date of its entry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:563 (June 1995).

### §369. Review by Secretary of Decisions by the Presiding Officer

A. A party may seek review by the secretary of a presiding officer's decision on the merits within the time frame specified in LAC 33:I.367 by filing with the administrative hearings clerk a written motion for review stating the grounds upon which the review is requested. However, if a petition for reconsideration, reopening, or rehearing is filed timely, a motion for review by the secretary must be filed within 30 days following:

1. service of an order denying the petition; or

2. service of a decision on the merits by the presiding officer following a reconsideration, reopening, or rehearing.

B. Upon receipt of a motion for review, the secretary may:

1. deny the motion, at which time the decision shall become final agency action; or

2. grant the motion as to one or more of the grounds on which the review is requested or on such other grounds as he deems proper, and:

a. remand the matter with instructions to the presiding officer;

b. overrule the decision of the presiding officer and render his own decision based on the record developed; or

c. hold new hearings or collect additional evidence or both and render his own decision.

C. In the event the secretary overrules a decision of the presiding officer, renders his own decision based on the record developed, or holds a new hearing and renders a decision, the secretary shall issue findings of fact and conclusions of law.

D. The administrative hearings clerk shall serve a copy of the decision by certified mail upon all parties, their counsel of record, or other representative and record the date of mailing.

E. Pursuant to R.S. 49:959, any party may request a rehearing, reopening of the record, or reconsideration of a decision on the merits (in whole or in part) of the secretary if such request is filed with the administrative hearings clerk within 10 days from the date of its entry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:563 (June 1995).

### §371. Entry of Decisions

A. The original of any decision or order issued by the presiding officer or the administrative authority in connection with an adjudication, shall be filed with the administrative hearings clerk who shall notify all parties of the decision or order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:564 (June 1995).

### §373. Appeals to the Court of Appeal, First Circuit

A. Any final decision or order of the administrative authority appealable to the Court of Appeal, First Circuit shall not be subject to further review unless:

1. a motion for appeal is filed with the administrative hearings clerk within 30 days after notice of the final decision or order is served by certified mail or by hand upon the appealing party; or

2. if a rehearing, reopening of the record, or reconsideration is properly requested and denied, a motion for appeal is filed within 30 days after notice of the denial is served by certified mail or by hand upon the appealing party.

B. Copies of the motion for appeal shall be served upon the department and all parties of record.

C. Any motion for an appeal to the Court of Appeal, First Circuit shall comply with the local rules of that court and the Uniform Rules of Louisiana Courts of Appeal.

D. The filing of the motion for appeal does not automatically stay actions taken by the administrative authority. Unless otherwise directed by the secretary in writing, the presiding officer may grant a stay pending review by the court. A stay may also be granted by the secretary, or by the Court of Appeal, First Circuit, in accordance with law and the rules of the court.

E. Upon motion of a party, the presiding officer may allow the record to be supplemented if the party seeking to do so has demonstrated good cause for failure to previously designate the supplement as part of the record, and all parties are served with the motion to supplement the record and given an opportunity to be heard on the motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21:564 (June 1995).

## Chapter 5. Confidential Information Regulations

### §501. Scope

A. Department of Environmental Quality information and records obtained under the Louisiana Environmental Quality Act, or by any rule, regulation, order, license, registration, or permit term or condition adopted or issued thereunder, or by any investigation authorized thereby, shall be available to the public, unless confidentiality is requested in writing to the Office of the Secretary and the information or records are determined by the department to require confidentiality.

B. Unless otherwise provided by law or regulation, information or records may be classified as confidential if the secretary makes a written determination that confidentiality is necessary to:

1. prevent impairment of an ongoing investigation;

2. prevent prejudice to the final decision regarding a violation;

3. protect trade secrets;

4. protect proprietary secrets;

5. protect commercial or financial information; or

6. comply with federal or state law or regulation or a valid court order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:342 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2439 (November 2000), LR 30:742 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2432 (October 2005), LR 33:2078 (October 2007).

### §502. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

*Air Emission Data*—any information necessary or used to determine or calculate the identity, amount, frequency, concentration, or other characteristic of any emission or discharge that has been emitted or discharged by a source; or any information necessary or used to determine or calculate the identity, amount, frequency, concentration, or other characteristic of an emission that, under an applicable standard or limitation, a source was authorized to emit or discharge, including, to the extent necessary to identify the source and to distinguish it from other sources, a description of the device, installation, or operation constituting the source. This includes the calculation of an "allowable" emission limit for a permit.

*Complete*—in reference to a request for confidentiality of information or records, the request contains everything necessary for a determination to be made. Designating a request complete does not preclude the department from requesting or accepting an amended request.

*Financial Request*—a single character request that contains financial information or records only. This includes, but is not limited to, financial accounts statements, gross revenues statements, profit and loss statements, projected revenues statements, tax returns, financial/accounting statements, and financial audit documentation/reports.

*Mixed Character Record*—a record submitted as part of a request for confidentiality that, in addition to information that meets the criteria for confidentiality specified by law, also contains information that either does not meet the criteria for confidentiality specified by law or is prohibited by law or regulation from being classified as confidential.

*Mixed Character Request*—a request for confidentiality that contains one or more mixed character records.

*Single Character Request*—a request for confidentiality that contains only information or records that meet the criteria for confidentiality specified by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:2439 (November 2000), amended LR 30:742 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1888 (September 2008).

## §503. Requests for Confidentiality

A. Each request for confidentiality shall include all of the following:

1. a statement whether the request for confidentiality is a single character request, a mixed character request, or a financial request;

2. a list or an index identifying each separate record, category of records, or item of information and stating the legal authority under which each separate record or item of information may be determined to require confidentiality;

3. a statement of the measures taken to guard against undesired disclosure to others of each record or item of information;

4. a statement of the extent to which the information or records have been disclosed to others and the precautions taken in connection therewith;

5. a statement whether disclosure of the information or records would be likely to result in substantial harmful effects in the competitive market and, if so:

a. a statement of what those effects would be;

b. a statement of why they should be viewed as substantial; and

c. an explanation of the causal relationship between disclosure and such harmful effects for each record or item of information;

6. a statement whether any previous request for confidentiality has been made to any government agency for the same information or records and, if so, the date of the request and its disposition; and

7. a certification that all statements are true and correct to the best of the requester's knowledge.

B. Each request shall be submitted with two versions of the information or records; one version to be clearly marked "confidential," and the other to be clearly marked "public."

1. The confidential version is to show all information and must clearly indicate what confidential information is excised from the public version.

2. The public version is to have the confidential information excised and must clearly show that confidential information has been excised.

3. Blacking out confidential portions of otherwise public records is permissible, provided that the blacked-out portions are clearly identified in both confidential and public versions.

C. A financial request is not required to comply with the provisions of Paragraphs A.2-5 of this Section.

D. A single character request shall include a certification that no record or item of information is contained in the request that:

1. fails to meet the criteria for confidentiality specified by law; or

2. is prohibited by law or regulation from being classified as confidential.

E. Specific categories of information that are prohibited from being classified as confidential include:

1. air emission data;

2. any permit or portion of a permit issued to a source in accordance with LAC 33:III.507;

3. effluent and discharge data to surface water and groundwater;

4. the location and identification of any buried waste;

5. the name and address of any license, registration, or permit applicant or permittee;

6. all NPDES, LPDES, and other water discharge permit applications or permits and information required by LPDES application forms, including information submitted on the forms and any attachments used to supply information required by the forms;

7. any other information required by law or regulation to be disclosed or made available to the public; and

8. any other information for which a claim of confidentiality is prohibited by law or regulation.

F. All records submitted in accordance with R.S. 44:3.2 will be processed as a complete request for confidentiality as described in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:342 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:743 (April 2004), amended by the Office of Environmental Assessment, LR 30:2802 (December 2004).

## §505. Responses to Requests for Confidentiality

A. The department shall make a determination and send a written response to the requester by certified mail within a reasonable time from receipt of a complete request for confidentiality, except for:

1. requests made in accordance with R.S. 30:2074(D), in which case the department shall send a written response by certified mail within 21 working days from receipt of the complete request for confidentiality; and

2. requests made in accordance with R.S. 44:3.2, in which case the department shall send a written response by certified mail within 30 days from receipt of the complete request for confidentiality.

B. The department's determination shall become final unless, no later than 30 days after receipt of the written determination, the requester files a written request for a hearing.

C. Information or records for which a complete confidentiality request has been submitted shall be held confidential until the department's determination becomes final. Departmental employees, other than those charged with assessing the request for confidentiality, shall not be given access to such information or records, even if necessary for the performance of their jobs, until the department's determination as to confidentiality becomes final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:342 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:743 (April 2004), amended by the Office of Environmental Assessment, LR 30:2802 (December 2004).

## §507. Accessibility

A. Information that is confidential shall not be made available to the public.

B. If a request for confidentiality is granted, such confidentiality shall not prevent the necessary use of the information or records by department employees or duly authorized officers or employees of local, state, or federal governments in carrying out their responsibilities under law. The secretary or the secretary's designee must duly authorize any officer or employee of local, state, or federal government who seeks access to confidential information or records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030 and 2074.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:343 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:744 (April 2004), amended by the Office of Environmental Assessment, LR 30:2802 (December 2004).

## §509. Release of Confidential Information or Records

A. Information or records that are declared confidential to prevent impairment of an ongoing investigation or prejudice to the final decision regarding a violation will be made available for public inspection upon conclusion of the investigation or rendition of the final decision regarding a violation.

B. All other information or records that are declared confidential are subject to public disclosure three years from the date of determination of confidentiality, unless a complete request for continuance of confidentiality is received no later than 180 days prior to the expiration of the three-year period.

C. The submitter of information or records or the submitter's successor or assignee shall notify the secretary, by authentic act, of any information or record that is no longer considered to be confidential and shall release the secretary from any responsibility with regard to any claim of confidentiality concerning that record or information.

D. Renewal of a grant of confidentiality is at the discretion of the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:343 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:744 (April 2004).

## §511. Disclosure of Confidential Records or Information

A. Any employee or former employee of the department or anyone acting as a representative of the secretary of the department who is convicted of intentional disclosure or conspiracy to disclose trade secrets or other information that has been determined to be confidential is guilty of a

misdemeanor and, upon conviction, shall be punished by a fine of not more than $1,000, imprisonment for up to one year, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:744 (April 2004).

# Chapter 6. Security-Sensitive Information

## §601. Scope

A. Department of Environmental Quality records and information obtained under the Louisiana Environmental Quality Act, or in accordance with any rule, regulation, order, license, registration, or permit term or condition adopted or issued thereunder, or by any investigation authorized thereby, shall be available to the public unless specifically excepted or exempted by law. In accordance with law, regulation, or general practice, records and information may be made accessible to the public in a variety of ways, including but not limited to in-person on department premises, at a public library or other public facility, via request in accordance with the Louisiana Public Records Act, at a public meeting, via public notice, or via the Internet. Certain security-sensitive information shall not be publicly distributed or disseminated via the Internet by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:1321 (June 2005).

## §603. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

*Distribution or Dissemination via the Internet*—to make known to the public generally by posting to a web, FTP, database, or application server configured for anonymous public access under the direct control of the department.

*Security-Sensitive Information*—as defined in R.S. 44:3(A)(3), security procedures, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments created, collected, or obtained in the prevention of terrorist-related activity, including but not limited to physical security information, proprietary information, operational plans, and the analysis of such information, or internal security information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:1322 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1888 (September 2008).

## §605. Responsibility of Provider of Records or Information

A. As the department does not generate security-sensitive information as defined in LAC 33:I.603, it shall be the responsibility of a provider of such information to identify it as security sensitive at the time of submitting it to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:1322 (June 2005).

## §607. Procedure for Submitting Security-Sensitive Information

A. In the event that a submittal of records, documents, or information to the department contains security-sensitive information, these steps shall be followed in order to ensure that the information is marked for protection from Internet distribution or dissemination.

1. A cover sheet conspicuously labeled with the phrase "Contains Security-Sensitive Information" shall accompany the submittal. Each page or any item (e.g., any picture, map, videotape, computer disk, etc.) that contains allegedly security-sensitive information shall be clearly labeled. To the maximum extent possible, security-sensitive information shall be segregated and placed in a clearly labeled appendix to facilitate identification and handling.

2. A statement detailing the reasons for the required protection shall also accompany the submittal. It shall include all of the following:

a. the measures taken to guard against undesired disclosure of the information to others;

b. the extent to which the information has been disclosed to others and the precautions taken in connection therewith;

c. whether disclosure of the information would be likely to result in substantial harmful effects and, if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects;

d. the period of time for which protection from Internet distribution or dissemination is desired; and

e. a certification that all statements are true and correct to the best of the provider's knowledge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:1322 (June 2005).

## §609. Dissemination of Existing Security-Sensitive Information; Notification to Department

A. In the event that the department distributes or disseminates any information via the Internet that was in its possession prior to the adoption of this regulation, and the

provider of the information considers the information to be security sensitive, it is the responsibility of the provider to notify the department via letter to the Custodian of Records, Department of Environmental Quality, Box 4303, Baton Rouge, LA 70821-4303 or by fax to (225) 219-3175. Notification shall include all information required in LAC 33:I.607 and authentication that the person making the declaration is authorized to do so. Distribution or dissemination of the material via the Internet will be restricted within three business days of notification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:1322 (June 2005).

# Chapter 7. Penalties

## §701. Scope

A. The intent of this Chapter is to assure that, after the department has determined a penalty is to be assessed for one or more violations, each penalty is assessed in a consistent, fair, and equitable manner; that penalties are appropriate for the gravity of the violation committed; that economic incentives for noncompliance are eliminated; that penalties are sufficient to deter persons from committing future violations; and that compliance is expeditiously achieved and maintained.

B. After considering the nine factors in R.S. 30:2025(E)(3)(a), the department realizes there may be circumstances where violations have occurred that do not warrant a penalty action.

C. This Chapter is to be utilized by the department only after it has determined that a penalty is to be assessed for a specific violation unless otherwise specified by rule or regulation. Nothing in this Chapter applies to the determination of whether to assess a penalty, or to the compromise or settlement of a penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:657 (April 1999).

## §703. Definitions

A. For purposes of this Chapter, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

*Nine Factors*—the factors listed in R.S. 30:2025(E)(3)(a) and considered by the department in determining whether or not a civil penalty is to be assessed and in determining the amount agreed upon in compromise. The nine factors are as follows:

a. the history of previous violations or repeated noncompliance;

b. the nature and gravity of the violation;

c. the gross revenues generated by the respondent;

d. the degree of culpability, recalcitrance, defiance, or indifference to regulations or orders;

e. the monetary benefits realized through noncompliance;

f. the degree of risk to human health or property caused by the violation;

g. whether the noncompliance or violation and the surrounding circumstances were immediately reported to the department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged;

h. whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by his noncompliance or violation; and

i. the costs of bringing and prosecuting an enforcement action, such as staff time, equipment use, hearing records, and expert assistance.

*Penalty Event*—any violation [as defined in R.S. 30:2004(21)] for which the administrative authority, after consideration of the factors listed in R.S. 30:2025(E)(3)(a), determines a penalty is warranted. For violations lasting more than one 24-hour day, each such day of violation may be treated as a separate penalty event.

*Response Costs*—the costs to the state of any response action made necessary by a penalty event that are not voluntarily paid by the violator. These costs shall include, but are not limited to, the costs of surveillance staff activities including cleanup costs and the costs of bringing and prosecuting an enforcement action, such as staff time, equipment use, hearing records, and expert assistance.

*Violation-Specific Factor*—the two of the nine factors considered when plotting a violation on the penalty matrix. Each factor is weighed consistently without regard to the violator, and no special circumstances or violator-specific factors are considered when plotting the violation on the penalty matrix. These factors include:

a. the nature and gravity of the violation; and

b. the degree of risk to human health or property caused by the violation.

*Violator-Specific Factor*—the five of the nine factors considered when adjusting the difference between the minimum and maximum penalty range within a particular cell on the penalty matrix. The degree of adjustment in a particular penalty range on the penalty matrix will vary depending upon the specific and unique circumstances of these five factors. These factors include:

a. the history of previous violations or repeated noncompliance;

b. the gross revenues generated by the respondent;

c. the degree of culpability, recalcitrance, defiance, or indifference to regulations or orders;

d. whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by his noncompliance or violation; and

e. whether the noncompliance or violation and the surrounding circumstances were immediately reported to the department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:658 (April 1999).

## §705. Penalty Determination Method

A. A penalty range for each penalty event is calculated based on the two violation-specific factors. The two violation-specific factors are plotted on the penalty matrix to determine a penalty range for a particular penalty event (see Table 1). The various penalty ranges for a penalty event are found inside each cell of the penalty matrix.

**Table 1. Penalty Matrix**

| | | Nature and Gravity of the Violation | | |
|---|---|---|---|---|
| | | **Major** | **Moderate** | **Minor** |
| **Degree of Risk/Impact to Human Health or Property** | **Major** | $32,500 to $20,000 | $20,000 to $15,000 | $15,000 to $11,000 |
| | **Moderate** | $11,000 to $8,000 | $8,000 to $5,000 | $5,000 to $3,000 |
| | **Minor** | $3,000 to $1,500 | $1,500 to $500 | $500 to $100 |

1. *Penalty Matrix*—Degree of Risk to Human Health or Property. The first stage of the penalty calculation involves the categorization of each penalty event as major, moderate, or minor with regard to its degree of risk to human health or property. The following criteria are used to categorize each penalty event with regard to its degree of risk to human health or property.

a. Major. Refers to a violation in which actual measurable harm or substantial risk of harm to the environment or public health occurs. The noncompliance results in, or would reasonably be expected to result in, the temporary or permanent loss of a use of the environmental resource. A violation of major impact and hazard may be one characterized by high volume and/or frequent occurrence and/or high pollutant concentration. Such violations may have a detrimental impact on sensitive environments or include the discharge of toxic pollutants;

b. Moderate. Refers to a violation that has the potential for measurable detrimental impact on the environment or public health. A violation of moderate impact and hazard may be one characterized by occasional occurrence and/or pollutant concentration that may be expected to have a detrimental effect under certain conditions; and

c. Minor. Refers to a violation that does not directly present actual harm or substantial risk of harm to the environment or public health. Violations that are isolated single incidences and that cause no measurable detrimental effect to the environment or public health may be considered minor. Violations that are administrative in nature may be, but are not necessarily, considered minor.

2. *Penalty Matrix*—Nature and Gravity of the Violation. The second stage of the penalty calculation involves the categorization of each penalty event as major, moderate, or minor with regard to its nature and gravity. The following criteria are used to categorize each penalty event with regard to its nature and gravity.

a. Major. Refers to violations of applicable statutes, regulations, orders, permit limits, or permit requirements that result in negating the intent of the requirement. The respondent deviates significantly from the requirements of the statutes, regulations, or permit to such an extent that little or no implementation of requirements occurs;

b. Moderate. Refers to violations of applicable statutes, regulations, orders, permit limits, or permit requirements that result in substantially negating the intent of the requirement. The respondent deviates from the requirements of the statutes, regulations, or permit, but some implementation of the requirements occurred; and

c. Minor. Refers to violations of applicable statutes, regulations, orders, permit limits, or permit requirements that result in some deviation from the intent of the requirement. The respondent deviates somewhat from the requirements of the statutes, regulations, or permit; however, substantial implementation of the requirements occurred.

B. Once a penalty event has been categorized as major, moderate, or minor for both its degree of risk to human health or property and its nature and gravity, a penalty range is obtained by plotting these two categorizations with the corresponding cell of the penalty matrix.

C. Violator-Specific Factors (Adjustment Factors) per Event. The next stage of the penalty calculation involves the adjustment of the penalty using the following violator-specific factors:

1. the history of previous violations or repeated noncompliance;

2. the gross revenues generated by the respondent;

3. the degree of culpability, recalcitrance, defiance, or indifference to regulations or orders;

4. whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation; and

5. whether the noncompliance or violation and the surrounding circumstances were immediately reported to the department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.

D. The five violator-specific factors are used to adjust the penalty amount for each penalty event. Each violator-specific factor is assigned a percentage adjustment on a case-by-case basis. The upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The five percentages are added together to calculate a total percentage adjustment for the penalty range for the penalty event. The total upward or downward percentage adjustment is also limited to 100 percent. The total percentage adjustment is multiplied by the difference between the minimum and maximum penalty amount for the chosen matrix cell. The product is then added to, or subtracted from, the minimum penalty amount in the chosen matrix cell.

E. The information obtained from the violation-specific and violator-specific factors can be entered into one of the following formulas to obtain a penalty amount ($P_n$) for each penalty event:

$$P_n = A_n + (B_n \times [C_n - A_n])$$

$$P_n = 2(A_n + [B_n \times (C_n - A_n)]) \ *$$

where:

$P_n$ = penalty amount for a given penalty event.

$A_n$ = the minimum value of the penalty range for the cell located on the penalty matrix for a given penalty event.

$B_n$ = the sum of percentage adjustments calculated for a given penalty event, where 100 percent $\geq B \geq$ -100 percent.

$C_n$ = the maximum value of the penalty range for the cell located on the penalty matrix for a given penalty event.

* [NOTE: For violation of a previous enforcement action the penalty is multiplied by 2. The statutory maximum is $50,000 in circumstances where the penalty event constitutes a violation of a previous enforcement action as stated in R.S. 30:2025(E)(2).]

F. The values for each penalty amount ($P_n$) are added to determine a penalty subtotal ($P_s$):

$$P_s = P_1 + P_2 + P_3$$

G. The department shall consider the monetary benefits realized through noncompliance. Any monetary benefits calculated may be added to the penalty subtotal. However, the amount calculated may not cause the penalty subtotal to exceed the maximum penalty amount allowed by law. A cash penalty should be collected unless it has been demonstrated and documented that the violator cannot pay the cash penalty.

H. Response costs ($R_c$) are then added to the penalty subtotal ($P_s$) to determine the total penalty amount ($P_t$):

$$P_t = P_s + R_c$$

I. In accordance with R.S. 30:2025(E)(1)(a), the department reserves the right to assess an additional penalty of not more than $1,000,000 for any penalty event that is done intentionally, willfully, or knowingly, or results in a discharge or disposal that causes irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health.

J. In circumstances where the respondent has provided, or has agreed to provide, a grant, donation, or other form of assistance with respect to a designated pollution source, as provided in R.S. 30:2031, the penalty amount may be reduced by the monetary value of such grant, donation, or other form of assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:658 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2400 (December 1999), LR 30:421 (March 2004), amended by the Office of Environmental Assessment, LR 30:2802 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1843 (October 2006).

# Chapter 8. Expedited Penalty Agreement

## §801. Definitions

*Agency Interest Number*—a site-specific number assigned to a facility by the department that identifies the facility in a distinct geographical location.

*Expedited Penalty Agreement*—a predetermined penalty assessment issued by the department and agreed to by the respondent, which identifies violations of minor or moderate gravity as determined by LAC 33:I.705, caused or allowed by the respondent and occurring on specified dates, in accordance with R.S. 30:2025(D).

*LAR050000*—an LPDES multi-sector storm water general permit.

*LAR100000*—an LPDES storm water general permit associated with construction activity greater than 5 acres.

*LPDES General Permit*—for the purposes of this Chapter, any Louisiana Pollutant Discharge Elimination System Permit in the LAG530000, LAG540000, or LAG750000 series.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2242 (December 2006), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1393 (July 2008).

## §803. Purpose

A. The purpose of this Chapter is to provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty assessments in appropriate cases. This Chapter:

1. addresses common violations of minor or moderate gravity;

2. quantifies and assesses penalty amounts for common violations in a consistent, fair, and equitable manner;

3. ensures that the penalty amounts are appropriate, in consideration of the nine factors listed in R.S. 30:2025(E)(3)(a);

4. eliminates economic incentives for noncompliance for common minor and/or moderate violations; and

5. ensures expeditious compliance with environmental regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2242 (December 2006).

## §805. Applicability

A. Limit of Penalty Amount. The total penalty assessed for the expedited penalty agreement shall not exceed $1,500 for one violation or $3,000 for two or more violations.

B. Departmental Discretion. The secretary of the department or his designee, at his sole discretion, may propose an expedited penalty agreement for any violation described in LAC 33:I.807.A and considered in accordance with Subsection E of this Section. The expedited penalty agreement shall specify that the respondent waives any right to an adjudicatory hearing or judicial review regarding violations identified in the signed expedited penalty agreement. The respondent must concur with and sign the expedited penalty agreement in order to be governed by this Chapter and R.S. 30:2025(D).

C. Notification to the Respondent. The expedited penalty agreement shall serve as notification to the respondent of the assessed penalty amount for the violations identified on the specified dates.

D. Certification by the Respondent. By signing the expedited penalty agreement, the respondent certifies that all cited violations in the expedited penalty agreement have been or will be corrected, and that the assessed penalty amount has been or will be paid, within 30 days of receipt of the expedited penalty agreement.

E. Nine Factors for Consideration. An expedited penalty agreement may be used only when the following criteria for the nine factors for consideration listed in R.S. 30:2025(E)(3)(a) are satisfied.

1. The History of Previous Violations or Repeated Noncompliance. The violation identified in the expedited penalty agreement is not the same as or similar to a violation that occurred within the previous two years at the facility under the same agency interest number, and that was identified in any compliance order, penalty assessment, settlement agreement, or expedited penalty agreement issued to the respondent by the department. Site-specific enforcement history considerations will only apply to expedited penalty agreements.

2. The Nature and Gravity of the Violation. The violation identified is considered to be minor or moderate with regard to its nature and gravity.

a. The violation identified in the expedited penalty agreement deviates somewhat from the requirements of statutes, regulations, or permit; however, the violation exhibits at least substantial implementation of the requirements.

b. The violation identified is isolated in occurrence and limited in duration.

c. The violation is easily identifiable and corrected.

d. The respondent concurs with the violation identified and agrees to correct the violation identified and any damages caused or allowed by the identified violation within 30 days of receipt of the expedited penalty agreement.

3. The Gross Revenues Generated by the Respondent. By signing the expedited penalty agreement, the respondent agrees that sufficient gross revenues exist to pay the assessed penalty and correct the violation identified in the expedited penalty agreement within 30 days of receipt of the expedited penalty agreement.

4. The Degree of Culpability, Recalcitrance, Defiance, or Indifference to Regulations or Orders. The respondent is culpable for the violation identified, but has not shown recalcitrance, defiance, or extreme indifference to regulations or orders. Willingness to sign an expedited penalty agreement and correct the identified violation within the specified time frame demonstrates respect for the regulations and a willingness to comply.

5. The Monetary Benefits Realized through Noncompliance. The respondent's monetary benefit from noncompliance for the violation identified shall be considered. The intent of these regulations is to eliminate economic incentives for noncompliance.

6. The Degree of Risk to Human Health or Property Caused by the Violation. The violation identified does not present actual harm or substantial risk of harm to the environment or public health. The violation identified is isolated in occurrence or administrative in nature, and the violation identified has no measurable detrimental effect on the environment or public health.

7. Whether the Noncompliance or Violation and the Surrounding Circumstances Were Immediately Reported to the Department and Whether the Violation or Noncompliance Was Concealed or There Was an Attempt to Conceal by the Person Charged. Depending upon the type of violation, failure to report may or may not be applicable to this factor. If the respondent concealed or attempted to conceal any violation, the violation shall not qualify for consideration under these regulations.

8. Whether the Person Charged Has Failed to Mitigate or to Make a Reasonable Attempt to Mitigate the Damages Caused by the Noncompliance or Violation. By signing the expedited penalty agreement, the respondent states that the

violation identified and the resulting damages, if any, have been or will be corrected. Violations considered for expedited penalty agreements are, by nature, easily identified and corrected. Damages caused by any violation identified are expected to be nonexistent or minimal.

9. The Costs of Bringing and Prosecuting an Enforcement Action, Such as Staff Time, Equipment Use, Hearing Records, and Expert Assistance. Enforcement costs for the expedited penalty agreement are considered minimal. Enforcement costs for individual violations are covered with the penalty amount set forth for each violation in LAC 33:I.807.

F. Schedule. The respondent must return the signed expedited penalty agreement and payment for the assessed amount to the department within 30 days of the respondent's receipt of the expedited penalty agreement. If the department has not received the signed expedited penalty agreement and payment for the assessed amount by the close of business on the thirtieth day after the respondent's receipt of the expedited penalty agreement, the expedited penalty agreement may be withdrawn at the department's discretion.

G. Extensions. If the department determines that compliance with the cited violation is technically infeasible or impracticable within the initial 30-day period for compliance, the department, at its discretion, may grant additional time in order for the respondent to correct the violation cited in the expedited penalty agreement.

H. Additional Rights of the Department

1. If the respondent signs the expedited penalty agreement, but fails to correct the violation identified, pay the assessed amount, or correct any damages caused or allowed by the cited violation within the specified time frame, the department may issue additional enforcement actions, including, but not limited to, a civil penalty assessment, and may take any other action authorized by law to enforce the terms of the expedited penalty agreement.

2. If the respondent does not agree to and sign the expedited penalty agreement, the department shall consider the respondent notified that a formal civil penalty is under consideration. The department may then pursue formal enforcement action against the respondent in accordance with R.S. 30:2025(C), 2025(E), 2050.2, and 2050.3.

I. Required Documentation. The department shall not propose any expedited penalty agreement without an affidavit, inspection report, or other documentation to establish that the respondent has caused or allowed the violation to occur on the specified dates.

J. Evidentiary Requirements. Any expedited penalty agreement issued by the department shall notify the respondent of the evidence used to establish that the respondent has caused or allowed the violation to occur on the specified dates.

K. Public Enforcement List. The signed expedited penalty agreement is a final enforcement action of the department and shall be included on the public list of enforcement actions referenced in R.S. 30:2050.1(B)(1).

L. Date of Issuance. When an expedited penalty agreement is issued in conjunction with a Notice of Potential Penalty, the issuance date shall be the date on the document of initial signature by the administrative authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2242 (December 2006).

## §807. Types of Violations and Expedited Penalty Amounts

A. The types of violations listed in the following tables may qualify for coverage under this Chapter; however, any violation listed below, which is identified in an expedited penalty agreement, must also meet the conditions set forth in LAC 33:I.805.E.

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| ALL MEDIA | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure to provide timely notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition. | LAC 33:I.3917.A | $500 | Per occurrence |
| Failure to provide prompt notification of any unauthorized discharge that results in the contamination of the groundwaters of the state or that otherwise moves in, into, within, or on any saturated subsurface strata in accordance with LAC 33:I.3923. | LAC 33:I.3919.A | $500 | Per occurrence |
| Failure to provide timely written notification of the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition. | LAC 33:I.3925.A | $500 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| AIR QUALITY | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure to timely submit any applicable Specific Condition or General Condition report as specified in a minor source permit. | LAC 33:III.501.C.4 | $250 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **AIR QUALITY** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure to timely submit any applicable Specific Condition or General Condition report (other than those specified elsewhere in this Section) as specified in a Part 70 (Title V) air permit. | LAC 33:III.501.C.4 | $350 | Per occurrence |
| 40 CFR Part 70 General Permit conditions (Part K, L, M, or R): Failure to timely submit any applicable annual, semiannual, or quarterly report. | LAC 33:III.501.C.4 | $500 | Per occurrence |
| Failure to submit an updated Emission Point List, Emissions Inventory Questionnaire (EIQ), emissions calculations, and certification statement as described in LAC 33:III.517.B.1 within seven calendar days after effecting any modification to a facility authorized to operate under a standard oil and gas permit. | LAC 33:III.501.C.4 | $750 | Per occurrence/ emission point |
| Failure to submit the Title V permit renewal application at least six months prior to the date of expiration, applicable only when the renewal application is submitted prior to permit expiration and a renewal permit is issued on or before the expiration date. | LAC 33:III.507.E.4 | $1,000 | Per occurrence |
| Failure to provide notice of change of ownership within 45 days after the change. | LAC 33:III.517.G | $200 | Per occurrence |
| Failure to submit an Annual Criteria Pollutant Emissions Inventory in a timely and complete manner when applicable. | LAC 33:III.919 | $500 | Per occurrence |
| Control of Fugitive Emissions, sandblasting facilities: Failure to take all reasonable precautions to prevent particulate matter from becoming airborne. | LAC 33:III.1305.A | $250 | Per occurrence |
| Failure to maintain records for glycol dehydrators subject to LAC 33:III.2116. | LAC 33:III.2116.F | $250 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **AIR QUALITY** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure to submit an Annual Toxic Emissions Data Inventory in a timely and complete manner when applicable. | LAC 33:III.5107 | $500 | Per occurrence |
| Failure to submit an initial perchloroethylene inventory report. | LAC 33:III.5307.A | $250 | Per occurrence |
| Failure to submit a perchloroethylene usage report by July 1 for the preceding calendar year. | LAC 33:III.5307.B | $250 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **AIR QUALITY—Asbestos** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure to teach courses meeting the minimum criteria and length of training specified, including hands-on training specific to the discipline taught. | LAC 33:III.2799.C and F.5.i | $200 | Per occurrence |
| Failure to renew training provider or trainer recognition prior to teaching a class. | LAC 33:III.2799.F | $200-Training Provider $100-Trainer | Per occurrence |
| Failure to submit any applicable course notification in writing prior to class commencement, including changes in instructors, location, or time, or course cancellation. | LAC 33:III.2799.F.5.c.i-ii and e | $150 | Per occurrence |
| Failure to timely submit a complete class roster of trainees. | LAC 33:III.2799.F.5.d | $100 | Per occurrence |
| Failure to thoroughly inspect the affected facility or part of the facility where a demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM, prior to the commencement of the demolition or renovation. | LAC 33:III.5151.F.1 | $500 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **AIR QUALITY—Asbestos** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure to provide a typed notice of intention to demolish or renovate, using the latest version of Form AAC-2, Notification of Demolition and Renovation. | LAC 33:III.5151.F.2.a | $200 | Per occurrence |
| Failure to provide notice of a new start date to the DEQ regional office if an asbestos renovation or demolition operation will begin on a date other than the one contained in the original notice. | LAC 33:III.5151.F.2.c.iv | $100 | Per occurrence |
| Failure to submit a typed notification as specified in LAC 33:III.5151.F.2.d and e within five working days after an emergency asbestos notification has been made by phone. | LAC 33:III.5151.F.2.f.ii | $200 | Per occurrence |
| Acceptance of an invalid Asbestos Disposal Verification Form (ADVF) by a waste transporter or disposal site owner or operator. | LAC 33:III.5151.F.2.g.vii | $200 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **AIR QUALITY—Lead** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure by a training provider to receive recognition prior to offering or claiming to provide, or providing, lead training courses for accreditation purposes. | LAC 33:III.2805.A and B.14 | $200 | Per occurrence |
| Failure by a training provider to employ qualified principal instructors; in particular, allowing trainers to teach courses without current accreditation in the disciplines they teach. | LAC 33:III.2805.B.2.c | $100 | Per occurrence |
| Failure to teach courses meeting the minimum criteria and length of training specified, including required hands-on training. | LAC 33:III.2805.B.6 and 14.b | $200 | Per occurrence |
| Failure to timely submit a complete class roster of trainees within 10 days of course completion. | LAC 33:III.2805.B.9 | $100 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **AIR QUALITY—Lead** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure to submit any applicable course notification in writing prior to class commencement, including changes in instructors, location, or time, or course cancellation. | LAC 33:III.2805.E | $100 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **AIR QUALITY—Stage II Vapor Recovery** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Note: LAC 33:III.2132 is only applicable to subject gasoline dispensing facilities in the parishes of Ascension, East Baton Rouge, West Baton Rouge, Iberville, Livingston, and Pointe Coupee. | | | |
| Failure to use and/or diligently maintain, in proper working order, all air pollution control equipment installed at the site. | LAC 33:III.905 | $300 | Per occurrence |
| Failure to submit an application to the administrative authority prior to installation of the Stage II vapor recovery system. | LAC 33:III.2132.B.6 | $500 | Per occurrence |
| Failure to have at least one person trained as required by the regulations. | LAC 33:III.2132.C | $300 | Per occurrence |
| Failure to test the vapor recovery system prior to start-up of the facility and annually thereafter. | LAC 33:III.2132.D | $750 | Per occurrence |
| Failure to post operating instructions on each pump. | LAC 33:III.2132.E | $100 | Per occurrence |
| Failure to maintain equipment and tag defective equipment "out of order." | LAC 33:III.2132.F.1 and 3-4 | $500 | Per inspection |
| Failure to perform daily inspections and accurately record results. | LAC 33:III.2132.F.2 | $300 | Per inspection |
| Failure to maintain records on-site for at least two years and present them to an authorized representative upon request. | LAC 33:III.2132.G.1-7 | $200 | Per compliance inspection |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **HAZARDOUS WASTE-Used Oil** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure of a used oil generator to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service. | LAC 33:V.4013.E | $500 | Per occurrence |
| Failure of a used oil transfer facility to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service. | LAC 33:V.4035.H | $500 | Per occurrence |
| Failure of a used oil processor or re-refiner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service. | LAC 33:V.4049.G | $500 | Per occurrence |
| Failure of a used oil burner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service. | LAC 33:V.4069.G | $500 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **SOLID WASTE** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Unauthorized on-site disposal of regulated solid waste generated at the site by the owner, lessee, or other person having an actual right, title, or interest in the property. | LAC 33:VII.315.C | $250 | Per occurrence |
| Unauthorized disposal of solid waste by the generator at an off-site location not permitted to receive such waste. | LAC 33:VII.315.C | $250 | Per occurrence |
| Operation of an unauthorized disposal site where solid waste is disposed. | LAC 33:VII.315.C | $1,000 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **SOLID WASTE** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| An owner, lessee, or other person having an actual right, title, or interest in the property of an unauthorized disposal site in which solid waste is disposed. | LAC 33:VII.315.C | $1,000 | Per occurrence |
| Failure to report any discharge, deposit, injection, spill, dumping, leaking, or placing of solid waste into or on the water, air, or land. | LAC 33:VII.315.F | $500 | Per occurrence |
| Open burning of solid waste as prohibited by regulation. | LAC 33:VII.315.M | $250 | Per occurrence |
| Offering residential solid waste to an unauthorized transporter and/or a facility not permitted to receive such waste. | LAC 33:VII.315.O | $250 | Per occurrence |
| Offering commercial solid waste and/or construction and demolition debris to an unauthorized transporter and/or a facility not permitted to receive such waste. | LAC 33:VII.315.O | $500 | Per occurrence |
| Offering industrial solid waste to an unauthorized transporter and/or a facility not permitted to receive such waste. | LAC 33:VII.315.O | $750 | Per occurrence |
| Failure to notify the department of generating, transporting, processing, or disposing of solid waste. | LAC 33:VII.401.A | $300 | Per occurrence |
| Transportation of solid waste to a processing or disposal facility not permitted to receive such waste. | LAC 33:VII.505.D | $1,000 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **SOLID WASTE—Waste Tires** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Storage of more than 20 whole tires without authorization from the administrative authority. | LAC 33:VII.10509.B | $200 | Per occurrence |
| Transporting more than 20 tires without first obtaining a transporter authorization certificate. | LAC 33:VII.10509.C | $300 | Per occurrence |
| Storing tires for greater than 365 days. | LAC 33:VII.10509.E | $200 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **SOLID WASTE—Waste Tires** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure to maintain all required records for three years on-site or at an alternative site approved in writing by the administrative authority. | LAC 33:VII.10509.G; 10519.O and P | $200 | Per occurrence |
| Failure to obtain a waste tire generator identification number within 30 days of commencing business operations. | LAC 33:VII.10519.A | $300 | Per occurrence |
| Failure to accept one waste tire for every new tire sold unless the purchaser chooses to keep the waste tire. | LAC 33:VII.10519.B | $100 | Per occurrence |
| Failure to collect appropriate waste tire fee for each tire sold. | LAC 33:VII.10519.C; 10521.B; 10535.B | $200 | Per occurrence |
| Failure to remit waste tire fees to the state on a monthly basis as specified. | LAC 33:VII.10519.D; 10521.C | $200 | Per occurrence |
| Failure to post required notifications to the public. | LAC 33:VII.10519.E; 10521.D | $100 | Per occurrence |
| Failure to list the waste tire fee on a separate line on the invoice so that no tax will be charged on the fee. | LAC 33:VII.10519.F; 10521.E | $100 | Per occurrence |
| Failure to keep waste tires or waste tire material covered as specified. | LAC 33:VII.10519.H; 10521.H | $200 | Per occurrence |
| Storing waste tires for more than 120 days without complying with the exceptions for the extended storage time. | LAC 33:VII.10519.I | $200 | Per occurrence |
| Failure to use an authorized transporter for removal of tires from a place of business. | LAC 33:VII.10519.K | $500 | Per occurrence |
| Failure to segregate waste tires from new or used tires offered for sale. | LAC 33:VII.10519.M | $200 | Per occurrence |
| Failure of a motor vehicle dealer to notify administrative authority within 30 days of commencing business operations. | LAC 33:VII.10521.A | $300 | Per occurrence |
| Failure to submit application and fees for transporter authorization. | LAC 33:VII.10523.A | $300 | Per occurrence |
| Failure to use a manifest when transporting greater than 20 waste tires. | LAC 33:VII.10523.C | $200 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **SOLID WASTE—Waste Tires** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure of transporter to transport all waste tires to an authorized collection center or a permitted processing facility. | LAC 33:VII.10523.D | $1,000 | Per occurrence |
| Failure of out-of-state or out-of-country transporter to comply with state waste tire regulations. | LAC 33:VII.10523.E | $200 | Per occurrence |
| Failure to affix to driver's door and passenger's door the authorization certificate number, 3 inches in height. | LAC 33:VII.10523.F | $100 | Per occurrence |
| Failure to provide notification in writing within 10 days when any information on the authorization certificate form changes, or if the business closes and ceases transporting waste tires. | LAC 33:VII.10523.G | $100 | Per occurrence |
| Acceptance by a processor of more than five unmanifested tires per day per customer. | LAC 33:VII.10525.A.2 | $300 | Per occurrence |
| Failure of a processor to maintain a log for all unmanifested loads. | LAC 33:VII.10525.A.2 | $200 | Per occurrence |
| Failure to meet any of the facility standards listed in LAC 33:VII.10525.D. | LAC 33:VII.10525.D | $300 | Per occurrence |
| Failure by a collector or collection center to follow the requirements for receipt of tires. | LAC 33:VII.10527.A | $200 | Per occurrence |
| Failure of collection center operator to meet the standards in LAC 33:VII.10525.D.1-10 and 12-24. | LAC 33:VII.10527.B | $300 | Per occurrence |
| A collector or collection center exceeding the storage limit of waste tires or waste tire material. | LAC 33:VII.10527.C; 10531.C | $300 | Per occurrence |
| Failure of recycler to provide notification of its existence and obtain an identification number. | LAC 33:VII.10531.A | $300 | Per occurrence |
| Failure of a waste tire or waste tire material recycler to meet the requirements of LAC 33:VII.10525.D. | LAC 33:VII.10531.B | $300 | Per occurrence |
| Failure to provide a manifest for all waste tire shipments containing more than 20 tires. | LAC 33:VII.10533.A | $200 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **SOLID WASTE—Waste Tires** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure to follow the requirements for manifest discrepancies. | LAC 33:VII.10533.C | $300 | Per occurrence |
| Failure to maintain completed manifests for three years and have them available for inspection. | LAC 33:VII.10533.D | $200 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **WATER QUALITY** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure to develop a Spill Prevention and Control (SPC) plan for any applicable facility. | LAC 33:IX.905 | $500 | Per occurrence |
| Failure to implement any component of an SPC plan. | LAC 33:IX.905 | $100 | Per occurrence |
| Unauthorized discharge of oily fluids. | LAC 33:IX.1701.B | $1,000 | Per occurrence |
| Unauthorized discharge of oil field wastes, including produced water. | LAC 33:IX.1901.A | $1,000 | Per occurrence |
| Failure to submit a Notice of Intent for coverage under the LAR050000 or LAR100000 LPDES Storm Water General Permit. | LAC 33:IX.2511.C.1 | $1,000 | Per occurrence |
| Failure to comply with any portion(s) of an LPDES LAG530000 Schedule A permit. | LAC 33:IX.2701.A | $200 and completion of a department -sponsored compliance class | 10 or fewer violations |
| Failure to comply with any portion(s) of an LPDES LAG530000 Schedule A permit. | LAC 33:IX.2701.A | $400 and completion of a department -sponsored compliance class | More than 10 violations |
| Failure to comply with any portion(s) of an LPDES LAG530000 Schedule B permit. | LAC 33:IX.2701.A | $300 and completion of a department -sponsored compliance class | 10 or fewer violations |
| Failure to comply with any portion(s) of an LPDES LAG530000 Schedule B permit. | LAC 33:IX.2701.A | $500 and completion of a department -sponsored compliance class | More than 10 violations |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| **WATER QUALITY** | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure to comply with any portion(s) of an LPDES LAG540000 permit. | LAC 33:IX.2701.A | $400 and completion of a department -sponsored compliance class | 10 or fewer violations |
| Failure to comply with any portion(s) of an LPDES LAG540000 permit. | LAC 33:IX.2701.A | $600 and completion of a department -sponsored compliance class | More than 10 violations |
| Failure to comply with any portion(s) of an LPDES LAG750000 permit. | LAC 33:IX.2701.A | $400 and completion of a department -sponsored compliance class | 10 or fewer violations |
| Failure to comply with any portion(s) of an LPDES LAG750000 permit. | LAC 33:IX.2701.A | $600 and completion of a department -sponsored compliance class | More than 10 violations |
| Failure to comply with monitoring requirements of LPDES Storm Water General Permits LAR050000 and LAR100000. | LAC 33:IX.2701.A | $300 | Per occurrence |
| Failure to submit certain reports as required by any LPDES permit not previously defined as an LPDES General Permit in LAC 33:I.801, including noncompliance reports, storm water reports, pretreatment reports, biomonitoring reports, overflow reports, construction schedule progress reports, environmental audit reports as required by a municipal pollution prevention plan, and toxicity reduction evaluation reports. | LAC 33:IX.2701.A | $300 | Per required submittal |
| Failure to prepare and/or implement any portion or portions of a Storm Water Pollution Prevention Plan (SWPPP), a Pollution Prevention Plan (PPP), or a Best Management Practices (BMP) Plan as required by any LPDES permit not previously defined as an LPDES General Permit in LAC 33:I.801. | LAC 33:IX.2701.A | $500 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| UNDERGROUND STORAGE TANKS | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure to register an existing or new UST containing a regulated substance. | LAC 33:XI.301.A-B | $300 | Per inspection |
| Failure to certify and provide required information on the department's approved registration form. | LAC 33:XI.301.B.1-2 | $200 | Per inspection |
| Failure to provide notification within 30 days after selling a UST system or acquiring a UST system; failure to keep a current copy of the registration form on-site or at the nearest staffed facility. | LAC 33:XI.301.C.1-3 | $300 | Per inspection |
| Allowing a regulated substance to be placed into a new UST system that has not been registered. | LAC 33:XI.301.C.4 | $300 | Per inspection |
| Failure to provide corrosion protection to tanks that routinely contain regulated substances using one of the specified methods. | LAC 33:XI.303.B.1 | $500 and completion of a department-sponsored compliance class | Per inspection |
| Failure to provide corrosion protection to piping that routinely contains regulated substances using one of the specified methods. | LAC 33:XI.303.B.2 | $500 and completion of a department-sponsored compliance class | Per inspection |
| Failure to provide corrosion protection to flex hoses and/or sub-pumps that routinely contain regulated substances using one of the specified methods. | LAC 33:XI.303.B.2 | $500 and completion of a department-sponsored compliance class | Per inspection |
| Failure to provide spill and/or overfill prevention equipment as specified. | LAC 33:XI.303.B.3 | $300 and completion of a department-sponsored compliance class | Per inspection |
| Failure to ensure that the individual exercising supervisory control over installation-critical junctures is certified in accordance with LAC 33:XI.Chapter 13. | LAC 33:XI.303.B.4.b.ii | $1,000 | Per occurrence |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| UNDERGROUND STORAGE TANKS | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure to upgrade an existing UST system to new system standards as specified. | LAC 33:XI.303.C | $1,300 and completion of a department-sponsored compliance class | Per inspection |
| Failure to pay fees by the required date. | LAC 33:XI.307.D | $200 | Per inspection |
| Failure to report any spill and/or overfill. | LAC 33:XI.501.C | $500 | Per inspection |
| Failure to investigate and/or clean up any spill and/or overfill. | LAC 33:XI.501.C | $1,500 | Per inspection |
| Failure to continuously operate and maintain corrosion protection to the metal components of portions of the tank and piping that routinely contain regulated substances and are in contact with the ground or water. | LAC 33:XI.503.A.1 | $300 and completion of a department-sponsored compliance class | Per inspection |
| Failure to have a UST system equipped with a cathodic protection system inspected for proper operation as specified. | LAC 33:XI.503.A.2 | $300 and completion of a department-sponsored compliance class | Per inspection |
| Failure to inspect a UST system with an impressed current cathodic protection system every 60 days to ensure that the equipment is running properly. | LAC 33:XI.503.A.3 | $300 and completion of a department-sponsored compliance class | Per inspection |
| Failure to comply with recordkeeping requirements. | LAC 33:XI.503.B | $200 and completion of a department-sponsored compliance class | Per inspection |
| Failure to meet requirements for repairs to UST systems. | LAC 33:XI.507 | $300 | Per inspection |
| Failure to ensure that the individual exercising supervisory control over repair-critical junctures is certified. | LAC 33:XI.507.A.2 | $1,000 | Per occurrence |
| Failure to maintain required information and/or keep records at the UST site and make them immediately available or keep them at an alternative site and provide them after a request. | LAC 33:XI.509.B and C | $200 and completion of a department-sponsored compliance class | Per inspection |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| UNDERGROUND STORAGE TANKS | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure to meet the performance requirements when performing release detection required in LAC 33:XI.703. | LAC 33:XI.701; 703.A.2.b and c | $750 and completion of a department-sponsored compliance class | Per inspection |
| Failure to use a method or combination of methods of release detection described in LAC 33:XI.701 for all new or existing tank systems. | LAC 33:XI.703.A.1 | $1,500 and completion of a department-sponsored compliance class | Per inspection |
| Failure to monitor tanks for releases as specified. | LAC 33:XI.703.B.1 | $350 and completion of a department-sponsored compliance class | Per inspection |
| Failure to monitor underground piping for releases as specified. | LAC 33:XI.703.B.2 | $750 and completion of a department-sponsored compliance class | Per inspection |
| Failure to maintain release detection records. | LAC 33:XI.705 | $200 and completion of a department-sponsored compliance class | Per inspection |
| Failure to report any suspected release within 24 hours after becoming aware of the occurrence or when a leak detection method indicates that a release may have occurred. | LAC 33:XI.703.A.3 or 707 | $500 and completion of a department-sponsored compliance class | Per occurrence |
| Failure to investigate and confirm any suspected release of a regulated substance that requires reporting under LAC 33:XI.707 within seven days. | LAC 33:XI.711 | $1,500 | Per occurrence |
| Failure to maintain corrosion protection and/or release detection on a UST system that is temporarily closed and contains more than 2.5 cm (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system. | LAC 33:XI.903.A | $500 and completion of a department-sponsored compliance class | Per inspection |
| Failure to comply with permanent closure and/or changes in service procedures. | LAC 33:XI.905 | $500 | Per inspection |

| EXPEDITED PENALTIES | | | |
|---|---|---|---|
| UNDERGROUND STORAGE TANKS | | | |
| **Violation** | **Citation** | **Amount** | **Frequency** |
| Failure to use a certified worker for tank closure. | LAC 33:XI.905.A.2 | $1,000 | Per inspection |
| Failure to assess the site at closure or change-in-service where contamination is most likely to be present. | LAC 33:XI.907.A | $500 | Per occurrence |
| Failure to submit the assessment in duplicate within 60 days following permanent closure or change-in-service. | LAC 33:XI.907.A | $500 | Per occurrence |
| Failure to begin corrective action of contaminated soils, contaminated groundwater, or free product discovered through methods in LAC 33:XI.907.A, in accordance with LAC 33:XI.715. | LAC 33:XI.907.B | $1,500 | Per occurrence |

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2243 (December 2006), amended LR 34:1393 (July 2008), LR 35:62 (January 2009).

# Chapter 9. Petition for Rulemaking

## §901. Scope

A. In general, rulemaking to adopt, amend, or rescind any regulation may be initiated by any division as its own option, upon the recommendation of another agency of the state of Louisiana, or at the petition of any interested person. This Chapter addresses general requirements for petitions requesting rulemaking.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:297 (March 1997).

## §903. Rescission

A. Section 2.13 of the Rules of Procedure of the Louisiana Environmental Control Commission dated July 22, 1980, and effective August 20, 1980, is hereby rescinded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:297 (March 1997).

## §905. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise

requires, or unless specifically redefined in a particular Section.

*Administrative Authority*—the Secretary of the Department of Environmental Quality or his designee, or the appropriate assistant secretary or his designee.

*Department*—the Department of Environmental Quality as created by R.S. 30:2001 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:297 (March 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2439 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1888 (September 2008).

### §907. Content of a Rulemaking Petition

A. Any interested person may petition the administrative authority in writing to issue, amend, or rescind any regulation.

B. The petition shall be addressed to the Office of the Secretary.

C. The petition shall be submitted by certified mail.

D. The petition shall include:

1. the petitioner's name and address;

2. the petitioner's interest in the proposed action;

3. the basis for the request;

4. the substance or specific text of any proposed regulation or amendment or a description of the regulation, the rescission, or the amendment that is desired; and

5. any other information that justifies the proposed action.

E. The petition shall address any additional requirements specific to the requests illustrated below:

1. for petitions seeking to exclude a hazardous waste produced at a particular facility, the person shall comply with LAC 33:V.105.M;

2. for petitions seeking approval of alternate equivalent hazardous waste testing or analytical methods, the person shall comply with LAC 33:V.105.I.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:297 (March 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2439 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2432 (October 2005), LR 33:2078 (October 2007).

### §909. Processing a Rulemaking Petition

A. Upon receipt, the petition for rulemaking shall be reviewed for completeness, as prescribed in LAC 33:I.907. If found complete, the petition shall be processed in accordance with this Section.

B. Within 90 days of receipt of the petition for rulemaking, the administrative authority shall deny the petition in writing, stating reasons for the denial, or shall initiate rulemaking by providing the petitioner with the necessary, completed form as provided in the department's Policy Number 0003-88, "Rule Development Procedure."

1. If the administrative authority decides to proceed with rulemaking, the department procedures for processing a proposed regulation shall be followed. In addition, a notice of the initiation of rulemaking shall be published in a major newspaper of general circulation within the area affected by the petition for rulemaking or in the official journal of the state, if the impact of the proposed rule is statewide.

2. If the administrative authority decides not to proceed with rulemaking, the decision to deny the petition, stating reasons for the denial, shall be published in a major newspaper of general circulation within the area affected by the petition for rulemaking or in the official journal of the state, if the impact of the petition denial is statewide, and in the *Louisiana Register.*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2440 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1843 (October 2006).

## Chapter 11. Declaratory Rulings

### §1101. Purpose

A. This Chapter establishes procedures for issuance of declaratory rulings by the Department of Environmental Quality on significant matters when a request for a declaratory ruling has been received by the administrative authority. All requests for declaratory rulings shall be governed by the Louisiana Environmental Quality Act (in particular, R.S. 30:2050.10), the Administrative Procedure Act (in particular, R.S. 49:962), and this Chapter. This Chapter also establishes procedures for related matters such as, but not limited to, appeals related to declaratory rulings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1141 (September 1997).

### §1103. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

*Administrative Authority*—the Secretary of the Department of Environmental Quality, or his designee, or the appropriate assistant secretary or his designee.

*Administrative Record*—any and all documents, testimony, records, files, or materials submitted to the administrative authority or compiled by the administrative

authority concerning a request for a declaratory ruling or a declaratory ruling.

*Aggrieved Person*—person who has a real and actual interest that is or might be adversely affected by the agency action upon which a declaratory ruling is sought.

*Declaratory Ruling*—a final agency action in writing, identified as a declaratory ruling, and issued by the department with respect to one or more of the following:

a. the validity of a rule; or

b. the applicability of any rule, order, or statute to any person, property, or existing state of facts or facts certain to arise.

*Declaratory Rulings Clerk*—the person who, directly or through his/her designee(s), maintains custody of and receives filings to the records of declaratory rulings.

*Declaratory Rulings Officer*—the secretary or a delegated assistant secretary responsible for issuing a declaratory ruling.

*Department*—the Louisiana Department of Environmental Quality.

*Intervener*—an aggrieved person to whom intervener status is granted by the declaratory rulings officer under LAC 33:I.1133.

*Party*—the department, a petitioner, or an intervener.

*Petitioner*—any person who formally requests a declaratory ruling in accordance with this Chapter.

*Pleading*—a petition, motion, response, request, or any statement of position filed with the declaratory rulings clerk in connection with a request for a declaratory ruling or a declaratory ruling.

*Secretary*—the Secretary of the Department of Environmental Quality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1141 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2440 (November 2000).

## §1105. Severability

A. If any provision of these rules, or the application thereof, is held to be invalid, the remaining provisions of these rules shall not be affected, so long as they can be given effect without the invalid provision. To this end, the provisions of these rules are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1141 (September 1997).

## §1107. Conflicts

A. Except as otherwise required by statutory law, this Chapter shall exclusively govern procedures for the department's issuance of declaratory rulings on significant matters, and this Chapter supersedes all rules in conflict herewith.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1141 (September 1997).

## §1109. Declaratory Rulings Officer

A. Unless otherwise provided by the secretary in writing, all declaratory rulings shall be issued by the secretary. The secretary may delegate the authority to issue declaratory rulings to the various assistant secretaries.

B. The secretary or designated assistant secretary, when issuing a declaratory ruling, shall be referred to as the declaratory rulings officer.

C. The declaratory rulings officer shall have the authority to regulate all matters concerning a request for declaratory ruling and to issue the declaratory ruling after concurrence as to legal sufficiency by the Office of the Secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1141 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2440 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2432 (October 2005), LR 33:2078 (October 2007).

## §1111. Duty to Maintain List

A. The secretary shall maintain, in a place accessible to the public in the Office of the Secretary, a list of all petitions for declaratory rulings and declaratory rulings and an index to the list. The list shall identify the petitioner, the matter to be decided, and when applicable, the location of the activity or facility that is the subject of the petition. The list shall also include the date on which the petition is received, the date the secretary decides whether a declaratory ruling will be issued, the date the secretary sets for issuance of the ruling, the date the ruling issues, and the date of any request for modification or appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1141 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2440 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2432 (October 2005), LR 33:2078 (October 2007).

## §1113. Declaratory Rulings Clerk

A. The administrative authority shall designate a person in the Office of the Secretary to serve as the declaratory rulings clerk, who shall be the official custodian of declaratory rulings records. The clerk shall maintain these records separately from other records of the department.

B. The declaratory rulings clerk, or his/her designee, is authorized to:

1. certify copies of official documents in his/her custody;

2. ensure distribution of all decisions and notices issued by the declaratory rulings officer;

3. receive all filings of petitions, rulings, and other pleadings or documents;

4. maintain a list of petitions for declaratory rulings and declaratory rulings and an index to the list in a place accessible to the public; and

5. perform other duties as assigned by the declaratory rulings officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1142 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2440 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2433 (October 2005), LR 33:2078 (October 2007).

## §1115. Requests for Declaratory Rulings in Accordance with R.S. 30:2050.10

A. A valid request for issuance of a declaratory ruling is made by filing a written petition in accordance with LAC 33:I.1117 and 1137.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1142 (September 1997).

## §1117. Petition Contents and Form

A. A petition requesting issuance of a declaratory ruling shall be in writing and shall contain the following information:

1. the name, address, and telephone number of the petitioner and whether the petitioner is a permittee;

2. identification of the specific rule or statute in question;

3. the exact question presented to the department for ruling;

4. a concise statement of all particular facts necessary and sufficient to accomplish the following:

a. to show the nature of the controversy or uncertainty and the manner in which the rule or statute on which the declaratory ruling is sought applies or potentially applies to petitioner; and

b. to answer the question presented to the department for ruling;

5. a statement identifying all other rules, statutes, orders, or statements (formal or informal) from officials, employees, or agents of any local, state, or federal government agency that are relevant to the question presented by the petitioner;

6. a statement of the reasons for submitting the petition, including a full disclosure of the petitioner's interest in obtaining the declaratory ruling;

7. a statement as to whether the question presented by the petitioner is presently pending before or under consideration by the department or any other administrative, legislative, or adjudicative body;

8. a statement as to whether the petitioner has some other adequate legal remedy that will terminate the controversy or remove any uncertainty as to the applicability to petitioner or the circumstances cited of the rule, order, or statute in question; and

9. an affidavit that verifies the facts stated in the petition are true and correctly stated, and the verification is based upon the documents attached to or identified in the petition or based upon the affiant's personal knowledge.

B. A petition for declaratory ruling shall be filed with the Office of the Secretary by either of the following methods:

1. personal delivery to the general counsel or the declaratory rulings clerk at department headquarters; or

2. United States Mail as certified mail, return receipt requested to Declaratory Rulings Clerk, Office of the Secretary.

C. A petition for declaratory ruling may be accompanied by a memorandum that urges the department to issue a declaratory ruling of specified content. Such memorandum should contain the arguments therefor and any relevant authorities in support thereof. No memorandum shall exceed 25 pages in length, exclusive of any cover pages, tables of contents, indexes of authorities, and exhibits.

D. In addition to these requirements, a petition must meet the requirements of LAC 33:I.1137.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1142 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2440 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2433 (October 2005), LR 33:2078 (October 2007).

## §1119. Disposition of Petition

A. After determining whether any circumstances exist that preclude the issuance of a declaratory ruling under

LAC 33:I.1121, the department shall, not later than 60 days after receipt of the petition, either:

1. issue a declaratory ruling;

2. deny the request for a declaratory ruling;

3. grant the request for a declaratory ruling and set a time within which the ruling will be issued; or

4. fail to respond to the petition, in which case the department's failure to respond shall be deemed to be a denial of the request for a ruling as well as a denial of the merits of the request.

B. All declaratory rulings and written denials of the requests for declaratory rulings issued by the department shall contain an explanation of the relevant facts and conclusions that served as the basis for the ruling or the denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1142 (September 1997).

### §1121. Circumstances in Which Declaratory Rulings May Not Be Issued

A. Circumstances in which declaratory rulings may not be issued include, but are not necessarily limited to:

1. lack of jurisdiction;

2. lack of clarity concerning the question presented;

3. the existence of pending or imminent litigation or administrative action or adjudication that may either answer the question presented by the petition or otherwise make an answer unnecessary;

4. the petition involves a subject, question, or issue that is the subject of a formal or informal matter or investigation currently pending before the department, a court, or other government agency;

5. the statute, rule, or order on which a declaratory ruling is sought is clear and not in need of interpretation to answer the question presented by the petition;

6. the facts presented in the petition are not sufficient to answer the question presented;

7. the petition fails to contain any of the information required by LAC 33:I.1117 or 1137;

8. the petitioner is not aggrieved by the rule or statute on which a declaratory ruling is sought;

9. the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion; or

10. the question presented by the petition concerns the validity or constitutionality of a statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1143 (September 1997).

### §1123. Stay of Action

A. The filing of a request for declaratory ruling shall not automatically stay any other department action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1143 (September 1997).

### §1125. Declaratory Rulings Initiated by the Secretary and Modification of Rulings

A. The secretary may issue a declaratory ruling setting forth the department's position with respect to any matter within its jurisdiction or authority or describing proposed agency action.

B. The declaratory rulings clerk shall give the petitioner whose declaratory ruling has been reversed or modified notice by certified mail return receipt of the reversal or modification.

C. The declaratory rulings clerk shall mail or hand deliver to any intervener a copy of the reversal or modification when issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1143 (September 1997).

### §1127. Effect of Declaratory Rulings

A. A declaratory ruling is not binding on the department except as to the parties and does not constitute a rule as defined in R.S. 49:951 nor does its issuance require "rulemaking" as defined in R.S. 49:951.

B. A declaratory ruling may be used by the petitioner as a defense in any enforcement proceeding brought by the department after the issuance of the ruling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1143 (September 1997).

### §1129. Docket Number

A. At the time a request for issuance of a declaratory ruling is filed, it shall be assigned a docket number by the declaratory rulings clerk. The docket number shall be used on all subsequent documents filed in the matter. The fact that a request for declaratory ruling is docketed does not constitute a determination as to whether the request is granted nor as to its sufficiency or validity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1143 (September 1997).

## §1131. Parties

A. Parties in declaratory ruling proceedings may include:

1. the petitioner; and

2. an intervener.

B. Parties shall have the right to retain counsel to represent them, but shall not be required to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1143 (September 1997).

## §1133. Intervention

A. An aggrieved person has the right to intervene as a party in a declaratory ruling, provided the proper petition for intervention is filed at least 15 days prior to the declaratory ruling and such intervention is not likely to create an undue broadening of the issues or otherwise unduly impede the resolution of the matter.

B. If more than one person or entity with the same or similar interests seeks to intervene, the declaratory rulings officer may limit participation to designated representatives.

C. A petition for intervention shall comply with the requirements of LAC 33:I.1137 and shall also state all facts necessary to demonstrate that the intervener is an aggrieved person, including but not limited to, all facts necessary to demonstrate its position, and the manner in which the rule, statute, or order in question does or does not apply to the intervener.

D. A petition for intervention must be accompanied by an affidavit that verifies the facts stated in the petition are true and correctly stated and the verification is based upon the affiant's personal knowledge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1143 (September 1997).

## §1135. Consolidation and Separation of Petitions

A. When two or more petitions for declaratory ruling involve a common issue or issues of law or fact, they may be consolidated and considered as a single petition. In such cases all petitions shall be docketed under the lowest docket number.

B. Petitions may be separated to simplify the proceedings or to permit a more orderly disposition of the matters consolidated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997), repromulgated LR 23:1303 (October 1997).

## §1137. Pleadings: Form and Content

A. Pleadings shall:

1. state the name, mailing address, and telephone number of the person causing the pleading to be filed. In instances where the person filing a pleading is represented by another person, that person's name, address, and telephone number shall be included in the pleading;

2. be legibly written in ink, typewritten, or printed with 1-inch top, bottom, and side margins, and shall be on strong durable white paper, no larger than 8 1/2 by 11 inches;

3. be double-spaced, have its pages numbered, and if customary, be divided into separate numbered paragraphs;

4. state clearly, concisely, and particularly all relevant facts that give rise to and support the relief sought;

5. when appropriate, identify any statute, rule, written statement of law or policy, decision, order, permit, license, or any other regulatory mechanism and the particular aspect of each upon which the pleading relies;

6. state clearly and concisely the relief or action sought;

7. be signed in ink by the party filing same or by his/her duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he or she has read the document and that, to the best of his/her knowledge, information, and belief, every statement contained in the document is true; and

8. certify that a copy of the pleading or document has been mailed or hand delivered, on or before the date it is filed with the declaratory rulings clerk, to all parties.

B. The heading shall be similar in format to and shall include the information contained in LAC 33:I.331.B.

C. Failure to comply with this Section shall not invalidate the pleadings, but may be grounds for denial of the request for issuance of a declaratory ruling. The declaratory rulings officer shall have discretion to rule whether pleadings are in substantial compliance with this Section, to require the amendment or supplementation of any pleading, or to take such other action as may be appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997).

## §1139. Filing of Pleadings and Documents

A. Any pleading, document, or other item that is being filed into the record maintained by the declaratory rulings clerk shall be filed by mail or hand delivery to the clerk.

B. All pleadings, documents, or other items shall be deemed filed on the date received by the declaratory rulings clerk.

C. An original and one copy of all pleadings and documents shall be filed unless otherwise specifically provided by a particular regulation or by order of the declaratory rulings officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997).

### §1141. Computation of Time

A. In computing any period of time prescribed or allowed in this Chapter or the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the date of the act or event after which the period begins to run shall not be included.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997).

### §1143. Discovery

A. No discovery is allowed by or between the parties to proceedings concerning a petition for declaratory ruling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997).

### §1145. Judicial Review

A. A party seeking judicial review of a declaratory ruling shall comply with R.S. 30:2050.21.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10 and 2050.21.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997).

### §1147. Termination of Proceedings

A. Issuance of a ruling or unconditional withdrawal of the request for a ruling terminates the proceedings related to a request or petition for declaratory ruling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997).

### §1149. Entry and Notice of Rulings

A. Entry. The original of any declaratory ruling or order issued shall be filed with the declaratory rulings clerk who shall notify all parties of the decision or order.

B. Notice

1. When a declaratory rulings officer issues, reverses, or modifies a declaratory ruling, a copy shall be served by certified mail return receipt requested upon the petitioner.

2. The declaratory rulings clerk shall also mail or deliver a copy of the ruling to any intervener and to any person who has on file with the declaratory rulings clerk a written request for notice that includes the information necessary to receive notice [including requester's name and address and the matter(s) about which requester desires notice].

3. Declaratory rulings or a summary of rulings shall be published in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10 and 2050.23.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997).

## Chapter 12. Requests for Review of Environmental Conditions

### §1201. Applicability and Scope

A. This Chapter applies to reviews by the department of reports of environmental conditions at specified tracts of immovable property when such reports from site investigations are not required or requested by the administrative authority.

B. Nothing herein shall be construed to diminish the responsibility of any person (e.g., owner, operator, employee, agent, contractor, or assign) having knowledge of the presence at any site of any hazardous substance, hazardous waste, hazardous waste constituent, or other pollutant or contaminant, to notify the department pursuant to LAC 33:I.Chapter 39. If additional information becomes available to indicate that the source of the release is a current discharge or a discharge that should have been reported, enforcement action may be taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and specifically 2011(D)(25).
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:447 (March 2007).

### §1203. Procedure for Submittal of Request

A. All requests for reviews by the department of reports of environmental conditions shall be accompanied by an initial $1500 minimum fee. All payments shall be made by check, draft, or money order payable to the Department of Environmental Quality.

B. Contents of Request. An applicant requesting a review of environmental conditions for specific immovable property shall furnish the following information:

1. the agency interest number or a completed agency interest form from the department identifying the facility/agency interest;

2. the area of investigation, if different from the facility/agency interest location;

3. the basis for the request;

4. the purpose of the use of the property and the date-range of the use;

5. a brief description of activities that occurred on the property;

6. the future intended use of the property;

7. the types and results of investigations that have occurred, including the following information:

a. report dates;

b. the media investigated;

c. the constituents of concern (COC);

d. the maximum remaining concentration of the COC; and

e. the limiting RECAP standards for the COC;

8. any remedial standards previously developed for the property;

9. any remedial actions taken for the property; and

10. any other information requested by the administrative authority.

C. An applicant shall submit the request for review, in accordance with the requirements of Subsection B of this Section, in triplicate, with the initial minimum fee in Subsection A of this Section, to the administrator of the Office of Environmental Assessment.

D. The administrative authority will issue the result of the review to the owner/operator of the facility and to the person requesting the review.

E. The administrative authority shall keep an accounting of time spent by the department civil service employee processing the review request. Every hour or portion thereof that the department civil service employee works processing the request shall be multiplied by the maximum per-hour overtime salary, including associated related benefits, of the department civil service employee who performed the work. If this amount exceeds the initial minimum fee charged pursuant to R.S. 30:2011(D)(25) and Subsection A of this Section, an additional fee shall be charged for the amount exceeding the initial minimum fee.

1. An invoice for the additional fee shall be transmitted to the person requesting the review after the review is complete.

2. Failure to pay the additional fee by the due date specified on the invoice will constitute a violation of these regulations and shall subject the person requesting the review to relevant enforcement action under the Louisiana Environmental Quality Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and specifically 2011(D)(25).
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:447 (March 2007), amended LR 33:2079 (October 2007).

# Chapter 13. Risk Evaluation/Corrective Action Program

## §1301. Scope

A. This Chapter constitutes the minimum technical requirements to evaluate and/or remediate sites that have been affected by constituents of concern, except as otherwise specifically provided by statute, rule, or permit.

B. Any remediation performed in accordance with this Chapter shall not relieve any person from:

1. complying with more stringent federal, state, or local requirements; or

2. obtaining any and all permits required by law, except as expressly provided herein.

C. No provision of this Chapter shall be construed to limit the department's authority to require additional remediation based upon site-specific conditions in order to protect human health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998).

## §1302. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

*Department*—the Department of Environmental Quality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:2440 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1888 (September 2008).

## §1303. Liberal Construction

A. These rules, being necessary to promote the public health and welfare, shall be liberally construed in order to permit the department to effectuate the provisions of the Environmental Quality Act including, but not limited to, R.S. 30:2272.1, 2077, 2195.2(A), 2195.10, 2203(A), 2204(A)(2) and (3), and 2205(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998).

## §1305. Applicability

A. Except as is otherwise specifically provided by statute, rule, or permit, this Chapter establishes the minimum technical requirements to evaluate and/or remediate sites that have been affected by constituents of concern including, without limitation, those sites and activities subject to:

1. the Louisiana Environmental Quality Act, R.S. 30:2001 et seq.;

2. the federal Resource Conservation and Recovery Act (RCRA), as amended by Hazardous and Solid Waste Amendments (HSWA), 42 U.S.C. 6901 et seq.; and

3. the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9601 et seq.

B. This Chapter shall not apply to activities conducted in accordance with corrective action plans, closure plans, or closure standards that were approved by the department prior to December 20, 1998, except when modification of such a plan is deemed by the department to be necessary to protect human health or the environment or when modification of such a plan is otherwise allowed or required by the department in accordance with law.

C. This Chapter shall not apply to:

1. current spills that:

a. do not require notification under LAC 33:I.Chapter 39;

b. are remediated as soon as practicable, but not more than 30 days, after learning of the discharge; and

c. are remediated in a manner that will ensure protection of human health and the environment;

2. spills that create *emergency conditions*, as defined in LAC 33:I.3905, but do not exceed a reportable quantity, provided conditions specified in Subparagraphs C.1.b-c of this Section are met;

3. spills solely to air; and

4. current spills over the reportable quantity that require notification under LAC 33:I.Chapter 39, that are remediated promptly in a manner protective of human health and the environment, provided that:

a. the spill is remediated as soon as practicable, but not more than 30 days, after learning of the discharge;

b. notification is made in accordance with LAC 33:I.Chapter 39; and

c. the written report required by LAC 33:I.Chapter 39, or a subsequent follow-up report, documents that the material has been removed to a level that will ensure protection of human health and the environment:

i. such documentation may include confirmatory sampling, use of organic vapor monitoring devices or, where appropriate (such as where the spill is of a dark material and/or is very small), visual confirmation;

ii. upon review of the reported cleanup documentation, the department may require a complete RECAP evaluation if the department determines that the actions taken do not adequately ensure protection of human health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1264 (June 2000), LR 29:2056 (October 2003).

### §1307. Adoption by Reference

A. The document entitled, "Louisiana Department of Environmental Quality Risk Evaluation/Corrective Action Program (RECAP)," dated October 20, 2003, is hereby adopted and incorporated herein in its entirety. The RECAP document is available for purchase or inspection from 8 a.m. until 4:30 p.m., Monday through Friday, from the Office of the Secretary. For RECAP document availability at other locations, contact the department's Regulation Development Section. The RECAP document may also be reviewed on the Internet through the department's website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1264 (June 2000), LR 26:2441 (November 2000), LR 29:2057 (October 2003), amended by the Office of Environmental Assessment, LR 30:2020 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2433 (October 2005), LR 33:2079 (October 2007).

### §1309. Severability

A. If any provision of these regulations or the application thereof to any person, situation, or circumstance is for any reason adjudged invalid, the adjudication does not affect any other provision or application that can be given effect without the invalid provision or application; to this end, the provisions of these regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998).

## Chapter 14. Groundwater Fees

[NOTE: The information contained in Chapter 14 was previously located in LAC 33:XIII.Chapter 13. It was relocated and renumbered in November, 1998.]

### §1401. Authority

A. Rules and regulations are hereby established by the Department of Environmental Quality as authorized by R.S. 30:2014.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:729 (July 1992).

### §1403. Scope and Purpose

A. The purpose of these regulations is to establish a fee system for funding the departmental review and oversight of assessment and remediation activities undertaken by those entities noted in LAC 33:I.1405 and for funding the monitoring, investigation and other activities required to be conducted for the maintenance of a safe and healthful environment by the Department of Environmental Quality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:729 (July 1992).

## §1405. Applicability

A. These rules and regulations apply to facilities which are required under solid waste regulations or hazardous waste regulations to produce annual reports concerning the groundwater condition at their sites, to facilities which have installed groundwater monitoring systems, and to facilities conducting assessment and/or remediation of groundwater contamination (regardless of whether said contamination originated from a regulated waste management unit or from a non-regulated facility) for which the department is providing oversight. These rules and regulations do not apply:

1. to sites over which other departments, such as the Department of Natural Resources, are legitimately exercising oversight and to which the department provides no assistance or technical guidance;

2. to sites regulated under the underground storage tank regulations; or

3. to facilities billed under the authority of another Part or Chapter of Title 33 for the same activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:729 (July 1992), repromulgated LR 21:796 (August 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2441 (November 2000).

## §1407. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

*Assessment*—planning, data gathering and reporting, and other activities used to generate a report that appraises groundwater contamination and draws conclusions as to the need for further assessment and/or corrective action.

*Assessment Oversight*—departmental review and evaluation of a facility's assessment activities.

*Corrective Action Oversight*—departmental review and evaluation of corrective action plans and of remedial actions undertaken to restore the quality of contaminated groundwater.

*Corrective Action Plan*—a plan that details a schedule of remedial actions that will restore the quality of contaminated groundwater.

*Non-Regulated Facility*—a facility that is not classified as a solid or hazardous waste facility but under which groundwater contamination has been detected.

*Regulated Unit*—a solid waste facility or a hazardous waste facility under which groundwater contamination has been detected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:729 (July 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1889 (September 2008).

## §1409. Groundwater Protection Fees

A. Assessment Oversight (Annual). The fee listed below covers the cost of reviewing, evaluating, and approving plans and/or reports that assess groundwater contamination and draw conclusions as to the need for further assessment and/or corrective action.

| | |
|---|---|
| Hazardous Waste Facilities | $10,395 |
| Solid Waste Facilities | $ 6,930 |
| Nonregulated Facilities | $ 3,465 |

B. Corrective Action Oversight (Annual). The fee listed below covers the cost of reviewing, evaluating, and approving plans and/or actions to cleanup groundwater that has been contaminated by a facility.

| | |
|---|---|
| Hazardous Waste Facilities | $13,860 |
| Solid Waste Facilities | $10,395 |
| Nonregulated Facilities | $ 3,465 |

C. Annual Report Review Fee. The fee listed below covers the cost of reviewing the groundwater annual report required by both the Hazardous and Solid Waste regulations.

| | |
|---|---|
| Hazardous Waste Facilities | $1,386 |
| Solid Waste Facilities | $ 346 |

D. Groundwater Monitoring Systems Installation. The fee listed below covers the cost of reviewing the geology and design of proposed groundwater monitoring systems to ensure compliance with department specifications.

| | |
|---|---|
| Each well | $660 |

E. Groundwater Monitoring Systems Surveillance Fee (Annual). The fee listed below covers the cost of inspecting monitoring systems to ensure that they are functioning properly and continue to maintain their integrity. The cost also includes other activities, such as the analysis of boring logs and site geology (cross sections, isopachs, etc.). The maximum fee that can be charged for this category is $6,600.

| | |
|---|---|
| Each well | $330 |

F. Facility Inspection Fee (Annual). The fee listed below covers the cost of inspecting the various facilities to ensure compliance with the groundwater protection aspects of the facilities' permits.

| | |
|---|---|
| Hazardous Waste Facilities | $1,320 |

| | |
|---|---|
| With sampling | $9,900 |
| Solid Waste Facilities | $ 660 |
| With sampling | $1,980 |

G. Oversight of Abandonment Procedures. The fee listed below covers the cost of reviewing plans to plug and abandon all nonpermitted groundwater monitoring systems (monitoring wells, piezometers, observations wells, and recovery wells) to ensure that they do not pose a potential threat to groundwater.

| | |
|---|---|
| Casing pulled | $132 each well |
| Casing reamed out | $264 each well |
| Casing left in place | $660 each well |

H. Maximum Total Fee per Facility. The maximum fee that can be assessed a facility under these regulations is $41,580.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:729 (July 1992), amended LR 21:797 (August 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:671 (May 2003), LR 29:2041 (October 2003).

### §1411. Method of Payment

A. All fee payments shall be made by check, draft, or money order payable to the Department of Environmental Quality and mailed to the department at the address provided on the invoice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:730 (July 1992), repromulgated LR 21:797 (August 1995).

### §1413. Late Fee

A. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a 5 percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional 5 percent late payment fee on the original assessed fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:730 (July 1992), amended LR 21:797 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:426 (March 1999).

### §1415. Failure to Pay

A. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the Louisiana Environmental Quality Act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:730 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:426 (March 1999).

## Chapter 15. Permit Application Review

### §1501. Applicability

A. This Chapter applies to permit applications for new facilities and to applications for substantial permit modifications submitted to the department after the rule's effective date (date of publication in the *Louisiana Register*).

B. Nothing in this Chapter shall limit the administrative authority from pursuing enforcement authorized in the Act, this Part, or in Parts III, V, VII, IX, or XI of LAC Title 33.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2022(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Legal Affairs and Enforcement, Enforcement and Regulatory Compliance Division, LR 19:487 (April 1993), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1341 (July 2007).

### §1503. Definitions

A. For all purposes of this regulation, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

*Administratively Complete*—in reference to an application for a permit, that the application contains all of the information necessary for the administrative processing of the application. Designating an application administratively complete for purposes of permit processing does not preclude the administrative authority from requesting or accepting any additional information. Required application information submitted under separate cover or separately from the application shall cause the administrative completeness determination to be delayed until such information is received, processed, and verified along with the other application information.

*Department*—Louisiana Department of Environmental Quality.

*Extraordinary Public Response*—that situation that exists where the quality and/or quantity of comments that are

relevant and material to the permit are such as to necessitate additional time for department review.

*Final Decision*—action taken by the administrative authority to issue, deny, modify, revoke and reissue, or terminate a permit.

*New Facility*—a pollution source (including all emission points and units of the source located within a contiguous area and under common control) or any public or private property where an activity required to be permitted by the department has not yet commenced.

*Processing Day*—except as otherwise provided herein, a day during which an application is available to the department for review and decision in the permit decision development process. Non-processing days include, but are not limited to, any day the department:

a. awaits from the applicant requested information that revises or supplements administrative or technical information or deficiencies in the application; or

b. reviews the following information from the applicant, not to exceed 60 days per submittal:

i. department-requested information; or

ii. application revisions or additional information unsolicited by the department.

*Substantial Permit Modification*—a change that substantially alters the permitted facility or its operation as follows:

a. for a hazardous waste permit, any Class 3 modification listed in LAC 33:V.322 or otherwise described in LAC 33:V.321.C.4;

b. for a solid waste permit, any modification listed in LAC 33:VII.517.A.2.a, or otherwise determined by the administrative authority to warrant public notice;

c. for a Louisiana Pollutant Discharge Elimination System (LPDES) permit, any modification not processed as a minor modification under LAC 33:IX.2905; and

d. for an air quality permit, any modification that results in a significant increase in the amount of any regulated pollutant or results in the significant emission of any air pollutant not previously emitted.

*Suspended Application*—a permit application that is not eligible to be processed for a permit decision because administrative or technical information requested by the department has not been submitted by the applicant within the time period specified by the department. An application deemed suspended, if not denied, may be reinstated if the requested information is submitted to, and found to be adequate by, the department within six months from date of application suspension. In addition, the department may require the applicant to submit an updated application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2022(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Legal Affairs and Enforcement, Enforcement and Regulatory Compliance Division, LR 19:487 (April 1993), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1341 (July 2007).

## §1505. Review of Permit Applications for New Facilities and Substantial Permit Modifications

A. Administrative Completeness Review

1. After receipt of a permit application for a new facility or an application for a substantial permit modification, the department shall perform an administrative completeness review and, if applicable, submit written notification to the applicant that lists the application's specific administrative deficiencies or additional information needed for application processing. Permit application forms and checklists of required information in the permit application review process shall be provided to the applicant upon request.

2. The applicant shall respond to the notice of deficiency or the request for additional information within the amount of time specified in the notice or request. This response shall contain all of the information required by the department to proceed with processing the application, unless otherwise provided for in Subsection E of this Section.

3. Within 60 processing days from the date a permit application is submitted, the department shall:

a. issue a letter of administrative completeness; or

b. notify the applicant that the application has been suspended because the required administrative information has not been received within the amount of time specified by the department.

4. The applicant’s failure to address an application deemed suspended may result in a permit denial, based on an incomplete application.

5. Within 30 days after receipt of a letter of administrative completeness, the applicant shall publish a notice, provided by the department, of the administrative completeness determination in a major local newspaper of general circulation and submit proof of publication to the Office of Environmental Services.

6. The requirement for publication of a notice of administrative completeness may be waived for applications for air quality permits for sources not defined as major in LAC 33:III.502 or 5103.

7. The requirement for publication of a notice of administrative completeness may be waived for applications for water quality permits for sources defined as minor by the administrative authority.

B. Technical Review

1. If at any time during the application review process the application is found to contain technical deficiencies, or if additional information is needed to correct or clarify the application, the department shall provide a written notice or request to the applicant and require a response within a specified time.

2. The applicant shall respond to the notice of technical deficiency or request for additional information within the time specified in the notice or request. This response shall be deemed adequate only if it contains all of the information specified in the notice of technical deficiency or request for additional information as required by the department to complete the review of the application.

3. If the applicant does not supply the required information within the time period specified in the notice of technical deficiency or request for additional information, the department may notify the applicant that the application has been suspended because the required information has not been received within the amount of time specified by the department.

4. The applicant's failure to address an application deemed suspended may result in a permit denial, based on an incomplete application.

5. Applications undergoing technical review shall not be subject to rule changes that occur during the technical review unless such changes are made in accordance with R.S. 49:953(B)(1) or are required by federal law or regulation to be incorporated prior to permit issuance. However, such a rule change made prior to the issuance of the permit may constitute grounds for a modification of the final permit.

C. Final Decision

1. The secretary or his designee shall issue a final decision within 300 processing days from the submission date of the application.

2. The 300-processing-day deadline shall be extended where additional time is required:

a. for the applicant to revise or supplement the application to address technical information or deficiencies in the application;

b. for adjudicatory or judicial proceedings under R.S. 30:2024;

c. for required review by the United States Environmental Protection Agency; or

d. for consideration of comments received at a public hearing in the case of an extraordinary public response, however in no case shall the extension for consideration of comments exceed 45 days.

D. Exceptions. Notwithstanding any other provisions of this Chapter to the contrary, the following requirements shall pertain to all applications for permits relating to oil and gas wells and pipelines.

1. Within 14 workdays after submittal of a permit application, the department shall perform an administrative completeness review and make a determination as follows.

a. If the application is deemed administratively complete, the department shall issue notification of the administrative completeness determination to the applicant.

b. If the application is not deemed administratively complete, the department shall notify the applicant in writing and provide a list of the application's specific administrative deficiencies. This notice shall specify the date by which the administrative information is to be submitted.

2. If, during the technical review, additional information is needed, the department shall notify the applicant in writing and shall specify the date by which the information is to be submitted.

3. If the applicant does not submit the required administrative or technical information within the specified time period as requested by the department, the department may notify the applicant that the application has been suspended because the required information has not been received within the amount of time specified by the department.

4. The applicant's failure to address an application deemed suspended may result in a permit denial, based on an incomplete application.

5. Within 60 processing days after a permit application has been submitted to the department, the secretary or his designee shall issue a final decision to grant or to deny the permit.

6. In the event of a permit denial, the secretary or his designee shall provide written reasons for the decision to all parties.

7. If the secretary or his designee does not grant or deny the permit within the time period provided for herein, the applicant may file a rule as provided for in R.S. 49:962.1.

E. Extensions. Any deadline established by this Section may be extended. A request for an extension of any deadline shall be submitted in writing by the permit applicant or by the secretary or his designee. The request shall specify the reasons and any special conditions that support a deadline extension. Written responses to all extension requests shall be submitted to the requestor within 10 days of receipt of the request.

F. Withdrawal of Permit Application

1. An applicant may voluntarily withdraw an application during the review process, without prejudice, provided notice of withdrawal is submitted to the Office of Environmental Services in writing with the appropriate signatory authority, and:

a. the applicant has voluntarily submitted an application for a new facility and such an application is not required other than to gain permission to operate; or

b. the applicant has voluntarily submitted an application to modify an existing permit and such a permit modification would not be required other than to operate in a different manner.

2. Following withdrawal, any subsequent submission will be considered a new application.

3. Following withdrawal, the requirements of this Chapter will be reinitiated upon the submittal of a new application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2022(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Legal Affairs and Enforcement, Enforcement and Regulatory Compliance Division, LR 19:487 (April 1993), repromulgated LR 19:742 (June 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2441 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2433 (October 2005), LR 33:1342 (July 2007), LR 33:2079 (October 2007).

# Chapter 17. Permit Qualifications and Requirements

## §1701. Requirements for Obtaining a Permit

A. In addition to meeting the requirements for permits outlined in the applicable sections of the environmental quality regulations, an applicant shall:

1. have no history of environmental violation(s) that demonstrates to the department an unwillingness or inability to achieve and maintain compliance with the permit for which the application is being made, unless the department determines that the applicant's history of environmental violation(s) can be adequately addressed by permit conditions;

2. if required, register with the Secretary of State;

3. owe no outstanding fees or final penalties to the department; and

4. if under a compliance schedule, be making satisfactory progress in meeting the conditions of the compliance schedule.

B. Before issuing any permit or transfer of ownership of a permit, the administrative authority may conduct an evaluation of the applicant related to the management of any facilities or activities subject to regulation under any applicable air, water, solid waste, hazardous waste, radiation control, or other environmental programs administered by the various states of the United States or by the federal government. If, pursuant to this evaluation, the administrative authority determines that the applicant has demonstrated an unwillingness or inability to achieve and maintain compliance with the permit for which application is being made, the administrative authority may:

1. include such conditions in the permit as reasonably deemed necessary for the protection of human health and the environment; or

2. deny any application for the issuance or transfer of the permit.

C. The applicant shall provide to the Office of Environmental Services a list of the state(s) where he or she has federal or state environmental permits identical to, or of a similar nature to, the permit for which application is being made. This information shall be provided for all individuals, partnerships, corporations, or other entities who own a controlling interest (50 percent or more) in the company or who participate in the environmental management of the facility for an entity applying for a permit or an ownership interest.

D. In addition to providing the information required in Subsection C of this Section, the applicant shall submit a written statement to the Office of Environmental Services as part of the permit application, to certify that:

1. if required, the applicant has registered with the secretary of state; and

2. no outstanding fees or final penalties are owed to the department.

E. The administrative authority may require the submission of additional information if the administrative authority deems such information necessary in order to make a determination under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2441 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2433 (October 2005), LR 33:2079 (October 2007).

# Chapter 18. Expedited Permit Processing Program

## §1801. Scope

A. This Chapter establishes a program to expedite the processing of permits, modifications, licenses, registrations, or variances for environmental permit applicants who may request such services. Expedited processing of an application for a permit, modification, license, registration, or variance is an exercise of the discretion of the administrative authority and is subject to the availability of resources needed in order to process the permit, modification, license, registration, or variance. Permit actions approved for expedited permit processing must meet all regulatory requirements, including required public comment periods and any required review by other agencies.

B. Eligibility

1. An application for an initial permit or permit modification necessary for new construction as required by the Environmental Quality Act or regulation is eligible for expedited permit processing.

2. An application for permit modification that does not result in new permanent jobs is eligible for expedited processing pursuant to the provisions of this Chapter if it is associated with new construction; includes increases in production that benefit the national, state, or local economy; or provides a direct benefit to the environment.

3. Applications for permit renewal and/or reconciliation will be considered for expedited processing

pursuant to the provisions of this Chapter on a case-by-case basis.

4. Applications for permits, modifications, licenses, registrations, or variances under the Solid Waste and Hazardous Waste programs are not eligible for expedited permit processing.

5. A request for expedited permit processing submitted prior to submittal of the associated permit application will not be considered.

6. Requests for exemptions, letters of no objection, and other miscellaneous letters of response are not eligible for expedited permit processing.

C. To the extent practicable, requests proposing new construction and requests that will result in the creation of new permanent jobs will be given highest consideration.

D. Approval of a request for expedited permit processing in no way guarantees issuance of the permit action or issuance of the permit action by the date requested.

E. The department may deny a request for expedited permit processing for any reason, including but not limited to the following:

1. the applicant's failure to pay outstanding fees or penalties;

2. compliance history concerns regarding the applicant;

3. an infeasible date requested for permit action;

4. an insufficient maximum amount the applicant is willing to pay; or

5. insufficient workforce resources available to assign to the task or a request not in line with department priorities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.5

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1013 (June 2007).

## §1803. Procedures

A. Requests for expedited permit processing shall be submitted using the approved form. The approved form is available on the official website for the department. Hard copies may be obtained from the Office of Environmental Services.

B. Within 10 working days after receipt of a request for expedited processing of any permit, modification, license, registration, or variance, the administrative authority shall issue a decision to grant or deny the expedited processing request.

C. Permit Applications. The following are additional permit application requirements for facilities requesting expedited permit processing.

1. If requested by the department, the applicant shall submit permit application information electronically using the Air Permit Data Upload (APDU) system or any other electronic data submittal program provided by the department.

2. Prior to submittal of a permit application for a new major source, a new synthetic minor source, or a major modification of an existing source, a technical meeting with a representative of the department is recommended to review and discuss the proposed application.

D. Requests for Additional Information

1. If at any time during the review process of an application the administrative authority determines that additional information is necessary, the administrative authority shall notify the applicant and require a response from the applicant within a specified time.

2. The applicant shall respond to the request for additional information within the time specified by the administrative authority. Such a response shall contain all information required by the administrative authority.

3. The administrative authority may cease expedited processing of an application for a permit, modification, license, registration, or variance in accordance with the provisions of this Chapter if the applicant fails to supply the requested additional information by the specified time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30: 2014.5.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1014 (June 2007), amended LR 33:2079 (October 2007).

## §1805. Fees

A. In addition to the fees charged pursuant to R.S. 30:2014, a fee shall be charged for each application for a permit, modification, license, registration, or variance that is processed on an expedited basis in accordance with the provisions of this Chapter.

1. An appropriate fee shall be computed based on the maximum per hour overtime salary, including associated related benefits, of the civil service employee of the department who performs the work.

2. The fee shall be computed by multiplying the salary figure from Paragraph A.1 of this Section by every overtime hour or portion thereof that a department employee or contractor works on expedited processing of the application for a permit, modification, license, registration, or variance.

3. The applicant may request that the expedited permit processing fee not exceed a maximum amount. If such a maximum amount is established, the number of overtime hours a department employee or contractor works processing the application for a permit, modification, license, registration, or variance shall be limited accordingly. If further processing of the application is required, the department's continued review will not follow the provisions of this Chapter, and the request will no longer be handled on an expedited basis, unless the applicant agrees in writing to pay the expedited fees required to complete the expedited processing of the permit action.

B. In the event that the administrative authority ceases processing an application for a permit, modification, license, registration, or variance in accordance with LAC 33:I.1803.D.3 or Paragraph A.3 of this Section, a fee will be charged for every overtime hour or portion thereof that a department employee or contractor worked on expedited processing of the subject application for a permit, modification, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30: 2014.5 and 6.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1014 (June 2007).

### §1807. Invoicing and Failure to Pay

A. An invoice for the expedited permit processing fee shall be transmitted to the applicant after the administrative authority has made a decision to grant or deny the permit, modification, license, registration, or variance.

B. If the administrative authority has ceased processing the permit application in accordance with LAC 33:I.1803.D.3 or 1805.A.3, an invoice for the appropriate expedited permit processing fee shall be transmitted to the applicant.

C. Failure to pay the expedited permit processing fee by the due date specified on the invoice constitutes a violation of these regulations and shall subject the applicant to relevant enforcement action under the Louisiana Environmental Quality Act including, but not limited to, revocation or suspension of the permit, modification, license, registration, or variance.

D. A permit appeal, whether by the applicant or a third party, shall not stay the requirement to pay the expedited permit processing fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30: 2014.5 and 6.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1015 (June 2007).

### §1809. Public Notice and Availability of Records

A. Requirement to Provide Public Notice. The department shall provide notice of each request for expedited processing of an application for a permit, modification, license, registration, or variance that is processed pursuant to the provisions of this Chapter.

1. The notice of expedited permit processing shall be provided on the official website for the department.

2. For draft or proposed permit actions subject to public notice requirements under other regulations or program requirements, such public notice shall indicate that the draft or proposed permit was processed under the expedited permit processing provisions of this Chapter.

B. Contents of the Notice

1. The notice on the official website for the department shall contain the name of the applicant/permittee, the agency interest number, the parish in which the facility is physically located, the environmental medium involved, the date the request for expedited processing was received, and the date of the decision to approve or deny the request for expedited processing.

2. For draft or proposed permit actions subject to public notice requirements under other regulations or program requirements, in addition to such requirements, the public notice shall contain a statement that the draft or proposed permit was processed under the expedited permit processing provisions of this Chapter.

C. Availability of Records. All recorded information concerning a request for expedited processing (completed permit application form, fact sheet or statement of basis, draft and proposed permits, or any other public document) not classified as confidential information under R.S. 30:2030(A) or 30:2074(D) or not designated confidential in accordance with applicable regulations shall be made available to the public for inspection and copying in accordance with the Public Records Act, R.S. 44:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30: 2014.5.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1015 (June 2007).

## Chapter 19. Facility Name and Ownership/Operator Changes Process

### §1901. Applicability

A. This Chapter applies to name and ownership/operator changes at facilities that are under the purview of the air, water, hazardous waste, and solid waste regulatory programs. Written notifications of these changes shall be submitted to the department for facilities applying for or holding any air permits, Louisiana Pollutant Discharge Elimination System (LPDES) permits, hazardous waste permits, and solid waste permits. A name, ownership, and/or operator change will be considered a minor permitting action or administrative amendment.

B. When the ownership of a facility holding an LPDES permit changes and there is no change to the operator of that facility, a permit transfer is not required. Notification of the change of ownership is still required in accordance with LAC 33:I.1905.

C. The terms *administratively complete*, *administrative amendment*, *financial assurance*, and *minor modification* as used in this Chapter shall have the same meaning and intent as when used in LAC 33:Parts III, V, VII, and IX.

D. This Chapter does not supersede any otherwise applicable requirements addressing administrative amendments or modifications in the air, LPDES, hazardous waste, and solid waste programs, in particular, applicable MACT rules or acid rain program requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2428 (October 2005).

### §1903. Liability

A. The previous owner or operator retains responsibility for compliance with all permit terms and conditions until the permit has been transferred in accordance with this Chapter.

B. The previous owner or operator retains responsibility for compliance with the financial requirements until the new owner or operator has demonstrated that he or she is complying with the specified financial requirements of Title 33 of the Louisiana Administrative Code (e.g., LAC 33:V.Chapter 37, LAC 33:VII.727.A.1 and 2, and LAC 33:IX.Chapter 67).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2428 (October 2005).

### §1905. Name Change

A. Changes in the name only of a facility or of its owner/operator shall be made with written notification to the Office of Environmental Services. The owner or operator shall submit a complete Name/Ownership/Operator Change Form (NOC-1 Form) prior to or no later than 45 days after the change. This form may be found on the department's website.

B. Within 30 days after receipt of the complete notification of a change of name of a facility or of its owner/operator, the administrative authority shall notify the owner/operator that the department has received and processed the name change. The effective date of the name change shall be the date indicated on the NOC-1 Form unless the administrative authority determines that a different date is appropriate, in which case the Office of Environmental Services shall notify the permit applicant of the actual effective date.

C. For permitted hazardous waste facilities, the permittee shall send a notice of the name change to all persons on the facility mailing list maintained by the administrative authority in accordance with LAC 33:V.717.A.5, and to the appropriate units of state and local government, as specified in LAC 33:V.717.A.2 and 4. This notification shall be made within 90 calendar days after the change is effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2428 (October 2005).

### §1907. Change of Ownership/Operator—No Financial Assurance Required

A. The administrative authority may approve the transfer of a permit to a new owner or operator where no financial assurance is required, based on the presence of the following factors:

1. documentation clearly identifying the party who will be responsible for existing violations; and

2. evidence of managerial competence on the part of the new owner or operator in accordance with LAC 33:I.1701.

B. Changes in the ownership or operational control of a facility shall be made with written notification to the Office of Environmental Services. The new owner or operator shall submit a Name/Ownership/Operator Change Form (NOC-1 Form) prior to or no later than 45 days after the change. A written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the previous and new permittees shall also be submitted to the administrative authority. The agreement shall be attached to the NOC-1 Form. The department may initiate action to terminate or revoke an existing media permit for a failure to disclose a change of ownership or operational control within 45 days after the change.

C. Within 30 days after receipt of the complete notification of a change of the ownership or operational control of a facility, the administrative authority shall notify the previous and new owners/operators of the department's approval or disapproval of the transfer of the permit to the new owner or operator based on its evaluation of the factors set forth in Subsection A of this Section. The department will also notify EPA of changes in Title V permits within the same timeframe. The effective date of the permit transfer shall be the date indicated on the NOC-1 Form unless the administrative authority determines that a different date is appropriate, in which case the Office of Environmental Services shall notify the permit applicant of the actual effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2428 (October 2005).

### §1909. Change of Ownership/Operator—Financial Assurance Required

A. The administrative authority may approve the transfer of a permit to a new owner or operator where financial assurance is required, based on the following factors:

1. assumption by the new owner or operator of liability for existing violations;

2. demonstration of compliance with financial responsibility requirements by the new owner or operator; and

3. evidence of managerial competence on the part of the new owner or operator in accordance with LAC 33:I.1701.

B. Changes in the ownership or operational control of a facility shall be made with written notification to the Office of Environmental Services. The new owner or operator shall submit a Name/Ownership/Operator Change Form (NOC-1 Form) prior to or no later than 45 days after the change. The

department may initiate action to terminate or revoke an existing media permit for a failure to disclose a change of ownership or operational control within 45 days after the change. The following actions are also required to be completed in conjunction with the change of ownership/operator notification.

1. A written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the previous and new permittees shall be submitted to the administrative authority. The agreement shall be attached to the NOC-1 Form.

2. Permitted and interim status hazardous waste facilities shall also submit a revised Part I (i.e., Part A) permit application and Hazardous Waste Notification Form (HW-1 Form) in conjunction with the NOC-1 Form.

3. When a transfer of ownership or operational control occurs, the previous owner or operator shall comply with the applicable requirements of LAC 33:V.Chapter 37 (hazardous waste financial requirements), LAC 33:VII.727.A.1 and 2 (solid waste financial assurance requirements), and LAC 33:IX.Chapter 67 (water financial security requirements) until the new owner or operator has demonstrated that he or she is complying with the applicable requirements of LAC 33:V.Chapter 37, LAC 33:VII.727.A.1 and 2, and LAC 33:IX.Chapter 67.

C. The new owner or operator shall demonstrate compliance with the applicable requirements of LAC 33:V.Chapter 37, LAC 33:VII.727.A.1 and 2, and LAC 33:IX.Chapter 67 within six months of the date of the change of ownership or operational control of the facility. Upon adequate demonstration to the administrative authority by the new owner or operator of compliance with these financial assurance requirements, the administrative authority shall notify the previous owner or operator that he or she no longer needs to comply with the financial assurance requirements as of the date of demonstration.

D. Within 45 days after receipt of the complete notification of a change of ownership or operational control of a facility, the administrative authority shall notify the previous and new owners/operators of the department's approval or disapproval of the transfer of the permit to the new owner or operator based on its evaluation of the factors set forth in Subsection A of this Section. The effective date of the permit transfer shall be the date indicated on the NOC-1 Form unless the administrative authority determines that a different date is appropriate, in which case the Office of Environmental Services shall notify the permit applicant of the actual effective date.

E. For permitted hazardous waste facilities, the new permittee shall send a notice of the change of ownership or operational control to all persons on the facility mailing list maintained by the administrative authority in accordance with LAC 33:V.717.A.5, and to the appropriate units of state and local government, as specified in LAC 33:V.717.A.2 and 4. This notification shall be made within 90 calendar days after the administrative authority has provided a written response approving the transfer of the permit and the change has been put into effect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2429 (October 2005).

### §1911. Fees for Name and Ownership/Operator Changes

A. Notifications of name or ownership/operator changes at a facility shall be submitted by the new owner or operator with the appropriate fees. The fees listed below cover the cost of reviewing, evaluating, and processing a name or ownership/operator change that has occurred at the facility.

| Name and Ownership/Operator Change Fees | |
|---|---|
| **Program** | **LAC Citation for Fee** |
| Air | LAC 33:III.223, Fee Number 2000 |
| Hazardous Waste | LAC 33:V.5123.A |
| Solid Waste: Type I, I-A, II, and II-A Facilities | LAC 33.VII.525.C (N/A for name change alone) |
| Solid Waste: Type III Facilities or Beneficial Use Facilities | LAC 33.VII.525.D (N/A for name change alone) |
| LPDES | LAC 33:IX.1309.D.4 (N/A for name change alone) |

B. Method of Payment. All fee payments shall be made by check, draft, or money order payable to the Department of Environmental Quality and mailed to the department at the address provided on the NOC-1 Form.

C. Failure to Pay. Failure to pay the prescribed name change or ownership/operator change fee as provided herein shall result in the change request not being processed by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2429 (October 2005).

## Chapter 20. Records of Decision for Judicial Review

### §2001. Scope and Purpose

A. These regulations provide for the assembly, in a uniform and consistent order, of a record of decision of any department action or decision that is the subject of an appeal to, or other request for judicial review by, a court of competent jurisdiction.

B. The copying, assembly, and lodging of a record of decision with a court of competent jurisdiction pursuant to an appeal or other request for judicial review of an agency decision or other department action shall be considered a public records request in accordance with LAC 33:I.Chapter 23.

1. The cost, in accordance with LAC 33:I.Chapter 23, of the preparation of a record of decision for lodging with

the court shall be borne by the person seeking judicial review unless otherwise assigned by the court.

2. In the event of conflict between the requirements of LAC 33:I.Chapter 23 and this Chapter, the requirements of this Chapter shall apply.

C. These regulations do not apply to matters handled by the Department of State Civil Service, Division of Administrative Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, 2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:857 (May 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 33:88 (January 2007).

## §2003. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

*Record of Decision*—for purposes of this Chapter, all documents, evidence, and other items presented to, and/or actually considered by, the decision maker for the purpose of influencing the decision. This shall include, but is not limited to:

a. the record of any hearing or other proceeding held in connection with the decision or action;

b. any comments, written or oral, submitted to the department in connection with the decision or action;

c. any response to such comments issued by the department;

d. all matters officially noticed by the decision maker;

e. any written statement of the decision or action and reasons therefor; and

f. for permit actions:

i. the permit application, including all supplements and amendments thereto;

ii. any notices of deficiency issued by the department;

iii. any responses to notices of deficiency;

iv. any correspondence relating to the permit application;

v. any public notices relating to the permit action; and

vi. the final permit, if granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, 2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:857 (May 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1889 (September 2008).

## §2005. Responsibility for Assembly of Record of Decision

A. When the department is served with notice of an appeal or other request for judicial review, such notice shall be immediately forwarded to the Office of the Secretary, which shall be responsible for assembling a complete and legible copy of the record of decision and transmitting it to the court.

B. Upon receipt of such notice, the Legal Affairs Division shall promptly notify the decision maker and other appropriate agency personnel, each of whom shall be responsible for promptly transmitting to the Legal Affairs Division, complete and legible copies of any portions of the record of decision that may be in his/her possession or control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, 2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:858 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2441 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2433 (October 2005), LR 33:2079 (October 2007).

## §2007. Format of Record of Decision

A. Unless otherwise required by law or rule of court, the copy(ies) of the record of decision that are transmitted to the court shall be assembled in the format indicated in Paragraphs A.1-5 of this Section.

1. The main body of the record shall consist of all documents (or legible copies thereof) other than exhibits. (Exhibits are addressed in Paragraph A.2 of this Section.) The main body shall be assembled according to the provisions of Subparagraphs A.1.a-e of this Section.

a. The documents shall be arranged in chronological order, with the oldest document as the first.

b. Each page shall be consecutively numbered. The page number shall be inscribed in the lower right corner of the page, where it is possible to do so without obscuring text or other information.

c. The pages shall be on white paper, measuring 8 1/2 by 14 inches. The image shall be on one side of the paper only.

d. If the main body of the record contains more than 250 pages, it shall be divided into volumes of 250 pages or less.

e. Each volume shall be bound at the top, with front and back covers. The front cover of each volume shall be inscribed with:

i. the name of the court to which the record is directed;

ii. the title of the action;

iii. the docket number assigned by the court;

iv. the division of the court to which the matter is assigned;

v. the words, "Record of Decision;"

vi. the name, address, and telephone number of each attorney of record, with the name and status of each party he/she represents;

vii. the volume number of that volume and the total number of volumes (i.e., Volume 2 of 3); and

viii. the number of exhibits included in the record of decision.

2. Those portions of the record of decision that are not included in the main body are submitted as exhibits. Exhibits shall conform to the provisions of Subparagraphs A.2.a-d of this Section.

a. The following items shall not be included in the main body of the record of decision, but rather shall be submitted as exhibits:

i. items that are larger than 8 1/2 by 14 inches, such as maps, charts, and blueprints;

ii. bound materials, such as books and materials in loose-leaf binders; and

iii. any other items that are too bulky or cumbersome to be efficiently included in the main body of the record of decision.

b. Each exhibit shall be assigned a number. The numbers shall be assigned chronologically according to the date appearing on the exhibit, if any. If no date appears on the exhibit, the exhibit number shall be assigned according to the date of submittal of the exhibit to the department.

c. Each exhibit shall be labeled with the exhibit number, a brief description of the exhibit, and the date appearing thereon or the date of submittal, as applicable.

d. Exhibits shall be packaged in boxes, envelopes, or other containers in such a manner as to facilitate storage and handling. Each box, envelope, or container shall bear a label inscribed with the following information:

i. the name of the court to which the record is directed;

ii. the title of the action;

iii. the docket number assigned by the court;

iv. the division of the court to which the matter is assigned;

v. the words, "Record of Decision;"

vi. the name, address, and telephone number of each attorney of record, with the name and status of each party he/she represents; and

vii. the exhibit number for each exhibit contained therein and the total number of exhibits (i.e., Exhibits 2 and 3 of 7).

3. Confidential Documents

a. Documents or other materials that are part of the record of decision, but have been declared confidential by the secretary in accordance with R.S. 30:2030, R.S. 30:2074(D), or other law, shall be submitted to the court only under seal. "Under seal" shall mean contained in sealed envelopes or boxes, which are clearly marked or labeled with the following inscription:

> "CONFIDENTIAL—FOR REVIEW BY COURT PERSONNEL ONLY. The enclosed materials have been declared confidential by the Secretary of the Louisiana Department of Environmental Quality, pursuant to La. R.S. [insert citation]."

b. Confidential materials submitted under seal, as described in Subparagraph A.3.a of this Section, shall not be placed in the main body of the record of decision nor in the exhibits. In place of each such item in the main body of the record of decision the following notice shall be placed, accompanied by a copy of the secretary's written determination of confidentiality as to that item:

> "NOTICE—CONFIDENTIAL ITEM SUBMITTED UNDER SEAL. An item which would otherwise appear at this point in the record of decision has been submitted to the court separately and under seal, because the Secretary of the Louisiana Department of Environmental Quality has declared it confidential, pursuant to La. R.S. [insert citation]. See the attached written determination of confidentiality."

4. Indexes

a. The following indexes shall be prepared:

i. a chronological index of every document in the main body of the record of decision, showing the date, item name or description, and page number of the first page of each document;

ii. an alphabetical index of every document in the main body of the record of decision, showing the date, item name or description, and page number of the first page of each document; and

iii. a chronological index of every exhibit in the record of decision, showing the exhibit number and description of each exhibit.

b. A copy of each index shall be included in each volume of the main body of the record of decision, directly beneath the front cover.

c. A copy of the exhibit index shall be placed in each box, envelope, or other container in which exhibits are transmitted to the court.

5. Certificate of Completeness and Authenticity. The first volume of the main body of the record of decision shall contain an original certificate of the decision maker as to the completeness and authenticity of the entire record of decision. Each other volume, if any, shall contain a copy of that certificate. The certificate, or copy thereof, shall be placed after the last page of each volume.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, 2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:858 (May 1999).

# Chapter 21. Electronic Submittals and Electronic Signatures

## §2101. Purpose

A. Pursuant to R.S. 30:2043, electronic documents will be accepted by the department in satisfaction of the requirements of department regulations, notwithstanding any other department regulation to the contrary.

B. This Chapter provides for the submittal of electronic documents and electronic signatures to the department as original documents to meet requirements set forth in department regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2043 and 9:2601.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:1611 (August 2008).

## §2103. Definitions

A. For all purposes of this Chapter, the terms defined in this Section shall have the following meanings, unless the context of use clearly indicates otherwise.

*Department*—the Louisiana Department of Environmental Quality.

*Electronic Document*—any document in electronic, magnetic, optical, or other format, except an audio recording, used to create, transfer, approve, or store the document for subsequent retrieval. This may include data, text, codes, computer programs, software, or databases.

*Electronic Document Receiving System*—a set of apparatus, procedures, software, and/or records used to receive electronic documents.

*Electronic Signature*—any information in digital form that is included in or logically associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature if affixed to an equivalent paper document with the same reference to the same content. An electronic document bears or has on it an *electronic signature* when it includes or has logically associated with it such information.

*Subscriber*—a person who has submitted a subscriber agreement to the department and has received authorization from the department to submit electronic documents using one of the department's electronic document receiving systems.

*Subscriber Agreement*—a document drafted by the department and signed with a handwritten wet ink signature by a *person* as defined in R.S. 30:2004, or with respect to an electronic signature device that the person will use to create his or her electronic signature, and whereon the person acknowledges the obligations connected with preventing compromise of the electronic signature device.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2043 and 9:2601.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:1612 (August 2008).

## §2105. Procedures

A. Any person may submit an electronic document to the department, in lieu of a paper document, provided that:

1. the person has executed the proper subscriber agreement in accordance with department instructions;

2. the secretary has first published a notice on the department's website announcing that the department is prepared to receive, in electronic form, documents submitted to satisfy the requirements of one or more specific programs;

3. the person transmits the electronic document to an electronic document receiving system designated by the department for the receipt of such submissions, complying with the system's requirements for submission; and

4. the electronic document bears valid electronic signatures at all locations where the signatory would be required to sign the paper document for which the electronic document substitutes.

B. Each subscriber agreement shall include one or more handwritten wet ink signatures, receive approval from the department, and be retained on file with the department while the subscriber agreement is active and for an additional five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2043 and 9:2601.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:1612 (August 2008).

## §2107. Enforcement

A. A person who submits an electronic document and fails to comply with the provisions of this Chapter is subject to penalties and remedies for failure to comply with department reporting requirements.

B. When an electronic document bears an electronic signature, the electronic signature legally binds, obligates, and makes the signatory responsible, to the same extent as the signatory's handwritten signature would on a paper document.

C. Nothing in this Chapter limits the use of an electronic document or information derived from electronic documents as evidence in enforcement or other proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2043 and 9:2601.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:1612 (August 2008).

# Chapter 23. Procedures for Public Record Requests

## §2301. Purpose

A. It is the purpose of this Chapter to give notice of the standard department procedures for receiving and processing requests for copies of public records and to establish a department copy fee schedule in compliance with the Uniform Fee Schedule for Copies of Public Records (LAC 4:I.301), the Administrative Procedure Act (R.S. 49:950 et seq.), and the Louisiana Public Records Law (R.S. 44:1 et seq.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:428 (March 1999).

## §2303. Policy

A. The department shall implement the fee schedule in LAC 33:I.2309 when providing copies of public records requested by the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq., 44:1 et seq., and 30:2043 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:429 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:702 (May 2003).

## §2305. Standard Operating Procedures

A. All requests for copies of public records, including discovery requests, subpoenas duces tecum for production of public records, and the preparation of a record of decision pursuant to LAC 33:I.Chapter 20, shall be made using LDEQ Form ISD-0005-01. A certification on LDEQ Form ISD-0005-02 shall be submitted with a request for free or reduced rate copies. Completed forms may be submitted in person, by mail, by facsimile, or by another approved method. No other form of request will be honored. Copies of the forms may be obtained through the department's website or from the department's custodian of records.

B. Payment shall be made in accordance with the rates established in this Chapter.

C. Advance payment is required, except for a request for an administrative record of decision required to be lodged with a court. Payment shall be made only by check or money order made payable to the Department of Environmental Quality. The department does not accept cash.

D. In order to ensure the preservation of department records, no records shall leave the premises, whether accompanied by agency personnel or otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:429 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), LR 29:702 (May 2003), amended by the Office of Environmental Assessment, LR 30:2020 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:88 (January 2007).

## §2307. Exceptions to Standard Operating Procedures

A. The following procedures shall apply to persons requesting copies of public records under an exception to standard operating procedures.

1. Requests for exceptions to standard operating procedures shall be approved in advance by the department's custodian of records.

2. All requests for copies of public records shall be made using LDEQ Form ISD-0005-01 unless the records were prepared for sale to the public, e.g., Environmental Regulatory Code.

B. Specific Exceptions

1. Exception to LAC 33:I.2305.C. Copies of public records may be requested and delivered by facsimile. The copies may be sent upon receipt of a facsimile of the payment check or money order, pending receipt of the actual payment.

a. Custodian of records' approval and credit approval may be required prior to providing copies by facsimile.

b. If payment is not received within 10 working days, the requester's name will appear on an accounts receivable past due report maintained by the Office of Management and Finance.

c. No copies shall be provided to any requester who appears on the accounts receivable past due report until all past due amounts have been paid.

2. Exception to LAC 33:I.2305.D. Oversize and color records that must be duplicated by an outside source copy provider, due to unavailability of suitable copying equipment within the department, may leave the premises by approval of the custodian of records.

a. The document shall be accompanied by an official, employee, agent, or contractor of the agency who shall remain with the document until its return.

b. The requester shall be responsible for all costs of reproduction. The requester shall:

i. make payment or arrangements for payment with the outside source copy provider in advance of the request for the exception; and

ii. include a statement of such arrangements as part of the request.

c. The department reserves the right to approve the outside source copy provider and to refuse the release of public records to an outside source copy provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal

Services Division, LR 25:429 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), LR 29:702 (May 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2080 (October 2007).

### §2309. Uniform Fee Schedule

| Item | Regular Fee | Reduced Fee |
|---|---|---|
| Copy | $0.25 per one-sided page | $0.05 per one-sided page |
| | $0.50 per two-sided page | $0.10 per two-sided page |
| Copy, Color | $1 per one-sided page | $0.50 per one-sided page |
| Copy of existing electronic file | $0.25 per one-sided page paper copy | $0.05 per page paper copy |
| | $0.50 per two-sided page paper copy | $0.10 per page paper copy |
| (Disk/CD will be provided by the department) | Cost of disk/CD for electronic copy | Cost of disk/CD for electronic copy |
| Computer-generated report/map that requires data processing time* (Disk/CD will be provided by the department) *Cost to include personnel, supplies, etc. | $25 per hour + cost of disk/CD | $5 per hour + cost of disk/CD |
| Copies printed and produced by outside sources at the request of the department (LSU Press, DOA Printing, etc.) | As determined by the cost statement | As determined by the cost statement |
| Facsimile, per page **A cover sheet and an invoice shall be included in the faxed material at no charge. | $1 per page** | $1 per page** |
| Reproduced videotape | Cost of tape | Cost of tape |
| Reproduced audiotape | Cost of tape | Cost of tape |
| Postage & Handling | Actual cost | Actual cost |
| Viewing records, certification of record copies, or copies of Requests for Proposal (RFP) | No charge | No charge |

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:430 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:703 (May 2003).

# Chapter 25. Beneficial Environmental Projects

### §2501. Applicability

A. These regulations apply when the department has decided to enter into a settlement in which a beneficial environmental project (BEP) is utilized. The department reserves the right to settle for the amount of cash penalty, if any, it deems appropriate in considering all of the circumstances relating to the case in which the settlement is perfected. The decision to enter into a settlement that includes a BEP is solely within the discretion of the department. Nothing in these regulations requires that the department enter into a settlement or that the settlement include BEPs. Any BEP may be accepted if it meets the terms of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031, and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1603 (August 2000).

### §2503. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

*Beneficial Environmental Project (BEP)*—a project that provides for environmental mitigation which the defendant/respondent is not otherwise legally required to perform, but which the defendant/respondent agrees to undertake as a component of a settlement of a violation or penalty assessment.

*Environmental Mitigation*—that which tends to lead in any way to the protection from, reduction of, or general awareness of potential risks or harm to public health and the environment. Environmental mitigation includes any and all projects that conform to the requirements set forth in LAC 33:I.2505.

*Not Otherwise Legally Required to Perform*—the approved project is not required of the defendant/respondent by any federal, state, or local law, regulation, or permit (except that early compliance may be allowed) or actions which the defendant/respondent may be required to perform as injunctive relief in the instant case or as part of a settlement or order in another action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031, and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1603 (August 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1889 (September 2008).

### §2505. Project Categories

A. A BEP must be within one or more of the following categories.

1. Public Health. A public health project provides diagnostic, preventative, and/or remedial components of human health care that is related to the actual or potential damage to human health caused by a violation of environmental law or mismanagement of substances containing constituents detrimental to human health. This may include, but is not limited to, epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/tissue samples, medical treatment, and rehabilitation therapy.

2. Pollution Prevention

a. A pollution prevention project is one that reduces the generation of pollution through "source reduction," i.e., any practice that reduces the amount of any hazardous

substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment, prior to recycling, treatment, or disposal. (After the pollutant or waste stream has been generated, pollution prevention is no longer possible and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods.)

b. Source reduction may include equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project which protects natural resources through conservation or increased efficiency in the use of energy, water, or other materials. In-process recycling, wherein waste materials produced during a manufacturing process are returned directly to production as raw materials on site, is considered a pollution prevention project.

c. In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution released to the environment, not merely a transfer of pollution among media. This decrease may be achieved directly or through increased efficiency (conservation) in the use of energy, water, or other materials.

3. Pollution Reduction. If the pollutant or waste stream already has been generated or released, a pollution reduction approach, which employs recycling, treatment, containment, or disposal techniques, may be appropriate. A pollution reduction project is one that results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means which does not qualify as "pollution prevention." This may include the installation of more effective end-of-process control or treatment technology, or improved containment, or safer disposal of an existing pollutant source. Pollution reduction also includes "out-of-process recycling," wherein industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for production off-site.

4. Environmental Restoration and Protection. An environmental restoration and protection project is one that goes beyond repairing the damage caused by the violation to enhance the condition of any ecosystem or geographic area. These projects may be used to restore or protect natural environments (including ecosystems) and man-made environments (including the removal/mitigation of contaminated materials, such as soils, asbestos, and leaded paint, from facilities and buildings). Also included is any project which protects the ecosystem from actual or potential damage resulting from violations of state environmental regulations or improves the overall environmental condition of the ecosystem or geographic area. Examples of these projects include: restoration of a wetland; purchase and management of a watershed area or environmentally sensitive area; and providing for the protection of endangered species, i.e., developing conservation programs or habitat protection and enhancement.

5. Assessments and Audits

a. The four types of assessments/audits are:

i. pollution prevention assessments;

ii. site assessments;

iii. environmental management system audits; and

iv. compliance audits.

b. These assessment or audit projects must be performed by an entity approved by the department. The defendant/respondent must agree to provide a certified copy of the assessment or audit to the department along with an implementation report to detail the action(s) taken and/or to defend the facility's decision to forego implementation of the suggested changes listed in the audit report. Settlement agreements which include assessment and/or audit projects may be constructed with stipulated penalty amounts for failure to implement suggested changes included in the report that the department deems appropriate based on an assessment of the certified implementation report provided by the facility. Assessments and audits may not include projects that are required by enforcement and/or legal requirements.

6. Environmental Compliance Promotion. An environmental compliance promotion project provides training or technical support to identify, achieve and maintain compliance with applicable statutory and regulatory requirements; avoid committing a violation with respect to such statutory and regulatory requirements; go beyond compliance by reducing the generation, release, or disposal of pollutants to a level below the legally required limits; or promote environmental education, including awareness of potential risks or harm to the public health and the environment. In all cases, the department will specify the approved party responsible for developing and providing the environmental compliance promotion project. Acceptable projects may include, but are not limited to, the production and or sponsorship of seminar(s) related to environmental obligations, regulations, and improvement techniques.

7. Emergency Planning, Preparedness, and Response. An emergency planning and preparedness project provides assistance to a responsible state or local emergency planning, preparedness, or response entity. This is to enable these organizations to further fulfill their obligations to collect information to assess the dangers of hazardous chemicals present in a response situation, to develop emergency plans and/or procedures, to train emergency response personnel, and to better respond to emergency situations. These projects may include providing computers and software, communication systems, chemical emission detection and inactivation equipment, or hazardous materials equipment or training.

8. Other Projects. Projects determined by the department to have environmental merit that do not fit

within at least one of the seven categories above may be accepted if they are otherwise fully consistent with the intent of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031, and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1604 (August 2000).

# Chapter 27. Mercury Risk Reduction

## Subchapter A. Requirements Related to the Sale of Mercury-Added Products

### §2701. Authority

A. Regulations for the purpose of mercury risk reduction in the state of Louisiana are hereby established by the department pursuant to R.S. 30:2571-2588.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571-2588.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:450 (March 2009)

### §2703. Purpose

A. The purpose of this Chapter is to supplement procedures and requirements set forth in the Louisiana Mercury Risk Reduction Act, R.S. 30:2571 et seq., for manufacturers of mercury-added products offered for sale, users of mercury-added products in drinking water and wastewater treatment systems, and dismantlers of end-of-life products that contain mercury-added products within the state of Louisiana. This Chapter is in addition to any other requirements to provide notice, and nothing in this Chapter shall be construed to relieve the department or any other person from any other requirement set forth in Title 33 of the *Louisiana Administrative Code*. Furthermore, nothing in this Chapter shall prevent a manufacturer of mercury-added products, or the department, from providing additional means for public information and participation consistent with this Chapter or any other Chapter of Title 33 of the *Louisiana Administrative Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:450 (March 2009)

### §2705. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

*Amalgam*—any of various alloys of mercury and other metals, as with tin or silver.

*Amalgam Sludge*—the mixture of liquid and solid material collected within vacuum pump filters or other amalgam capture devices.

*Appliances* (*White Goods*)—discarded domestic and commercial appliances, such as refrigerators, ranges, washers, and water heaters.

*Chair Side Traps*—devices that capture amalgam waste during amalgam placement or removal procedures.

*Contact Amalgam*—amalgam that has been in contact with a patient. Examples include extracted teeth with amalgam restorations, carving scrap collected at chair side, and amalgam captured by chair side traps, filters, or screens.

*Empty Amalgam Capsule*—an individually-dosed container left over after mixing pre-capsulated dental amalgam.

*Fabricated Mercury-Added Product*—a product that consists of a combination of individual components that combine to make a single unit including, but not limited to, mercury-added measuring devices, lamps, and switches.

*Formulated Mercury-Added Product*—a chemical product, including, but not limited to, laboratory chemicals, cleaning products, cosmetics, pharmaceuticals, and coating materials, that is sold as a consistent mixture of chemicals.

*Health Care Facility*—any hospital, nursing home, extended care facility, long-term care facility, clinical or medical laboratory, state or private health or mental institution, clinic, physician's office, or health maintenance organization.

*Manufacturer*—any person, firm, association, partnership, corporation, governmental entity, organization, or combination or joint venture that produces a mercury-added product, or an importer or domestic distributor of a mercury-added product produced in a foreign country. In the case of a multi-component mercury-added product, the *manufacturer* is the last manufacturer to produce or assemble the product. If the multi-component product is produced in a foreign country, the *manufacturer* is the importer or domestic distributor.

*Mercury-Added Novelty*—a mercury-added product intended mainly for personal or household enjoyment or adornment. *Mercury-added novelties* include, but are not limited to, items intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, items of apparel including footwear, and similar products.

*Mercury-Added Product*—a product, commodity, or chemical, or a product with a component, that contains mercury or a mercury compound intentionally added to the product, commodity, chemical, or component in order to provide a specific characteristic, appearance, or quality or to perform a specific function or for any other reason. These products include *formulated mercury-added products* and *fabricated mercury-added products*, as defined in this Subsection. The presence of mercury as a contaminant does not of itself make a product a *mercury-added product.*

*Mercury Fever Thermometer*—a mercury-added product that is used for measuring body temperature.

*Motor Vehicle*—an automobile, motor home, motorcycle, all-terrain vehicle, recreational vehicle trailer, boat trailer, semitrailer, truck, truck-tractor, and any other device that is self-propelled and drawn, in, upon, or by which any person or property is or may be transported or drawn either upon or off a public highway, except such as is moved by animal power, or is used exclusively upon stationary rails or tracks, or is an implement of husbandry.

*Non-Contact Amalgam (Scrap)*—excess amalgam mix left over at the end of a dental procedure that has not come into physical contact with a patient.

*Vacuum Pump Filter*—a device used for filtering amalgam solids from vacuum lines that may contain amalgam sludge and water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:450 (March 2009)

## §2707. Notifications

A. Effective January 1, 2007, no mercury-added product shall be offered for final sale or use or distributed for promotional purposes in Louisiana without prior notification in writing by the manufacturer of the product to the Office of the Secretary in accordance with the requirements of this Section. The Interstate Mercury Education and Reduction Clearinghouse (IMERC) report may be used for notification purposes; a form can be obtained from IMERC, the department, or the department's website.

1. The notification to the department shall, at a minimum, include:

a. a brief description of the product to be offered for sale, use, or distribution;

b. the amount of, and purpose for, mercury in each unit of the product;

c. the total amount of mercury contained in all products manufactured by the manufacturer; and

d. the name and address of the manufacturer, and the name, address, and phone number of a contact at the manufacturer.

2. For purposes of complying with this Section, the manufacturer may submit to the department a copy of the report sent by the manufacturer to IMERC. At a minimum, the copy of the report shall contain the information listed in Subparagraphs A.1.a-d of this Section.

B. Any mercury-added product for which federal law governs notice in a manner that preempts state authority shall be exempt from the requirements of this Section.

C. The manufacturer may supply the information required in this Section for a product category rather than an individual product. The manufacturer shall update and revise the information in the notification on an annual basis, indicating all changes, or when requested to do so by the department. A notification in accordance with this Subsection is to be submitted to the Office of the Secretary.

D. A manufacturer may request confidentiality for certain submitted information by following the procedures in LAC 33:I.Chapter 5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:451 (March 2009)

## §2709. Notification of Restrictions Governing Sale of Certain Mercury-Added Products

A. The final sale or use or distribution of certain mercury-added products have been restricted in R.S. 30:2575(A)-(D).

B. Manufacturers that produce and sell such materials shall notify retailers about these restrictions in writing. The notification shall contain the following information:

1. the date of restriction;

2. proper handling and disposal instructions;

3. recycling options; and

4. proper clean-up instructions in case of spills.

C. Manufacturers shall keep records documenting this notification and make them immediately available for the department's inspection upon request. These records shall be maintained for at least three years after the notification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:451 (March 2009)

## §2711. Petitions for Exemptions from Phase Outs

A. The manufacturer of a mercury-added product subject to the phase-out provisions of R.S. 30:2576 may petition the administrative authority for an exemption.

B. Applications for exemption from mercury-added product phase-out must contain the following information:

1. documentation of the basis for the requested exemption or renewal of exemption;

2. a description of how the manufacturer will ensure that a system exists for the proper collection, transportation, and processing of the products at the end of their useful lives;

3. documentation of the readiness of all necessary parties to perform as intended in the planned system;

4. a statement of the consistency of the exemption request with the practices of other IMERC states;

5. criteria considering whether use of the product is beneficial to the environment or protective of public health or protective of public safety, and, if so, how;

6. criteria considering whether there exist any technically feasible alternatives to the use of mercury in the product, and, if so, a description of such alternatives; and

7. criteria considering whether any comparable non-mercury added products are available at a reasonable cost, and, if so, a description of such products and their costs.

C. A mercury-added product shall be exempt from the limits on total mercury content set forth in R.S. 30:2576(A), if the level of mercury or mercury compounds contained in the product is required in order to comply with federal or state health, safety, or homeland security requirements. In order to claim an exemption under this provision the manufacturer must notify, in writing, the Office of the Secretary and provide the legal justification for the claim of exemption.

D. The administrative authority may provide exemptions from the limits on total mercury content set forth in R.S. 30:2576(A) for a product or category of products when requested to do so, and when such an exemption is deemed appropriate after consideration of the factors enumerated in Paragraphs B.1-7 of this Section, as well as any other pertinent factors.

E. The administrative authority shall decide whether to grant the exemption requested within 180 days from the date on which the request for exemption was filed, unless a longer time period is agreed upon by mutual consent of the applicant and the administrative authority.

F. Exemptions may be renewed upon reapplication by the manufacturer and findings by the department of continued eligibility under the criteria of this Section and of compliance by the manufacturer with the conditions of its original approval. Exemptions may be renewed one or more times, and each renewal shall be for a period of no longer than two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:451 (March 2009)

## §2713. Labeling of Mercury-Added Products

A. The responsibility for product and package labels required by this Section and R.S. 30:2577 shall be on the manufacturer and not on the wholesaler or retailer unless the wholesaler or retailer agrees with the manufacturer to accept responsibility in conjunction with implementation of an alternative to the labeling requirements of this Section approved under R.S. 30:2579 and LAC 33:I.2715. In the case of a multi-component product the responsible manufacturer is the last manufacturer to produce or assemble the product or, if the multi-component product is produced in a foreign country, the responsible manufacturer is the importer or domestic distributor.

B. Except for items described in R.S. 30:2578, mercury-added products and their associated packaging manufactured after July 1, 2008, shall be labeled in accordance with this Section.

C. If a mercury-added product is a component of another product, the product containing the mercury-added component and the component itself must both be labeled. The product containing a mercury-added component shall be labeled in accordance with Paragraphs F.1-5 of this Section. The label on the larger product must clearly identify the internal mercury-added component with sufficient detail so that it may be readily located for removal. The labeling requirements of this Subsection shall not apply to non-consumer replaceable lamps and components as long as directions for proper disposal are included in the product literature. This requirement can be satisfied by the following wording, or other wording that is substantially equivalent.

> "The [insert description of component] in this product contains mercury. Dispose of according to local, state, and federal laws."

D. Manufacturers of products packaged but not yet sold before the effective date of this Section may apply to the department for an exemption from the labeling requirements of this Section.

E. If the product is offered for sale or use or promotional purposes by catalog, telephone, or Internet such that the label on the product or packaging is not visible prior to purchase or receipt, the consumer must be made aware prior to purchase or receipt that there is intentionally-added mercury in the product by placing a label or providing other information in sales literature, on website pages, etc.

F. The following labeling standards shall apply to all mercury-added consumer products and associated packaging. The label shall:

1. be clearly visible to the product purchaser prior to sale and at the point of sale;

2. be printed in English using a 10 point font or larger;

3. be mounted, engraved, molded, embossed, or otherwise affixed to the product using materials that are sufficiently durable to remain legible throughout the life of the product;

4. bear the wording "Contains Mercury" or equivalent wording;

5. state that the product cannot be placed in the trash and must be recycled, handled as a universal waste, or disposed of as a hazardous waste. This requirement can be satisfied by any of the following wordings, or other wordings that are substantially equivalent.

"Contains Mercury. Don't Put In Trash.
Recycle or Dispose of as Hazardous Waste."

"Contains Mercury. Dispose of According to
Local, State, and Federal Laws."

"Contains Mercury. Dispose of Properly."

G. If the product is sold in packaging that obscures the label, the packaging also must be labeled in accordance with Paragraphs F.1-5 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:452 (March 2009)

### §2715. Alternative Methods of Public Notification

A. A manufacturer may apply to the department for an alternative to the requirements of R.S. 30:2577 and LAC 33:I.2713 where strict compliance with the requirements is not feasible, or the proposed alternative would be at least as effective in providing pre-sale notification of mercury content and in providing instructions on proper disposal, or federal law governs labeling in a manner that preempts state authority.

B. The manufacturer of a mercury-added product subject to the labeling provisions of R.S. 30:2577 and LAC 33:I.2713 may apply to the department for approval of an alternative labeling plan. Applications for approval of an alternative labeling plan must contain the following information:

1. documentation of the justification for the requested alternative, which shall include, but not be limited to, any claim that strict compliance with the requirements of R.S. 30:2577 and LAC 33:I.2713 is not feasible, and any claim that federal law governs labeling in a manner that preempts state authority;

2. a description of how the alternative ensures that purchasers or recipients of mercury-added products will be made aware of mercury content prior to purchase or receipt;

3. a description of how a person discarding the product will be made aware of the need for proper handling to ensure that the product is not disposed of with trash or garbage or in a sewer system;

4. documentation of the readiness of all necessary parties to implement the proposed alternative; and

5. a description of the performance measures to be utilized by the manufacturer to demonstrate that the alternative is providing effective pre-sale notification and pre-disposal notification.

C. The department may approve, deny, modify, or condition a requested alternative to the requirements of R.S. 30:2577 and LAC 33:I.2713. Approval of the application for the alternative method of public notification shall be for a period of no more than two years and may, upon continued eligibility under the criteria of R.S. 30:2577 and this Section and compliance with the conditions of its prior approval, be renewed for two-year intervals. Prior to approving an alternative, the department shall consult with neighboring states and regional and national organizations to ensure that the alternative labeling requirements are consistent with those of other governments in the region.

D. Requests for renewals of alternative labeling plans shall be submitted to the Office of the Secretary in writing six months prior to the renewal anniversary date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:452 (March 2009)

### §2717. Collection of Mercury-Added Products

A. A manufacturer of any mercury-added product containing more than 10 milligrams of mercury that is offered for final sale or use or distributed for promotional purposes in the state must implement a collection system plan that has been approved by the department. For a product that contains more than one mercury-added product as a component, the limits specified in this Subsection apply to each component. A manufacturer may develop a collection system plan either on its own or in concert with others.

B. The collection system plan must provide for the removal and collection of the mercury-added component or the collection of both the mercury-added component and the product containing it.

C. Prior to offering any mercury-added product containing more than 10 milligrams (or for products with removable components, more than 10 milligrams per component) of mercury for final sale or use or distribution for promotional purposes in Louisiana, the manufacturer or its representative shall submit a written collection system plan, or a request for exemption from the collection system plan requirement, to the Office of the Secretary and receive the department's approval. The proposed plan shall include the following information:

1. the manufacturer's name, mailing address, and if available, Internet address;

2. the contact person's name and phone number;

3. documentation describing a public education program, including implementation dates, that will inform the public about the purpose of the collection system program and how to participate in it;

4. identification of the targeted capture rate for the mercury-added product, product category, or component;

5. a plan for implementation of the proposed collection system;

6. documentation of the willingness of all necessary parties to implement and participate in the program, and their contact information;

7. a description of the performance measures to be used to demonstrate that the collection system is meeting capture rate targets;

8. a description of additional or alternative actions that will be implemented to improve the collection system and its operation in the event that the program targets are not met;

9. a description of a recycling or disposal plan;

10. a signed certification stating that the person signing:

a. has personally examined and is familiar with the information submitted within the collection system plan and all attachments; and

b. is authorized to sign the certification by the entity on whose behalf he is signing.

D. Within a year of the department's approval of the collection system plan, the manufacturer, or the entity that submitted the plan on behalf of the manufacturer, shall ensure that a convenient and accessible recovery system for the users of those products is in full operation. Two years following the implementation of the collection system plan required under this Section, and every two years thereafter, the manufacturer, or the entity that submitted the plan on behalf of the manufacturer, shall submit a report on the effectiveness of the collection system. The report shall be submitted to the Office of the Secretary by July 1 of each reporting year. The report shall include the following information:

1. an estimate of the amount of mercury that was collected;

2. the capture rate for the mercury-added products or components;

3. the results of the other performance measures included in the manufacturer's collection system plan; and

4. such other information as the department may require.

E. Mercury-added formulated products intended to be totally consumed in use, such as cosmetics, pharmaceuticals, and reagents and other laboratory chemicals, shall be exempt from the requirements of this Section.

F. The manufacturer of a mercury-added product subject to the collection system requirements of R.S. 30:2581 and this Section may apply to the department for an exemption from R.S. 30:2581 and this Section for a product or category of products. An exemption request shall contain, at a minimum, the following information:

1. the amount of mercury in the mercury-added product;

2. the total amount of the mercury-added product sold in Louisiana;

3. the total amount of the mercury-added product disposed of in Louisiana;

4. the feasibility of a collection system; and

5. the overall risk to human health and the environment posed by the mercury-added product.

G. The administrative authority shall decide whether to grant the requested exemption within 180 days from the date on which the request for exemption was filed, unless a longer time period is agreed upon by mutual consent of the applicant and the administrative authority.

H. Exemptions may be renewed upon reapplication by the manufacturer and findings by the department of continued eligibility under the criteria of R.S. 30:2581 and this Section and of compliance by the manufacturer with the conditions of its original approval and any other conditions the department may have added. Exemptions may be renewed one or more times, and each renewal may be for a period of no longer than two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:453 (March 2009)

## §2719. Disposal Ban and Proper Management of Mercury in Scrap Metal Facilities

A. On and after January 1, 2007, mercury shall not be discharged to water, wastewater treatment, and wastewater disposal systems except when it is done in compliance with applicable local, state, and federal requirements.

B. No person, including, but not limited to, Louisiana-licensed dismantlers and parts recyclers, motor vehicle crushers, and scrapped motor vehicle dealers, shall crush, bale, shear, or shred a motor vehicle unless the person has made a reasonable effort, to the extent safe and practicable, to remove, or verify the removal of, the mercury-containing convenience lighting switches and antilock braking system components. The person removing the mercury-containing convenience lighting switches and antilock braking system components from a motor vehicle shall maintain written certification that the mercury-containing convenience lighting switches and antilock braking system components have been removed to the extent safe and practicable. A person verifying the removal of such mercury-containing convenience lighting switches and antilock braking system components from the scrapped motor vehicle by another party shall maintain written documentation supporting the verification that the mercury-containing convenience lighting switches and antilock braking system components have been removed to the extent safe and practicable. Verification that the mercury-containing convenience lighting switches and antilock braking system components have been removed from a motor vehicle shall be accomplished by:

1. obtaining a written certification from the person, or a duly authorized representative of the person, who removed the mercury-containing convenience lighting switches and antilock braking system components that such items required to be removed have been removed and are not included, and conducting a visual inspection as practicable; or

2. adopting a best management practices plan (BMP) governing mercury-containing convenience lighting switches and antilock braking system components in motor vehicles that is provided by the department, or any other such BMP which is submitted to and approved by the department, and participation in the EPA-partnered National

Vehicle Mercury Switch Recovery Program (NVMSRP), also known as the End of Life Vehicle Solutions (ELVS). A copy of an approved BMP and lists of known recent makes and models of motor vehicles with mercury-containing convenience lighting switches and antilock braking system components is available from the department and can be obtained for the department's website.

C. Any facility receiving vehicles that have been scrapped by being dismantled, crushed, scrapped, shredded, baled, sheared, or otherwise rendered more easily transported to the recycler shall obtain a written certification from the person, or a duly authorized representative of the person, who removed the mercury-containing convenience lighting switches and antilock braking system components that such items required to be removed have been removed and are not contained in the scrap being delivered, and shall conduct a visual inspection of the scrapped vehicle to the extent practicable to ensure that the mercury-containing components have been removed. Obtaining the certification and conducting the visual inspection shall constitute verification that the mercury contained within the convenience lighting switches and antilock braking system components has been removed. Written documentation of the certification and the visual inspection required by this Subsection shall be maintained.

D. No person shall crush, bale, shear, or shred an appliance containing mercury-containing switches or other mercury-added products unless the person has made a reasonable effort, to the extent safe and practicable, to verify that the component mercury-added products and/or mercury-containing switches have been removed. Verification of the removal of component mercury-added products and/or mercury-containing switches contained within the appliance shall be accomplished by:

1. obtaining and maintaining a written certification from the person, or a duly authorized representative of the person, who removed the mercury-added products and/or mercury-containing switches that such items required to be removed have been removed and are not included, and conducting a visual inspection as practicable; or

2. adopting a best management practices plan (BMP) governing component mercury-added products and/or mercury-containing switches in appliances (white goods) that is provided by the department, or any other such BMP which is submitted to and approved by the department. A copy of an approved BMP and lists of known recent makes and models of appliances with component mercury-added products and/or mercury-containing switches is available from the department and can be obtained through the department's website.

E. Any facility receiving appliances for scrapping that contained mercury-added products and/or mercury-containing switches shall obtain a written certification from the person, or a duly authorized representative of the person, who removed the mercury-added products and/or mercury-containing switches that such items required to be removed have been removed and are not included, and shall conduct a visual inspection to the extent practicable to ensure that the mercury-containing components have been removed. Obtaining the certification and conducting the visual inspection shall constitute verification that the mercury contained within the mercury-added products and/or mercury-containing switches has been removed. Written documentation of the certification and the visual inspection required by this Subsection shall be maintained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:454 (March 2009)

### §2721. Best Management Practices for Health Care Facilities

A. Any health care facility using a formulated mercury-added product, a fabricated mercury-added product, or a mercury-added product must maintain a current and appropriate Material Safety Data Sheet (MSDS), as defined in 42 U.S.C. 11049, for any elemental mercury used.

B. Any health care facility using a formulated mercury-added product, a fabricated mercury-added product, or a mercury-added product must maintain a statement signed by its authorized representative that certifies that its employees and other persons acting under its direction or control:

1. will use the mercury only for medical, dental, research, or manufacturing purposes;

2. understand that mercury is toxic, and will store, use, and otherwise handle such mercury in accordance with Subsection C of this Section; and

3. will dispose of the elemental mercury, formulated mercury-added product, fabricated mercury-added product, or mercury-added product in accordance with Subsection C or F of this Section.

C. Within 180 days of the effective date of these regulations, any health care facility using a formulated mercury-added product, a fabricated mercury-added product, or a mercury-added product shall develop, maintain, and comply with a Mercury Management Plan (MMP) that is designed to eliminate or capture mercury in waste. The MMP shall contain, at a minimum, the following requirements.

1. A baseline inventory of mercury-containing devices and substances at the facility shall be listed.

2. A timeline for the reduction and eventual elimination of mercury-containing equipment and chemicals, with the exception of dental amalgam, shall be established.

3. Mercury management protocols for safe handling, mercury spill cleanup procedures, disposal procedures, and education and training of employees shall be established.

4. Discarded mercury-containing devices and substances shall be recycled to the maximum extent practicable, and records associated with such recycling shall

be maintained at the facility for at least three years. Discarded mercury-containing devices and substances:

a. shall only be offered for recycling to treatment, storage, or disposal facilities that, if located in the United States, are either:

i. permitted under 40 CFR 270, LAC 33:V.Subpart 1, or a RCRA-approved hazardous waste program of any other state; or

ii. authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR 271; and

b. shall not be offered for disposal by incineration.

5. Management and storage of discarded mercury-containing devices and substances waste shall be protective of human health and the environment. Storage shall be in structurally sound, leak-proof, sealed, labeled containers that are impervious to mercury vapors. An example of a container meeting these criteria would be a clear glass container. Glass containers shall be secured inside a sturdy, padded box in order to prevent breakage of the glass and subsequent release of mercury.

6. An environmentally preferable purchasing (EPP) policy for mercury products and a process to regularly review mercury use reduction and elimination progress shall be established.

7. All other aspects of the MMP shall, at a minimum, conform to any best management practices (BMP) developed by the American Hospital Association or the American Medical Association or the American Dental Association or by Hospitals for a Healthy Environment (H2E). The H2E BMP is known as the Mercury Waste Virtual Elimination Model Plan.

D. Use of Dental Amalgam. Within 180 days of the effective date of these regulations, any health care facility using dental amalgam shall develop, maintain, and comply with a Dental Amalgam Management Plan that is designed to capture mercury in dental amalgam waste and excess. This management plan shall contain, at a minimum, the following requirements.

1. Chair-side traps and vacuum pump filters shall be used for the purpose of waste amalgam capture. Such devices shall be operated according to the manufacturer's recommendations.

2. Disposal of elemental mercury, dental amalgam, and used, disposable amalgam capsules shall be minimized by implementing practices that reduce mercury in waste, such as use of a variety of amalgam capsule sizes to minimize non-contact amalgam waste.

3. Waste amalgam (amalgam sludge and contact and non-contact amalgam) shall be recycled to the maximum extent practicable, and records associated with such recycling shall be maintained at the facility for at least three years. Waste amalgam shall be disposed of in accordance with Paragraph C.4 of this Section.

4. Management and storage of amalgam waste shall be in accordance with Paragraph C.5 of this Section.

5. Water line cleaners shall be of a type that will minimize dissolution of amalgam. Only pH neutral, non-bleach, non-chlorine-containing suction line cleaners shall be used. Water lines shall be cleaned daily on chairs where restorative dentistry is performed and as necessary, or according to the vacuum pump manufacturer's recommendations, on other chairs.

6. All other aspects of the Dental Amalgam Management Plan shall, at a minimum, conform to the BMP for amalgam waste as developed by the American Dental Association (ADA) and effective on June 2, 2006. The ADA publishes BMPs for the disposal of dental amalgam waste. The ADA may be contacted through their website or at American Dental Association, 211 East Chicago Ave., Chicago, IL 60611-2678; phone 312-440-2500.

E. Manufacturers of mercury-containing devices and substances shall establish a convenient and accessible collection system for formulated mercury-added products, fabricated mercury-added products, and/or mercury-added products from medical facilities in accordance with LAC 33:I.2717.

F. Mercury-containing devices and substances that contain mercury in sufficient quantities to be considered a hazardous waste as defined in LAC 33:V.Subpart 1, Hazardous Waste Regulations shall be subject to that Subpart if such waste cannot be recycled in accordance with Subsection C of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and, in particular, 2571.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:455 (March 2009)

# Chapter 37. Regulatory Innovations Programs

## §3701. Purpose

A. This Chapter establishes procedures for voluntary participation in the Louisiana Environmental Regulatory Innovations Programs (LERIP) as provided by R.S. 30:2561 et seq. Its purpose is to provide regulatory flexibility consistent with federal guidelines in exchange for superior environmental performance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2197 (November 1999).

## §3703. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

*Administrative Authority*—the Secretary of the Department of Environmental Quality or his designee or the appropriate assistant secretary or his designee.

*Demonstration Project (DP)*—a project containing all the elements required in LAC 33:I.3705, intended to be implemented in exchange for regulatory flexibility.

*Final Project Agreement (FPA)*—the final document agreed upon between the secretary and a program participant that specifically states the terms and duration of the proposed project. The final project agreement is an enforceable document.

*Regulatory Flexibility*—the power of the Secretary of the Department of Environmental Quality to exempt a qualified participant in a regulatory innovations program from regulations promulgated by the department under this Chapter, consistent with federal law and regulation.

*Stakeholders*—citizens in the communities near the project site, facility workers, government representatives, industry representatives, environmental groups, or other public interest groups with representatives in Louisiana and Louisiana citizens, or other similar interests.

*Superior Environmental Performance*—

a. a significant decrease of pollution to levels lower than the levels currently being achieved by the subject facility under applicable law or regulation, where these lower levels are better than required by applicable law and regulation; or

b. improved social or economic benefits, as determined by the secretary, to the state, while achieving protection to the environment equal to the protection currently being achieved by the subject facility under applicable law and regulation, provided that all requirements under current applicable law and regulation are being achieved by the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2197 (November 1999), repromulgated LR 25:2399 (December 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1889 (September 2008).

## §3705. Application for a Demonstration Project

A. An application for a demonstration project (DP) shall be submitted to the Office of the Secretary, Deputy Secretary. The application shall, at a minimum, include:

1. a narrative summary of the DP, including the specific statutes or rules for which an exemption is being sought;

2. a detailed explanation including a demonstration that the DP:

a. is at least as protective of the environment and the public health as the method or standard prescribed by the statute or rule that would otherwise apply;

b. will provide superior environmental performance;

c. will not transfer pollution impacts into a product;

d. will identify, if applicable, any proposed transfer of pollutants between media;

e. will include verifiable measures of success for project goals;

f. will not increase or shift risk to citizens or communities;

g. is consistent with federal law and regulation, including any requirement for a federally approved, delegated, authorized, or implemented program or plan; and

h. reduces the time and money spent at the facility on paperwork and other administrative tasks that do not directly benefit the environment;

3. an implementation schedule that includes a proposal for monitoring, recordkeeping, and/or reporting, where appropriate, of environmental performance and compliance under the DP;

4. a plan to identify and contact stakeholders, to advise stakeholders of the facts and nature of the project, and to request stakeholder participation and review. Stakeholder participation and review shall occur during the development, consideration, and implementation stages of the DP. The plan shall also include notice to the employees of the facility to be covered by the proposed project and a description of efforts made or proposed to achieve local community support;

5. the time period for which the exemption is sought; and

6. any other information requested from the applicant by the administrative authority during the application period.

B. The application shall be signed by the applicant or its duly authorized agent and shall certify that all information is true, accurate, and complete to the best of that person's knowledge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2197 (November 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000).

## §3707. Demonstration Project Priority System

A. Priority will be given to projects after considering whether the technology:

1. will result in significant pollution prevention or source reduction, particularly in low income areas already burdened with pollution;

2. will reduce air emissions in a nonattainment area;

3. will maintain or improve coastal wetland environments;

4. will be transferable to other members of the regulated community; and

5. will allow the department, the applicant, and other state and local agencies to spend less time and resources over the long term to monitor and administer the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2198 (November 1999).

**§3709. Review of Application for Demonstration Project**

A. Within 180 days after submittal of a complete application for a DP, the department will conduct a review and notify the applicant of its initial decision regarding acceptability of the proposed project.

B. The department will consider, among other factors, the applicant's compliance history and efforts made to involve the stakeholders and to achieve local community support.

C. If the department determines the DP to be unacceptable, it will provide written reasons for the determination.

D. A DP that has been determined to be unacceptable may be resubmitted in accordance with Subsection A of this Section provided all reasons for the unacceptable determination have been addressed.

E. The department will not approve any DP as a FPA if it requires prior approval by the USEPA, until the USEPA has formally approved all regulatory flexibility necessary for execution of the FPA. When an application for a DP includes regulatory flexibility that may affect a federal requirement or a state requirement that implements a federally approved, delegated, authorized, or implemented program or plan, the department shall submit a copy of the application to the USEPA for review and approval.

F. If the department determines the DP to be acceptable:

1. a public hearing will be held at a location near the proposed project to receive comments;

2. public comments will be received for 30 days after the hearing;

3. a response summary addressing the major issues raised during the comment period will be prepared by the department;

4. an applicant may be required to supplement or modify the application;

5. a recommendation will be made to the administrative authority to approve or deny the project; and

6. a FPA will be executed or a denial issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2198 (November 1999).

**§3711. Public Notice**

A. An applicant whose DP has been approved shall publish notice of the FPA in the official journal of the parish governing authority where the project will be implemented. Notice under this Section shall, at a minimum, include:

1. a brief description of the FPA and of the business conducted at the facility;

2. the name and address of the applicant and, if different, the location of the facility for which regulatory flexibility is sought, and a brief description of the regulatory relief that has been granted; and

3. the name, address, and telephone number of a department contact person from whom interested persons may obtain further information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2198 (November 1999), repromulgated LR 25:2399 (December 1999).

**§3713. Amendment or Renewal**

A. An application for amendment or renewal of a FPA shall be filed in the same manner as an original application under this Chapter.

B. If amendment or renewal procedures have been initiated at least 120 days prior to the FPA expiration date, the existing FPA will remain in effect and will not expire until the administrative authority has made a final decision on the amendment or renewal.

C. The administrative authority shall determine whether a public hearing will be held.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2198 (November 1999).

**§3715. Termination**

A. By the Recipient

1. A party to a FPA may terminate the FPA at any time by sending notice of termination to the administrative authority by certified mail.

2. The party terminating must be in compliance with all existing statutes or regulations at the time of termination.

B. By the Department

1. Noncompliance with the terms and conditions of a FPA or any provision of this Chapter may result in the FPA being voided, except that the recipient shall be given written notice of the noncompliance and provided an opportunity,

not less than 30 days from the date the notice was mailed, to show cause why the FPA should not be voided. Procedures for requesting a show cause hearing before the Division of Administrative Law shall be included in the written notice.

2. In the event more stringent or more protective regulations become effective after execution of a FPA, the recipient shall amend or modify the FPA to provide environmental protection equal to the new regulation pursuant to department and EPA approval, or the FPA will be voided.

3. In the event a FPA becomes void, the administrative authority may specify an appropriate and reasonable transition period to allow the recipient to come into full compliance with all existing statutory and regulatory requirements, including time to apply for any necessary agency permits, authorizations, or certifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2198 (November 1999).

# Title 33

# ENVIRONMENTAL QUALITY

## Part I. Office of the Secretary

## Subpart 2. Notification

## Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges

## Subchapter A. General

### §3901. Authority

A. Regulations for reporting unauthorized discharges or spills are hereby established by the Department of Environmental Quality by order of the administrative authority and pursuant to R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993).

### §3903. Purpose

A. The purposes of these regulations are as follows:

1. to protect the health and well being of the people of the state of Louisiana and to prevent and mitigate damage to property or to the environment due to unauthorized discharges of pollutants to land, water, or air;

2. to provide a uniform notification and reporting procedure for unauthorized discharges by any person;

3. to enable appropriate emergency response to unauthorized discharge incidents; and

4. to provide the department with the discharge information that shall be used to ensure compliance with permit terms and conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1668 (August 2004).

### §3905. Definitions

A. The following terms as used in these regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

*Administrative Authority*—the Secretary of the Department of Environmental Quality or his designee or the appropriate assistant secretary or his designee.

*Air Contaminant*—particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof produced by other than natural processes.

*Barrel*—a 42-gallon measure.

*By-Pass*—a diversion of a waste stream from any portion of a conveyance or treatment facility.

*Department*—the Department of Environmental Quality.

*Discharge*—the placing, releasing, spilling, percolating, draining, pumping, leaking, mixing, leaching, migrating, seeping, emitting, disposing, by-passing, or other escaping of pollutants on or into the air, waters of the state, or the ground. A release shall not include a federal or state permitted release.

*Discharger*—a facility, plant, company, site, person or its representatives, agents or employees, which discharge pollutants.

*Division*—the appropriate division within the Department of Environmental Quality.

*DPS*—the Department of Public Safety; the State Police.

*Emergency Condition*—any condition which could reasonably be expected to endanger the health and safety of the public, cause significant adverse impact to the land, water or air environment, or cause severe damage to property.

*Emission*—a discharge of air contaminants into the outdoor atmosphere.

*Facility*—a pollution source, or any public or private property or site where an activity is conducted, which is required to be regulated under Subtitle II of Title 30 of the Louisiana Revised Statutes and does or has the potential to do any of the following:

a. emit air contaminants into the atmosphere;

b. discharge pollutants into waters of the state;

c. use or control radioactive materials and waste;

d. transport, process, and/or dispose of solid wastes; or

e. generate, transport, treat, store, or dispose of hazardous wastes.

*Groundwater*—water located beneath the ground surface or below a surface water body in a saturated zone or stratum.

*Groundwater Contamination*—the degradation of naturally occurring groundwater quality either directly or indirectly as a result of human activities.

*Hotline*—24-hour Louisiana Emergency Hazardous Materials Hotline.

*Immediately*—a reasonable period of time after taking prompt measures to determine the nature, quantity, and

potential off-site impact of a release, considering the exigency of the circumstances.

*Leachate*—a liquid that has passed through or emerged from solid waste and may contain soluble, suspended, or miscible materials removed from such wastes.

*Migrating*—any movement by leaching, spilling, discharging, or any other uncontained or uncontrolled manner, except as permitted by law or other regulations of the department.

*Oil*—any of numerous smooth, greasy, combustible hydrocarbons that are liquid or at least easily liquefiable on warming, are soluble in ether but not in water, including but not limited to crude oil, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

*Permit* or *License*—written authorization by the administrative authority to discharge, emit, treat, store and/or dispose of liquid, gaseous, semi-solid, or solid waste or reusable materials, or radioactive material from or at a site or facility, including all conditions set forth therein.

*Person*—any individual, municipality, public or private corporation, partnership, firm, the United States government and any agent or subdivision thereof, or any other juridical person, which shall include, but not be limited to, trusts, joint stock companies, associations, the state of Louisiana, political subdivisions of the state of Louisiana, commissions, and interstate bodies.

*Pollutant*—any substance introduced into the environment of the state by any means that would tend to degrade the chemical, physical, biological, or radiological integrity of such environment.

*Pollution Source*—the immediate site or location of a discharge or potential discharge, including such surrounding property or water body necessary to quarantine the area or secure from access by the general public.

*Produced Water*—includes liquids and suspended particulate matter that is obtained by processing fluids brought to the surface in conjunction with the recovery of oil and gas from underground geologic formations, with underground storage of hydrocarbons, or with solution mining of brine.

*Radiation*—any electromagnetic or ionizing radiation including gamma rays and X-rays; alpha and beta particles; high-speed electrons, neutrons, protons, and other nuclear particles; but not sound waves.

*Radioactive By-Product Material*—any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

*Radioactive Material*—any material, whether solid, liquid, or gas, which emits radiation spontaneously.

*Radionuclide*—a radioactive species of an atom characterized by the constitution of its nucleus.

*Release*—the accidental or intentional spilling, leaking, pumping, pouring, emitting, escaping, leaching, or dumping of hazardous substances or other pollutants into or on any land, air, water, or groundwater. A release shall not include a federal or state permitted release.

*Reportable Quantity*—that specific quantity associated with pollutants, as set forth in Subchapter E of this Chapter, the release of which requires notification pursuant to this regulation.

*Reusable Material*—any material defined in LAC 33:V.Chapter 49 of the hazardous waste regulations which would be classified as a hazardous waste except that it will be beneficially used, reused, or legitimately recycled, or reclaimed, unless exempted in LAC 33:V.Chapter 41 of the hazardous waste regulations.

*Secretary*—the Secretary of the Department of Environmental Quality.

*Site*—the geographic location, other than a facility, of an unauthorized discharge.

*Solid Waste*—any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities; but does not include or mean solid or dissolved material in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under R.S. 30:2074, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, (42 U.S.C. 2011, et seq.) as amended, or hazardous waste subject to permits under R.S. 30:2171 et seq.

*Solid Waste Facility*—any land and appurtenances thereto used for storing, processing, and/or disposing of solid wastes.

*SPOC*—the Office of Environmental Compliance, Emergency and Radiological Services Division, Single Point of Contact (SPOC).

*Transport Vehicle*—a motor vehicle, aircraft, rail freight car, freight container, cargo tank, portable tank, or vessel used for the transportation of hazardous substances or other pollutants. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

*Transportation*—the movement of solid, liquid, or hazardous reusable materials or wastes from the point of generation or storage to the point of treatment, storage, or disposal by any means of commercial or private transport. The term does not apply to the movement of hazardous wastes on the premises of a hazardous waste treatment, storage or disposal facility.

*Treatment*—any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any reusable material or waste so as to neutralize such reusable

material or waste or render it nonhazardous, safer for transport, amenable for recovery or storage, or reduced in volume. The term also includes any activity or processing designed to change the physical form or chemical composition of hazardous waste to render it nonhazardous.

*Unauthorized Discharge*—a continuous, intermittent, or one-time discharge, whether intentional or unintentional, anticipated or unanticipated, from any permitted or unpermitted source which is in contravention of any provision of the Louisiana Environmental Quality Act (R.S. 30:2001 et seq.) or of any permit or license terms and conditions, or of any applicable regulation, compliance schedule, variance, or exception of the administrative authority. (*Discharge* is defined in this Section as the placing, releasing, spilling, percolating, draining, pumping, leaking, mixing, leaching, migrating, seeping, emitting, disposing, by-passing, or other escaping of pollutants on or into the air, waters, subsurface water or the ground.) A release shall not include a federal or state permitted release.

*Vessel*—any type of watercraft used, or capable of being used, as a means of transportation on the water.

*Waste*—any material for which no use or reuse is intended and which is to be discarded.

*Waters of the State*—both the surface and underground waters within the state of Louisiana including all rivers, streams, lakes, groundwaters, and all other water courses and waters within the confines of the state, and all bordering waters and the Gulf of Mexico.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), amended by the Office of Secretary, Legal Affairs Division, LR 33:2080 (October 2007), LR 33:2627 (December 2007).

### §3907. Scope

A. These regulations apply to all persons or parties, both permitted and unpermitted, licensed or unlicensed, who have responsibility for facilities, vessels, transport vehicles, or sites from which an unauthorized gaseous, liquid, semi-solid, or solid discharge may be released on or into the air, water, or land environment within the boundaries of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993).

### §3909. Enforcement

A. Failure to comply with any of the provisions of these regulations constitutes a violation of the Louisiana Environmental Quality Act (R.S. 30:2001 et seq.). Each day of failure to give the required notification shall constitute a separate violation and shall be in addition to any other violations of the act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993).

### §3911. Severability

A. If any provision of these regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end provisions of these regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993).

### §3913. Effective Date

A. These regulations shall be in full force and effective 60 days after final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993).

## Subchapter B. Requirements for Emergency Notification

### §3915. Notification Requirements for Unauthorized Discharges That Cause Emergency Conditions

A. Notification to the DPS 24-Hour Louisiana Emergency Hazardous Materials Hotline

1. In the event of an unauthorized discharge that does cause an emergency condition, the discharger shall notify the hotline by telephone at (225) 925-6595 (collect calls accepted 24 hours a day) immediately (a reasonable period of time after taking prompt measures to determine the nature, quantity, and potential off-site impact of a release, considering the exigency of the circumstances), but in no case later than one hour after learning of the discharge. (An emergency condition is any condition which could reasonably be expected to endanger the health and safety of the public, cause significant adverse impact to the land, water, or air environment, or cause severe damage to property.) Notification required by this Subsection will be made regardless of the amount of the discharge.

2. One notification to the hotline for any unauthorized discharge will suffice for unauthorized discharges that continue for more than one day if the initial notification clearly states that the discharge is expected to continue for more than one day.

3. The hotline must be immediately notified of any adverse change in the nature or rate of the discharge. Additional notifications must be made for discharges of multiple constituents when they originate from different

causes or sources or they are substantially different in nature from the discharges in the initial notification.

4. Dischargers are not relieved from any requisite written notification procedures in LAC 33:I.3925 or of any permit or license terms and conditions issued under the Louisiana Environmental Quality Act.

B. Notification to the Department of Environmental Quality. In the event of an unauthorized discharge which requires notification under Subsection A of this Section, the DPS 24-hour Louisiana Emergency Hazardous Materials Hotline will notify the Department of Environmental Quality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2204(A), 2194(C), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), LR 30:1668 (August 2004).

## Subchapter C. Requirements for Prompt Notification

### §3917. Notification Requirements for Unauthorized Discharges That Do Not Cause an Emergency Condition

A. In the event of an unauthorized discharge that exceeds a reportable quantity specified in Subchapter E of this Chapter but that does not cause an emergency condition, the discharger shall promptly notify the department within 24 hours after learning of the discharge. Notification should be made to SPOC in accordance with LAC 33:I.3923.

B. Dischargers are not relieved from any requisite written notification procedures in LAC 33:I.3925 or of any permit or license terms and conditions issued under the Louisiana Environmental Quality Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), repromulgated LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), repromulgated LR 27:38 (January 2001), amended LR 30:1668 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007).

### §3919. Notification Requirements for Unauthorized Discharges with Groundwater Contamination Impact

A. In the event that any unauthorized discharge results in the contamination of the groundwaters of the state or otherwise moves in, into, within, or on any saturated subsurface strata, the discharger shall notify SPOC within seven days.

B. Dischargers shall submit written notification in accordance with LAC 33:I.3925 or any permit or license terms and conditions issued under the Louisiana Environmental Quality Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2076(D), 2183(I), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), repealed LR 19:1022 (August 1993), repromulgated and amended LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:1668 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007), LR 33:2628 (December 2007).

## Subchapter D. Notification Procedures

### §3923. Prompt Notification Procedures

A. Prompt notification shall be provided within a time frame not to exceed 24 hours and shall be given to SPOC, as follows:

1. by the Online Incident Reporting screens found at http://www.deq.louisiana.gov/surveillance/irf/forms/;

2. by e-mail utilizing the Incident Report Form and instructions found at http://www.deq.louisiana.gov/surveillance;

3. by telephone at (225) 219-3640 during office hours, or at (225) 342-1234 after hours and on weekends and holidays; or

4. for radiation incidents, by telephone at (225) 765-0160.

B. Mobile or marine radio notifications should be directed to the nearest communication center or to a telephone center for forwarding of the notification by telephone.

C. Content of Prompt Notifications. The following guidelines will be utilized as appropriate, based on the conditions and circumstances surrounding any unauthorized discharge, to provide relevant information regarding the nature of the discharge:

1. the name of the person making the notification and the telephone number where any return calls from response agencies can be placed;

2. the name and location of the facility or site where the unauthorized discharge is imminent or has occurred, using common landmarks. In the event of an incident involving transport, include the name and address of the transporter and generator;

3. the date and time the incident began and ended, or the estimated time of continuation if the discharge is continuing;

4. the extent of any injuries and identification of any known personnel hazards that response agencies may face;

5. the common or scientific chemical name, the U.S. Department of Transportation hazard classification, and the best estimate of amounts of any or all discharged pollutants;

6. a brief description of the incident sufficient to allow response agencies to formulate their level and extent of response activity; and

7. for unauthorized emissions of toxic air pollutants listed in LAC 33:III.5112, Table 51.2 or 51.3 or radioactive material, the following supplemental information:

a. the location of the source facility or stack;

b. the time at onset of the emission;

c. the prevailing local wind direction and estimated wind velocity at the time of onset; and

d. the duration of the emission if stopped at the time of notification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1668 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007).

## §3925. Written Notification Procedures

A. Written reports for any unauthorized discharge that requires notification under LAC 33:I.3915.A, 3917, or 3919 shall be submitted by the discharger to SPOC in accordance with this Section within seven calendar days after the notification required by LAC 33:I.3915.A, 3917, or 3919, unless otherwise provided for in a valid permit or other department regulation.

1. If mailed by US mail or other courier service (e.g., Federal Express, UPS, etc.), the submittal date will be the date of the postmark on the envelope accompanying the written notification report.

2. If delivered by other means (e.g., hand-delivered, faxed, etc.), the submittal date of the written notification will be the date of receipt by the department.

3. For information required by Subsection B of this Section that is not available at the time of submittal of the written notification report due to an ongoing investigation, updates of the status of the ongoing investigation of the unauthorized discharge shall be submitted every 60 days until the investigation has been completed and the results of the investigation have been submitted.

B. Written notification reports required by LAC 33:I.3915, 3917, and 3919 shall include, but not be limited to, the following information:

1. the name, address, telephone number, Agency Interest (AI) number (number assigned by the department) if applicable, and any other applicable identification numbers of the person, company, or other party who is filing the written report, and specific identification that the report is the written follow-up report required by this Section;

2. the time and date of prompt notification, the state official contacted when reporting, the name of the person making that notification, and identification of the site or facility, vessel, transport vehicle, or storage area from which the unauthorized discharge occurred;

3. date(s), time(s), and duration of the unauthorized discharge and, if not corrected, the anticipated time it is expected to continue;

4. details of the circumstances (unauthorized discharge description and root cause) and events leading to any unauthorized discharge, including incidents of loss of sources of radiation, and if the release point is subject to a permit:

a. the current permitted limit for the pollutant(s) released;

b. the permitted release point/outfall ID; and

c. which limits were exceeded ($SO_2$ limit, mass emission limit, opacity limit, etc.) for air releases;

5. the common or scientific chemical name of each specific pollutant that was released as the result of an unauthorized discharge, including the CAS number and U.S. Department of Transportation hazard classification, and the best estimate of amounts of any or all released pollutants (total amount of each compound expressed in pounds, including calculations);

6. a statement of the actual or probable fate or disposition of the pollutant or source of radiation and what off-site impact resulted;

7. remedial actions taken, or to be taken, to stop unauthorized discharges or to recover pollutants or sources of radiation;

8. procedures or measures which have or will be adopted to prevent recurrence of the incident or similar incidents, including incidents of loss of sources of radiation;

9. if an unpermitted or unlicensed site or facility is involved in the unauthorized discharge, a schedule for submitting a permit or license application to the department, or rationale for not requiring a permit or license;

10. the reporting party's status (former or present owner, operator, disposer, etc.);

11. for discharges to the ground or groundwater, the following information shall also be included: all information of which the reporting party is aware that indicates pollutants are migrating, including, but not limited to, monitoring well data; possible routes of migrations; and all information of which the reporting party is aware regarding any public or private wells in the area of the migration used for drinking, stock watering, or irrigation;

12. what other agencies were notified;

13. the names of all other responsible parties of which the reporting party is aware;

14. a determination by the discharger of whether or not the discharge was preventable, or if not, an explanation of why the discharge was not preventable;

15. the extent of injuries, if any; and

16. the estimated quantity, identification, and disposition of recovered materials, if any.

C. Written notification reports shall be submitted to SPOC by mail or fax. The transmittal envelope and report or fax cover page and report should be clearly marked "UNAUTHORIZED DISCHARGE NOTIFICATION REPORT."

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C) and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:1669 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007), LR 33:2628 (December 2007).

# Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges

## §3927. Determination and Use of Reportable Quantity

A. The reportable quantity list in this Subchapter should be used to determine the need for and timeliness of notification to the department for unauthorized discharges which do not cause an emergency condition. This list is intended as a guide for the regulated community to reportable quantities of some of the more common pollutants. Exclusion of a substance from this list does not relieve the discharger from the reporting requirements of this regulation or from those of other department regulations. Each discharge must be evaluated individually and reported appropriately by the discharger.

B. The basis for determination of the reportable quantity for any pollutant in this Subchapter, unless otherwise noted, will be that quantity of the substance discharged continuously, intermittently, or as a one-time mass discharge within any continuous 24-hour period.

C. The reportable quantity determined under this Subchapter, except where otherwise noted, will apply regardless of the environmental medium (land, air, water, groundwater) into which the pollutant is discharged.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), repromulgated LR 20:182 (February 1994).

## §3929. Radionuclides: Notification of Incidents

A. The reportable quantity for all radionuclides will be determined in accordance with the Louisiana Radiation Regulations, LAC 33:XV.Chapter 4.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), repromulgated LR 20:182 (February 1994).

## §3931. Reportable Quantity List for Pollutants

A. Incorporation by Reference of Federal Regulations

1. Except as provided in Subsection B of this Section, the following federal reportable quantity lists are incorporated by reference:

a. 40 CFR 117.3, July 1, 2007, Table 117.3—Reportable Quantities of Hazardous Substances Designated Pursuant to Section 311 of the Clean Water Act; and

b. 40 CFR 302.4, July 1, 2007, Table 302.4—List of Hazardous Substances and Reportable Quantities.

2. Notification Requirements. The following administrative reporting exemptions are hereby incorporated by reference:

a. 40 CFR 302.6(e), July 1, 2007—Notification Requirements; and

b. 40 CFR 355.40(a)(2)(vii), July 1, 2007—Emergency Release Notification.

B. Modifications or Additions. The following table contains modifications to the federal reportable quantity lists incorporated by reference in Subsection A of this Section, as well as reportable quantities for additional pollutants. If a pollutant is listed with more than one reportable quantity, the lower-value reportable quantity shall be used.

| Pollutant | Synonym | CAS No.[1] | RCRA[2] Waste Number | Pounds |
|---|---|---|---|---|
| Acetaldehyde | Acetic aldehyde | 75070 | U001 | 700 |
| Allyl chloride | 3-Chloroproprene | 107051 | | 1000/10[@] |
| Aniline | Aminobenzene | 62533 | U012 | 5000/1000[@] |
| Antimony* | | 7440360 | | 5000/100[@] |
| Antimony compounds | | 20008 | | 100 |
| Barium* | | 7440393 | | 100 |
| Barium compounds | | 20020 | | 100 |
| n-Butyl alcohol | 1-Butanol | 71363 | U031 | 5000/1000[@] |
| Carbonic dichloride | Phosgene | 75445 | P095 | 10/1[@] |
| Chlorinated dibenzo furans, all isomers | | | | 1 |
| Chlorine dioxide | Chlorine oxide | 10049044 | | 1 |
| Chromium[3] * | | 7440473 | | 5000/100[@] |
| Chromium compounds | | 20064 | | 100 |
| Copper[3] | | 7440508 | | 5000/100[@] |
| Copper compounds | | 20086 | | 100 |
| Cumene | Isopropyl benzene | 98828 | U055 | 5000/1000[@] |
| Ethyl acrylate | 2-Propenoic acid, ethyl ester | 140885 | U113 | 1000/10[@] |
| Ethylene | Ethene | 74851 | | 5000[#] or 100[†] |
| Glycol ethers ** | | | | 100 |
| Hexane | Hexyl hydride | 110543 | | 5000/1000[@] |

| Pollutant | Synonym | CAS No.[1] | RCRA[2] Waste Number | Pounds |
|---|---|---|---|---|
| Hydrogen chloride | Hydrochloric acid | 7647010 | | 5000/1000@ |
| Hydrogen fluoride | Hydrofluoric acid | 7664393 | U134 | 100/10@ |
| Manganese* | Colloidal manganese | 7439965 | | 100 |
| Manganese compounds | | | | 100 |
| Methyl acrylate | 2-Propenoic acid methyl ester | 96333 | | 10 |
| Methyl ethyl ketone (MEK) | 2-Butanone | 78933 | U159 | 5000/1000@ |
| Methyl isobutyl ketone | 4-Methyl-2-pentanone | 108101 | U161 | 5000/1000@ |
| Methylmercaptan | Methanethiol | 74931 | U153 | 100/25@ |
| Methyl methacrylate | 2-Methylacrylic acid methyl ester | 80626 | U162 | 1000/100@ |
| Methylene diphenyl diisocyanate | Methylene bisphenyl isocyanate | 101688 | | 1000 |
| Nitric acid | Hydrogen nitrate | 7697372 | | 1000/100@ |
| Oil | | | | 1 barrel |
| Phthalic anhydride | 1,3-Isobenzofurandione | 85449 | U190 | 5000/1000@ |
| Polynuclear aromatic hydrocarbons *** | | | | 1 |
| Produced water | | | | 1 barrel |
| Propionaldehyde | Propionic aldehyde | 123386 | | 1000/100@ |
| Propylene | Propene | 115071 | | 100† |
| Sulfur dioxide | | | | 500 |
| Sweet pipeline gas (Methane/Ethane) | | | | 42000 (1,000,000 scf) |
| Vinyl acetate | Vinyl acetate monomer | 108054 | | 5000/100@ |
| Volatile organic compounds not otherwise listed[4] | | | | 5000 |
| Only those highly reactive volatile organic compounds listed below: ethylene and propylene [5] | | | | 100† |
| F003 The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents: | | | F003 | 100 |
| Methyl isobutyl ketone | | 108101 | | 5000/1000@ |
| n-Butyl alcohol | | 71363 | | 5000/1000@ |
| F005 The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents: | | | F005 | 100 |
| Methyl ethyl ketone | | 78933 | U159 | 5000/1000@ |

* No reporting of releases into the ambient air of this metal is required if the diameter of the pieces of solid metal released is equal to or exceeds 100 micrometers (0.004 inches).

** This reportable quantity is applicable to the aggregate emissions of the following glycol ethers: ethylene glycol monomethyl ether (CAS Number 109864), ethylene glycol monomethyl ether acetate (CAS Number 110496), ethylene glycol monoethyl ether (CAS Number 110805), ethylene glycol monoethyl ether acetate (CAS Number 111159), diethylene glycol dimethyl ether (CAS Number 111966), and ethylene glycol dimethyl ether (CAS Number 110714). All other glycol ethers are subject to the federal RQ, if applicable, that is incorporated by reference in LAC 33:I.3931.A.

*** The emissions of all Polynuclear Aromatic Hydrocarbons (PAHs), excluding any PAHs otherwise listed, shall be totaled to determine if a reportable quantity has been exceeded.

[1] Chemical Abstracts Service Registry Number.

[2] Resource Conservation and Recovery Act of 1976, as amended.

[3] Prompt notification of releases of massive forms of these substances is not required if the diameter of the pieces of the substance released is equal to or exceeds 100 micrometers (0.004 inches).

[4] The emissions of all volatile organic compounds (VOCs), excluding any VOCs otherwise listed, shall be totaled to determine if a reportable quantity has been exceeded. *VOC* is defined in LAC 33:III.111, and exempt compounds are listed in LAC 33:III.2117.

[5] The emissions of these highly reactive VOCs shall be totaled to determine if an RQ has been exceeded.

@ The first RQ listed denotes the reportable quantity that will apply to unauthorized emissions based on total mass emitted into or onto all media within any consecutive 24-hour period. The second RQ listed denotes the reportable quantity that will apply to unauthorized emissions based on total mass emitted into the atmosphere.

† The RQ listed denotes the reportable quantity that will apply to unauthorized emissions based on total mass emitted into the atmosphere for facilities in the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, St. Charles, St. James, St. John the Baptist, Pointe Coupee, and West Feliciana.

# RQ for the state except the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, St. Charles, St. James, St. John the Baptist, Pointe Coupee, and West Feliciana.

C. Copies of documents incorporated by reference may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401, or by telephone at (866) 512-1800.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229

(December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:751 (April 2004), LR 30:1669 (August 2004), amended by the Office of Environmental Assessment, LR 31:919 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:603 (April 2006), LR 32:2248 (December 2006), LR 33:640 (April 2007), LR 33:2628 (December 2007), LR 34:69 (January 2008), LR 34:866 (May 2008), repromulgated LR 34:981 (June 2008).

# Chapter 41. Hazardous Waste Site Cleanup Fund Site Prioritization

## §4101. Purpose

A. The purpose of this Chapter is to establish procedures for prioritizing sites for funding from the Hazardous Waste Site Cleanup Fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., in particular, 2205(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:696 (May 2003).

## §4103. Applicability

A. This Chapter applies to hazardous and nonhazardous sites to be funded by the Hazardous Waste Site Cleanup Fund and will become effective on May 20, 2003.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., in particular, 2205(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:696 (May 2003).

## §4105. Prioritization Scheme

A. Each site shall be prioritized by a numerical ranking system based on:

1. health risks;

2. groundwater and surface water contamination;

3. owner/operator recalcitrance or refusal to comply with department-required actions;

4. site owner/operator financial abilities;

5. eligibility for any other viable funding mechanism;

6. availability of money within the fund; and

7. determination by the secretary that the fund should be used to facilitate actions in a timely manner to abate emergencies.

B. The goal of the prioritization scheme is to allow the department to maximize risk reduction in proportion to the fund dollars spent. The department will use the prioritization numerical ranking system as a tool to aid the department in managing risk reduction in proportion to the fund dollars spent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., in particular, 2205(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:696 (May 2003).

# Title 33

# ENVIRONMENTAL QUALITY

## Part I. Office of the Secretary

## Subpart 3. Laboratory Accreditation

## Chapter 45. Policy and Intent

### §4501. Description and Intent of Program

A. Description and Intent of Program

1. These regulations provide requirements for an accreditation program specifically applicable to commercial laboratories, wherever located, that provide chemical analyses, analytical results, or other test data to the department, by contract or by agreement, and the data is:

a. submitted on behalf of any facility, as defined in R.S. 30:2004;

b. required as a part of any permit application;

c. required by order of the department;

d. required to be included on any monitoring reports submitted to the department;

e. required to be submitted by contract; or

f. otherwise required by department regulations.

2. The department laboratory accreditation program is designed to ensure the accuracy, precision, and reliability of the data generated, as well as the use of department-approved methodologies in the generation of that data. Laboratory data generated by commercial environmental laboratories that are not accredited under these regulations will not be accepted by the department.

B. This accreditation covers the following fields of testing:

1. air emissions;

2. wastewater/surface water;

3. groundwater;

4. solid/hazardous wastes;

5. soils, sediments, and sludges;

6. biological materials;

7. radiologicals/radioassays;

8. bioassays/biomonitoring/toxicological testing; and

9. asbestos.

C. Each field of testing is divided into test categories. Applications for accreditation may be made for one or more test categories within specified fields of testing. To apply the laboratory must identify the specific department-approved methods it will be using for each test category and participate in all relevant department-approved proficiency testing programs. Any variance from approved protocol or procedure is acceptable only with prior written confirmation by the department.

D. Applicants must have an acceptable quality control system and associated documentation. Accreditation earned from other states or regulatory agencies may be accepted by the department, provided that a review shows that the requirements are no less stringent than those required by these regulations. Reciprocity with other state accreditation programs will be reviewed by the department, and if the requirements of these regulations are met, then accreditation may be granted.

E. This Subpart shall not apply to the following:

1. laboratory analyses programs accredited under the regulatory and statutory authority of the Louisiana Department of Health and Hospitals; and

2. personnel monitoring services in accordance with LAC 33:XV.430.C and to those activities specifically licensed in accordance with LAC 33:XV.Chapter 3.Subchapter B, equivalent agreement state regulations, and the Nuclear Regulatory Commission regulations, Title 10 *Code of Federal Regulations*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:917 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1434 (July 2000), LR 29:312 (March 2003).

### §4503. Definitions

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

*Accreditation*—the formal recognition by the department of a laboratory's competence wherein specific tests or types of tests can be accurately and successfully performed in compliance with all minimum requirements set forth in these regulations.

*Annual Renewal Date*—July 1.

*Applicant*—the laboratory requesting accreditation.

*Commercial Laboratory*—any laboratory, wherever located, that performs analyses or tests for third parties for a fee or other compensation and provides chemical analyses, analytical results, or other test data to the department, by contract or agreement, and the data is: submitted on behalf of any facility, as defined in R.S. 30:2004; or required as a part of any permit application; or required by order of the department; or required to be included on any monitoring reports submitted to the department; or otherwise required by department regulations. The term commercial laboratory

does not include laboratories accredited by the Louisiana Department of Health and Hospitals in accordance with R.S. 49:1001, et seq.

*Corrective Action Proficiency Test Sample*—a proficiency test sample of known composition provided by an external source (e.g., EPA) that is used to evaluate lab performance after completion of required corrective action(s) of a failed proficiency evaluation test round.

*Department*—the Louisiana Department of Environmental Quality.

*Department Accreditation Program*—a program instituted by the department by which a laboratory that generates data for submittal to any area of the department may be deemed an accredited laboratory producing acceptable data, based upon the accuracy and reliability of the generated data, the use of department-approved methodology for the generation of the data, and the utilization of an acceptable quality control/quality assurance program to document the quality of the data produced.

*Department-Approved Testing Methods*—the laboratory and field procedures that have been approved by the department. These include all EPA-recognized methods, as well as those deemed equivalent by the department, that are adopted from existing standards and regulations or developed for specific fields of testing, specific testing technologies, or specific types of tests. This refers to the methods cited in the 40 CFR and subsequent changes published in the *Federal Register* from such sources as U.S. EPA, *Standard Methods for the Examination of Water and Wastewater,* ASTM, NIOSH, SW-846, *American Public Health Association for Microbiological Methods*, USGS, AOAC, and alternate test procedures approved for use.

*Discreditation*—the revocation by the department of the formal recognition of the laboratory's accredited status because of a violation of LAC 33:I.5705.F.

*EPA*—the United States Environmental Protection Agency.

*EPA-Accepted Methods*—the methods cited in the 40 CFR and subsequent changes published in the *Federal Register*; from such sources as EPA, *Standard Methods for the Examination of Water and Wastewater*, ASTM, NIOSH, SW846, *American Public Health Association for Microbiological Methods*, USGS, AOAC, and alternate test procedures approved for nationwide use, as well as any method approved by the department.

*Field of Testing*—air emissions; wastewater/surface water; groundwater; soils, sediments, and sludges; solid/ hazardous wastes; biological materials; radiologicals/ radioassays; and bioassays/biomonitoring/toxicological testing.

*Field Test*—any activity or operation conducted on-site resulting in the measurement of a specific parameter. Field tests are generally conducted at or near the site of sampling and include soil classification, pH, temperature, flow rate, fugitive emissions monitoring of valves, pumps, flanges, etc.

*Interim Status—a* status that exists in the accreditation process wherein all application requirements have been met by the laboratory, but formal accreditation status has not been granted by the department. Interim status is granted on a case-by-case basis at the discretion of the department and shall not exceed one year in length.

*Laboratory*—any facility, whether fixed-based, mobile, or field, that analyzes environmental samples and that seeks accreditation by the department.

*Laboratory Representative*—the laboratory employee who is designated as the contact person responsible for the information provided in the application and for ensuring compliance with the requirements for accreditation.

*Mobile Laboratory*—any facility that analyzes environmental samples and that seeks accreditation by the department that is capable of moving or being moved from one site to another.

*NIST*—National Institute of Standards and Technology.

*NRC*—Nuclear Regulatory Commission.

*Primary Accrediting Authority*—for the purpose of NELAP Accreditation, the Louisiana Department of Environmental Quality, with the exception of those laboratory analyses accredited under the regulatory and statutory authority of the Louisiana Department of Health and Hospitals.

*Proficiency Evaluation Test Sample (PE)*—a sample of known composition (unknown to laboratory) provided by an external source (e.g., EPA) that is used to evaluate lab performance.

*Reaccreditation*—the reinstatement of a fully accredited status by the department, thereby signifying that all violations of LAC 33:I.5705.F that initiated the discreditation action have been corrected and that the laboratory is deemed in compliance with requirements of these regulations.

*Reciprocity*—a method of obtaining accreditation, whereby the applicant laboratory provides documentation that demonstrates that its current certification or accreditation is no less stringent than required by these regulations. All fees associated with accreditation in the state of Louisiana shall be applicable. Laboratories located within the state of Louisiana shall be required to apply for a certification and shall not be eligible for reciprocity.

*Round Robin Testing*—a method of proficiency testing, whereby a blind sample is split and sent to laboratories for analysis from the department or its representative. Laboratories participating in round robin testing shall not pass test samples from one laboratory to another. This form of testing shall be limited to use where applicable.

*Small Laboratory*—a laboratory consisting of 10 or fewer people who influence the quality of data from sample collection through report generation.

*Suspension*—a temporary removal by the department of the accredited status, in part or whole, of a laboratory

because of an infraction(s) of LAC 33:I.5705.F until such time that the infraction(s) is satisfactorily corrected and the laboratory is returned to a fully accredited status or the infraction(s) is not corrected and the laboratory is discredited.

*Test Category*—any one of the 11 categories listed in LAC 33:I.4705.B in which a laboratory may request department accreditation for a specific test or analysis.

*Traceable Material*—any material whose true value or true measurement can be related to a standard reference, usually national or international, all having stated uncertainties (e.g., NIST traceable thermometers, standards, reagents, etc.).

*Variance*—any deviation from a department-approved method that has the potential for affecting the analytical results generated from a test procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:918 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1434 (July 2000), amended by the Office of Environmental Assessment, LR 31:1570 (July 2005).

# Chapter 47. Program Requirements

## §4701. Accreditation Process

A. The department accreditation process comprises four basic steps:

1. the submittal to the Office of Environmental Assessment of a written request from the laboratory in the form of an application provided by the department, along with payment of all applicable fees;

2. an on-site assessment/evaluation of the laboratory submitting the request/application by authorized representatives of the department with the appropriate laboratory background;

3. the successful participation in department-approved applicable proficiency evaluations; and

4. both periodic technical evaluation of the laboratory and periodic submittal by the laboratory of written documentation that all requirements of the department accreditation program are being fulfilled in order to maintain accreditation.

B. When all requirements for accreditation have been successfully fulfilled, the department shall grant the applicant laboratory a formal notice of certification that lists those analytes and methods for which the laboratory is certified. The certificate must be posted within public view in the laboratory setting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:919 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1435 (July 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2081 (October 2007).

## §4703. Application for Accreditation

A. An applicant for environmental laboratory accreditation must be legally identifiable and possess a permanent business address and telephone number. The applicant laboratory must have the staff and resources in order to satisfactorily accomplish those analyses/tests for which accreditation is requested.

B. An application for environmental laboratory accreditation shall be made in writing to the Office of Environmental Assessment. This application shall provide all requested information and be accompanied by the appropriate application fee. Information will include at least one satisfactory round of the most recent department-specified proficiency evaluation test results or an analytical data package for test categories where no accessible proficiency tests exist. Supplemental information may be required.

C. Laboratories maintained on separate premises, even though operated under the same management, shall be required to maintain distinct accreditation. If a laboratory is located outside of the state of Louisiana, it shall be considered a separate and distinct laboratory and shall require individual accreditation. Separate accreditation is not required for buildings on the same or adjoining grounds. If a mobile laboratory is operating independently within the state, separate accreditation may be necessary.

D. Each laboratory must identify an official to represent it in all matters related to attaining and maintaining environmental laboratory accreditation. This official is the point of contact with the laboratory and is known as the laboratory representative. The laboratory representative may be any senior person from either the technical or managerial staff. The laboratory representative should be in a position of authority to ensure that the laboratory complies with the criteria and conditions for accreditation and should have the authority to bind the company in a legal manner.

E. In cases where all application requirements have been met, including review of all methodology and quality assurance program data, a special status of "interim status" may be granted at the discretion of the department on a case-by-case basis. Interim status shall not exceed one year in length. Before a laboratory is granted full accreditation, all requirements of these regulations must be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:919 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1435 (July 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2081 (October 2007).

## §4705. Categories of Accreditation

A. At the time of application each applicant must clearly identify both the fields of testing and the test categories for

which accreditation is sought. A copy of the relevant test method documentation and the requisite equipment for the method must be available at the laboratory. A current list of approved methodologies for each parameter/analyte will be maintained by the Office of Environmental Assessment, and a copy of the list will become a part of the application package. In cases where the methodology used by the laboratory is not listed, the laboratory shall submit documentation that will verify that the results obtained from the method in use are equal to or better than those results obtained from the approved methodology. The department will review the data submitted by the laboratory and will notify the laboratory in writing within 60 calendar days if the method is acceptable or unacceptable as an alternate method of analysis.

B. A laboratory may apply for accreditation in any one or more of the eight fields of testing (e.g., air emissions, wastewater/surface water, etc.) and in one or more of the 11 test categories applicable to the field(s) of testing selected. The laboratory shall be accredited in those parameters within the test category(ies) for which the laboratory demonstrates acceptable performance on proficiency samples (when available) and meets all other requirements of the department accreditation program. The accreditation test categories are as follows:

1. metals;

2. air pollutants including industrial hygiene and Toxic Organic Compounds (T.O.) methods, stack sampling, and ambient air;

3. nutrients, minerals, ions, demands, classical wet chemistry, and total and fecal coliform;

4. microbiology (including fecal coliform and total coliform);

5. bioassay and biomonitoring;

6. organics (including volatiles, semi-volatiles, pesticides, herbicides, and PCBs);

7. dioxins and furans;

8. radiochemistry and radio assay;

9. asbestos;

10. geo-technical properties of soils including, but not limited to, compaction test, permeability, particle size analysis, soils classification, etc.; and

11. minor conventional parameters - $BOD_5$, oil and grease, TSS, pH, fecal and total coliform, and residual chlorine.

C. An accredited laboratory may request the addition of field(s) of testing and test category(ies) to its scope of accreditation at any time. Such a request must be submitted in writing to the Office of Environmental Assessment. Unless the previous on-site inspection can verify the competence of the laboratory to perform the additional tests, another on-site inspection may be required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:919 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1435 (July 2000), LR 26:2443 (November 2000), repromulgated LR 27:38 (January 2001), amended by the Office of Environmental Assessment, LR 31:1570 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:2081 (October 2007).

## §4707. Fees

A. Testing laboratories applying for accreditation or renewal of accreditation shall submit the appropriate fee calculated from the fee schedule along with the required application or update materials. Fees are nonrefundable. Fees are based on test categories and not the fields of testing.

B. In-house laboratories owned and/or operated by the state, local, or federal government are exempt from the fee requirements paid to the department, but shall make appropriate application for accreditation in accordance with other provisions of these regulations. Required proficiency samples shall be purchased by the laboratory and the required third-party audit shall be billed directly to the laboratory.

C. The annual fees shall not be prorated and shall apply in full to any portion of the fiscal year that remains prior to the annual renewal date (July 1).

D. The following basic fee structure will be used in determining the initial or annual fees due to the department.

| | |
|---|---|
| Accreditation application fee payable every three years | $660 |
| Per major test category payable every year | $330 |
| Minor conventional category payable every year | $264 |
| Annual surveillance and evaluation applicable to minor conventional facilities and facilities applying for only one category of accreditation | $330 |
| Proficiency samples biannually | to be purchased by the laboratory |
| Bioassay/biomonitoring annually | to be purchased by the laboratory |
| Third-party audit | to be billed directly to the laboratory |

E. Additional fees may be charged for the expansion of accreditation to include new test categories. Fees must be received prior to granting accreditation. Fee assessment will depend on the category(ies) of analyses and the need for a supplemental on-site inspection.

F. Travel expenses incurred by representatives of the department, traveling within and outside of the state of Louisiana, conducting an assessment/inspection for the purpose of accreditation shall be reimbursed by the laboratory. These rates shall be in accordance with the Division of Administration state general travel regulations, within the limits established for state employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:920 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1436 (July 2000), LR 29:672 (May 2003), LR 29:2041 (October 2003).

## §4709. Inspection of Laboratory

A. As a condition of obtaining and maintaining accreditation, a laboratory shall permit and facilitate inspections by personnel or designated representatives of the department. The specific requirements of an on-site inspection are outlined in LAC 33:I.Chapter 51.

B. Inspectors shall conform to appropriate safety procedures during an on-site inspection. The authorized representatives of the department who perform the on-site evaluation must be experienced professionals and hold at least a bachelor's degree in a science-related field with technical experience in a laboratory. The representative(s) must successfully complete a laboratory certification course presented by the United States Environmental Protection Agency, the National Institute of Standards and Technology, or other department-approved training group.

C. Regular inspections of accredited laboratories shall be conducted at intervals of not more than two years. Such inspections shall be conducted by representatives of the department upon presentation of credentials. Prior to granting initial accreditation and after all documentation provided to the department has been reviewed, an announced on-site laboratory inspection shall be performed.

D. Inspections may include on-site proficiency test sample(s) analyses but shall not exceed 10 percent of the test parameter(s) but must maintain minimum of one test. If there is a cost for these samples, the department will bill the laboratory, and the laboratory shall remit within 30 calendar days.

E. Laboratories that utilize mobile and/or field laboratories shall not be required to certify each laboratory individually. The mobile and/or field facilities shall be considered a part of the fixed-based laboratory and shall be required to participate in performance evaluation studies. Mobile and/or field laboratories shall not be exempt from any applicable requirements of an on-site evaluation as outlined in LAC 33:I.Chapter 51. Mobile and/or field laboratories may be inspected at the discretion of the department. In the event an organization is composed entirely of mobile and/or field laboratories and no fixed-based laboratory exists, the business address of the organization shall be utilized as the location for accreditation purposes.

F. Fixed-base laboratories that have moved to a new location shall be inspected within 30 calendar days after the laboratory has notified the department, in writing, of such change in location as required in LAC 33:I.5707.

G. The department shall reserve the right to inspect or observe the testing procedure(s) of the laboratory if such action is deemed necessary by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:920 (May 1998).

## §4711. Proficiency Testing Participation

A. All accredited environmental laboratories or laboratories seeking accreditation must participate in department-approved proficiency testing programs relevant to their scope of accreditation, except when determined by the department that an appropriate proficiency test is not accessible or readily available. The department may provide appropriate commercial test samples at the applicant's expense whenever necessary.

B. If proficiency test samples are not available for particular test categories, the laboratory requesting accreditation will submit an "analytical data package." An "analytical data package" shall include all relevant analytical methodology, technical information, and quality assurance results concerning a particular type of analysis for which there is no current proficiency testing program.

C. Department-approved proficiency tests shall be used to provide suitable evidence of laboratory proficiency.

D. Proficiency testing studies will be available at a minimum of every six months. Laboratories shall participate in two proficiency test studies per year for each field of testing. Failure to meet the minimum semiannual schedule shall be regarded as a failed proficiency test study. Laboratories may set up round robin testing programs under the department’s supervision in order to satisfy this requirement, using splits where applicable.

E. Laboratories shall satisfactorily complete two proficiency test studies offered for each test category accredited within the most recent three proficiency test studies attempted. A year shall be considered as the 12-month period from the first day of July until the last day of June. Results shall be considered satisfactory when they are within the acceptable limits established by the testing agency or the department.

F. Each participating laboratory shall authorize the proficiency test provider to release the results of the proficiency evaluation (PE) test to the Office of Environmental Assessment at the same time that they are submitted to the laboratory. Every laboratory that receives test results that are "unacceptable" for a specific analyte must investigate and identify likely causes for these results, resolve any problems, and report such activity to the Office of Environmental Assessment, along with the submittal of corrective action proficiency sample test results. The laboratory shall report only the analytes for which corrective action was required.

G. In cases of on-site proficiency testing, the department shall inform the laboratory of the results of the evaluation. The department may require the laboratory to analyze additional proficiency samples if the results of such test are "unacceptable."

H. Results of proficiency testing during the preceding 12 months shall be made available by the laboratory, upon request, to any person utilizing or requesting the services of the laboratory.

I. Accredited laboratories that desire to extend the range of tests or analyses offered shall submit a written request with the appropriate fees, shall comply with the requirements of these regulations, and shall demonstrate satisfactory results in at least one round of proficiency testing samples prior to receiving accreditation.

J. Laboratories shall bear the cost of any subscription(s) to a proficiency testing program required by the department for compliance purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:921 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1436 (July 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:2081 (October 2007).

## §4713. Interim Acceptance of Accreditation by Another Accrediting Authority for In-State Laboratories

A. Acceptance of accreditation from another accrediting authority as equivalent accreditation shall be determined by the department.

B. All of the following requirements must be fulfilled:

1. a completed application form and support documents submitted;

2. any appropriate fee(s) paid;

3. evidence of successful participation in a proficiency testing program or its equivalent;

4. written documentation of accreditation sent to the department;

5. a comparison of certification requirements from the accredited laboratory; and

6. an on-site evaluation/inspection conducted by authorized representatives of the department or the previous inspection conducted by the accrediting authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:921 (May 1998).

## §4715. Accreditation for Laboratories Not Located in Louisiana

A. Out-of-state laboratories may receive accreditation via two mechanisms:

1. direct application to the department based on the requirements of this program; or

2. reciprocity based on evaluation of current accreditation maintained. Reciprocal accreditation is based on meeting the requirements set forth in LAC 33:I.4713.

B. A testing laboratory located outside of Louisiana may receive accreditation from the department or from another agency having environmental regulatory responsibility or delegated administrative authority, if approved by the department. The laboratory shall comply with all documentation and fee requests from the department.

C. If the out-of-state laboratory's accreditation is revoked, the Louisiana authorization is thereby automatically canceled. The environmental representative shall notify the state and all clients in Louisiana that utilize the laboratory of the revocation within 10 calendar days.

D. When accreditation of the laboratory has been reinstated, the department will request adequate documentation from the laboratory indicating that the laboratory is in compliance with these regulations. The following requirements must be fulfilled before the department reinstates the laboratory as accredited:

1. a completed application form and support documents submitted;

2. fee(s) paid in accordance with LAC 33:I.4707;

3. evidence of successful participation in a proficiency testing program or its equivalent;

4. written documentation of accreditation sent to the department; and

5. an on-site evaluation/inspection conducted by authorized representatives of the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:921 (May 1998).

## §4719. Implementation

A. All commercial laboratories analyzing data as of the effective date of these regulations that are directly or indirectly submitting data to the department must submit an application for accreditation as required in LAC 33:I.4701.A.1, including the review fee, by July 1, 2000. The department shall not accept laboratory data generated by laboratories that do not comply with this deadline until such laboratories receive accreditation and fully comply with the requirements of this Section. The department shall not accept environmental data submitted to the department either directly or indirectly until the laboratory has applied for accreditation under these regulations.

B. All laboratories subject to these regulations must receive accreditation from the department, as provided in these regulations, undergo an on-site inspection as specified in LAC 33:I.4701.A.2, and successfully participate in proficiency evaluations as required in LAC 33:I.4701.A.3 by December 31, 2000, or as otherwise agreed to by the department and the applicant, not to exceed one year from December 31, 2000. The department shall not accept data generated by laboratories that do not comply with these

deadlines until such laboratories receive accreditation and fully comply with the requirements of this Section.

C. The department will accept analytical data generated by laboratories that do not comply with the deadlines established in Subsection B of this Section for accreditation if such laboratories:

1. have submitted a complete application form and supporting documents;

2. have submitted documentation verifying certification/accreditation by a department-approved accreditation program or supporting documentation showing the quality assurance and quality control program used to generate analytical data by the laboratory; and

3. have paid appropriate fees.

D. These regulations shall not apply to *field tests* as defined in LAC 33:I.4503.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:922 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1436 (July 2000), LR 29:312 (March 2003).

# Chapter 49. Organization and Personnel Requirements

## §4901. Laboratory Staff for All Programs Covered by These Regulations

A. Managerial Staff. The laboratory shall have the managerial staff with the authority and resources needed to discharge their duties. The technical director or his/her designated representative shall be a full-time member of the laboratory staff who has the authority to exercise the day-to-day supervision of the laboratory policies and procedures. The laboratory shall be organized in such a way that confidence in its independence of judgment and integrity is maintained at all times. The laboratory shall specify and document the responsibility, authority, and interrelation of all personnel who manage, perform, or verify work affecting the quality of calibrations and tests. Such documentation shall include:

1. a clear description of the lines of responsibility in the laboratory;

2. personnel proportioned such that adequate supervision is ensured. An organizational chart is recommended; and

3. job descriptions for all positions.

B. Laboratory Technical Director

1. Academic Training. The laboratory technical director must have a bachelor's degree in science or a minimum of four years' equivalent experience in a related field.

2. Experience. The laboratory technical director must have a minimum of two years' experience in the area of environmental analysis.

C. Quality Assurance Manager

1. Academic Training. The quality assurance manager must have a minimum of a bachelor's degree in science or four years' equivalent experience in a related field.

2. Experience. The quality assurance manager must have a minimum of two years' environmental laboratory experience.

3. Reporting Authority. The quality assurance manager must have direct access to the highest level of management for decisions regarding laboratory quality assurance policy and resources. He or she must have independent authority regarding quality assurance oversight and implementation of the quality assurance program. This organizational position must not report through the technical management of the laboratory. The quality assurance manager must have the opportunity and freedom to evaluate data objectively without influence from technical or financial management.

4. Technical Knowledge. The quality assurance manager must have a general knowledge of all analytical methods that are performed by the laboratory.

5. Small Laboratories. In smaller laboratories (staff less than 10 total employees), the quality assurance manager's responsibilities may be performed by an upper level technical or operational manager of the facility. Academic and experience requirements apply.

D. Supervisors

1. Academic Training. Supervisors must have a minimum of a bachelor's degree or a minimum of four years' experience in a related field.

2. Experience. Supervisors must have a minimum of one year of experience in the area to be supervised, preferably with a minimum of six months' supervisory experience.

3. Radiochemistry. If the individual is supervisor of a radiochemistry laboratory, the individual must have a minimum of four years' experience in the field/area of radiochemistry; however, each year of additional college-level training in related fields may substitute for one year of experience, up to a maximum of two years.

E. Instrument Operators

1. Academic Training. Instrument operators must have a minimum of a high school diploma or equivalent and satisfactory completion of a short course or structured in-house equivalent on the operation of the instrument (by equipment manufacturer, professional organization, university, or other qualified training facility).

2. Experience. Instrument operators must have a minimum of six months' experience in the operation of the instrument with documentation that acceptable results are

achieved by the operator (performance evaluation and quality control samples successfully analyzed).

3. On-the-Job Training. During on-the-job training to fulfill the requirement for experience, the data produced by the operator shall be deemed acceptable when validated and reviewed by a qualified instrument operator and/or laboratory supervisor.

F. Analyst

1. Chemistry Procedures

a. Academic Training. An analyst must have a minimum of a high school diploma or equivalent, plus proper training in a methods training course or by a qualified analyst.

b. Experience. An analyst must have a minimum of six months' laboratory experience with the analysis procedure(s) with documentation that acceptable results are achieved by the analyst (performance evaluation and quality control samples successfully analyzed).

c. On-the-Job Training. During on-the-job training to fulfill the requirement for experience, data produced by the analyst shall be deemed acceptable when validated and reviewed by a qualified analyst and/or laboratory supervisor.

2. Microbiological Procedures

a. Academic Training. An analyst must have a minimum of a bachelor's degree in science or four years' experience in a related field. He or she must have training in water analyses for total coliform and fecal coliform, a minimum of a high school diploma, or the equivalent, and satisfactory completion of a short course or structured in-house equivalent on the proper techniques of analysis.

b. Experience. An analyst must have a minimum of six months' experience in microbiological analysis and techniques.

3. Radiological Procedures (Gross Alpha, Gross Beta, and Specific Radionuclides)

a. Academic Training. An analyst must have a minimum of a high school diploma or equivalent, plus specialized training in standards and sample preparation, instrument calibration, calculations, and data handling.

b. Experience. An analyst must have a minimum of six months of on-the-job training. An analyst may assist in routine sample preparation and radioanalytical procedures provided that the work is supervised and validated by a qualified analyst and/or laboratory supervisor.

4. Biomonitoring Procedures

a. Academic Training. An analyst must have a minimum of a high school diploma, or the equivalent, and documented training by a qualified analyst. EPA video training tapes should be utilized where available.

b. Experience. An analyst must have six months of on-the-job training with documentation of acceptable results from standard reference toxicant tests performed by the analyst.

c. On-the-Job Training. During on-the-job training to fulfill the requirements for experience, data produced by the analyst shall be deemed acceptable when validated and reviewed by a qualified analyst and/or laboratory supervisor.

G. Information on the relevant qualifications, training, and experience of the technical staff shall be maintained by the laboratory.

H. The laboratory shall provide additional training as needed in order to keep personnel current with new procedures, changes in existing procedures, and/or equipment changes or improvements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:922 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1436 (July 2000).

# Chapter 51. On-Site Inspection/Evaluation

## §5101. Inspection Procedures

A. The authorized representative(s) of the department shall schedule the initial on-site inspection with the applicant laboratory. The authorized representative(s) of the department may make an announced or unannounced inspection or examination of an accredited laboratory whenever the department, in its discretion, considers such an inspection or examination necessary to determine the extent of the laboratory's compliance with the conditions of its accreditation and these regulations. Any refusal to allow entry to this representative shall constitute a violation of a condition of accreditation and is grounds for discreditation. The laboratory shall provide appropriate safety equipment for the department representative(s) when required.

B. Additional inspections may be conducted when evaluations and submissions from the laboratory or its clients indicate significant technical changes in the capability of the laboratory have occurred.

C. The following shall be available for review at the laboratory:

1. quality assurance plan;
2. approved methodology manual;
3. quality assurance data; and
4. proficiency test data.

D. During inspections, consideration will be given to:

1. competence of the staff;
2. working conditions, including adequacy of space;
3. lighting, equipment, and supplies;
4. efficient organization of the laboratory;

5. testing or analytical methods used;

6. quality control procedures;

7. maintenance of all required records; and

8. compliance with all the requirements of these regulations.

E. Laboratory inspection will follow this general outline:

1. an entry briefing with laboratory management;

2. review of quality documentation, sample handling, and records, such as typical lab results and reports of test data;

3. interviews with technical staff;

4. demonstration of selected tests, as necessary;

5. examination of equipment and calibration records;

6. an exit briefing including the specific identification of any deficiencies; and

7. a written report of inspection findings to be forwarded to the laboratory within 60 working days after the on-site visit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:923 (May 1998).

## §5103. Laboratory Facilities

A. The laboratory conditions in which the tests are undertaken shall not invalidate the test results or adversely affect the required accuracy of measurement. The laboratory shall have the equipment, adequate storage facilities, procedures to preserve the identity, concentration and stability of samples, and energy sources needed for proper testing. They shall be equipped with devices to monitor essential environmental conditions. Specifically, the testing laboratory shall include the following:

1. adequate workspace, ventilation, light, and access to stable power sources at work stations;

2. exhaust hoods for proper elimination of volatile materials;

3. contamination-free work areas as necessary;

4. chemical and sample handling areas that will provide safe working areas and prevent cross contamination of samples;

5. adequate storage facilities for samples, extracts, reagents, solvents, reference materials, and standards to preserve their identity, concentration, purity, and stability;

6. adequate procedures and facilities in place for collection, storage, and disposal of wastes, including expired chemicals, reagents, solutions, standards, and other material with a limited shelf-life;

7. where relevant, adequate procedures and facilities for handling materials that may transmit infectious agents and radioactive materials;

8. appropriate storage for volatile, corrosive, or explosive chemicals and flammable solvents;

9. adequate separation of activities to ensure that no activity has an adverse effect on analyses;

10. separate culturing and testing facilities for biomonitoring laboratories; and

11. counting rooms that are physically separated from other activities in radiological laboratories.

B. Access to and use of all test areas shall be regulated in a manner appropriate to their designated purpose, and entry by persons external to the laboratory shall be controlled.

C. Adequate measures shall be taken to ensure cleanliness in the testing laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:924 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1437 (July 2000).

## §5105. Test Methods and Procedures

A. The testing laboratory shall have adequately documented instructions on the use and operation of all relevant equipment, on the handling and preparation of test items, where applicable, and on standard testing techniques, where the absence of such instructions could jeopardize the efficiency of the testing process. All instructions, standards, manuals, and reference data relevant to the work of the testing laboratory shall be maintained up-to-date and be readily available to the staff.

B. The testing laboratory shall use department-approved methodologies. These methodologies shall be available to the staff performing the tests.

1. Any variance from department-approved methodology is acceptable with prior written confirmation by the department. When an approved method or an appropriate modification is not available, the data may be accepted when submitted with the method validation package that must include, at a minimum, the requirements found in Paragraph B.2 of this Section.

2. Where it is necessary to deviate from department-approved methods, a method validation package shall be submitted. This validation package must include, at a minimum, the following:

a. origin of method;

b. deviations from standard;

c. reason for deviations;

d. effects of deviations; and

e. comparison with the department-approved methods replaced, with documentation indicating results

achieved from the modified method are equal to or better than the original method.

C. Any federal and/or state regulations applicable to the request for alternate methodology shall have priority over these regulations, and shall be utilized in the assessment of the request.

D. The testing laboratory shall have implemented the written standard operating procedures (SOPs), which shall be available to the staff and the inspector.

E. The testing laboratory shall have an acceptable and written quality assurance program plan that is implemented by the staff and readily available to the inspector.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:924 (May 1998).

### §5107. Deficiencies Identified during On-Site Inspection

A. Whenever deviations or deficiencies are found during an inspection, documentation of same will be included in the written report as required in LAC 33:I.5101.E.7. The laboratory representatives (or designees) will be asked to attest to (sign) receipt of the on-site inspection form and review same with the representative of the department conducting the inspection. The laboratory shall have a period of 30 calendar days from date of receipt of the laboratory inspection report in which to respond to the deficiencies reported and submit a plan for correcting all identified deficiencies. If the laboratory fails to respond, the accreditation process will terminate and the laboratory will be considered as nonaccredited.

B. The laboratory shall correct any deficiencies or deviations within six months from the date of receipt of the inspection report. If deficiencies affecting the accuracy of results are found, the accreditation shall be immediately suspended or revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:924 (May 1998).

### §5109. Report of On-Site Inspection

A. The department shall prepare for each accredited laboratory a listing of the test categories for which the laboratory has demonstrated proficiency during inspections. Inspection reports and listings shall be deemed public records. The department shall prepare a certificate of accreditation identifying the test categories for which the laboratory has been approved.

B. Whenever an accredited laboratory completes the requirements for increasing the scope of accredited analyses performed, another on-site inspection may be required, unless the previous annual on-site inspection verifies the competency of the laboratory to perform the additional tests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:925 (May 1998).

### §5111. Laboratory Safety Program

A. While specific safety criteria are not an aspect of laboratory accreditation, laboratory personnel should apply general and customary safety practices as part of good laboratory procedures. Each laboratory is strongly encouraged to have a written safety plan as part of their standard operating procedures. However, when safety practices are included in any approved method, those procedures become mandatory and must be strictly followed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:925 (May 1998).

## Chapter 53. Quality System Requirements

### §5301. Quality Assurance/Quality Control Requirements

A. Each laboratory seeking accreditation shall maintain their Quality Assurance/Quality Control (QA/QC) program using appropriate document control practices. The quality assurance manual, analytical methods, and administrative procedures necessary to meet requirements of these regulations shall be reviewed for accuracy and approved for release by the appropriate personnel, distributed, and controlled to ensure the use of the current approved version. Each laboratory seeking accreditation shall:

1. have documented quality control procedures in use for each analytical procedure;

2. comply with all quality control procedures required by applicable federal, state, or public health agencies when performing analyses; and

3. have procedures to be followed for feedback and corrective action whenever testing discrepancies are detected or departures from documented policies and procedures occur.

B. The laboratory shall operate an internal quality assurance program appropriate to the type, range, and volume of work performed. A person/persons having responsibility for quality assurance within the laboratory shall be designated by the laboratory management and have direct access to top management.

C. The quality assurance program shall be documented in a quality assurance manual that is available for use by the laboratory staff. The quality assurance manual shall be maintained by the quality assurance manager. The quality assurance manual shall contain information regarding:

1. the structure of the laboratory (organizational charts and generic position descriptions) including relationship

between management, technical operations, support services, and quality systems;

2. the operational and functional duties and services pertaining to quality assurance, so that each person concerned knows the extent and the limits of his/her responsibility;

3. general quality assurance procedures;

4. procedures for feedback and corrective action whenever testing discrepancies are detected;

5. chain of custody procedures;

6. a quality policy statement, including objectives and commitments, by management;

7. references to procedures for the control and maintenance of documents, including document control of laboratory notebooks, instrument logbooks, standards logbooks, and records for data reduction, validation, storage, and reporting;

8. the laboratory's procedures for achieving traceability of measurements to NIST reference materials or other traceable commercial vendors;

9. the laboratory's scope of tests;

10. references to procedures for handling submitted samples;

11. references to major equipment, as well as the facilities and services used by the laboratory;

12. references to procedures for calibration, verification, and maintenance of equipment;

13. references to verification practices including interlaboratory comparisons, proficiency testing programs, use of reference materials, and internal quality control schemes;

14. the laboratory management arrangements for departures from documented policies and procedures or from standard specifications;

15. references to policy and procedures for the resolution of complaints received from clients or other parties. Records of the complaint and subsequent action shall be maintained;

16. references to procedures for protecting confidentiality and proprietary rights;

17. references to procedures for audit and review;

18. identification of the laboratory's approved signatories; at a minimum, the title page of the quality assurance manual must have the signed and dated concurrence (with appropriate titles) of all responsible parties, including the quality assurance officer(s), technical director, and the laboratory manager;

19. references to processes/procedures for educating and training personnel in their ethical and legal responsibilities, including potential punishment and penalties for improper, unethical, or illegal actions;

20. references to processes/procedures for establishing that personnel are adequately experienced in the duties they are expected to carry out and/or receive any needed training;

21. references to procedures for reporting analytical results; and

22. a table of contents and applicable lists of references, glossaries, and appendices.

D. The quality assurance system shall be reviewed annually by management to ensure its continued effectiveness. Such reviews shall be documented with details of any changes.

E. The laboratory shall conduct annual internal audits to verify the compliance with the laboratory's quality system. The quality assurance officer shall be responsible for planning and organizing audits. Personnel shall not audit their own activities.

F. Standard operating procedures (SOPs) shall be kept in a manual available to the analyst and the inspector. SOPs may be included as a part or section of the laboratory's quality assurance manual. The laboratory shall have clearly defined, written SOPs or an equivalent, addressing, at a minimum, and as appropriate:

1. methods of analysis:

a. identification of the test method;

b. applicable matrix or matrices;

c. detection limit;

d. scope and application, including components to be analyzed;

e. summary of test method;

f. definitions;

g. safety;

h. equipment and supplies;

i. reagents and standards;

j. sample collection, preservation, storage, handling, and chain of custody;

k. quality control;

l. calibration;

m. procedure;

n. calculations;

o. method performance;

p. pollution prevention;

q. data assessment and acceptance criteria for quality control measures;

r. corrective actions for out-of-control or unacceptable data;

s. contingencies for handling out-of-control or unacceptable data;

t. waste management;

u. references; and

v. any tables, diagrams, flowcharts, and validation data;

2. procurement and inventory procedures;

3. preventive maintenance;

4. recordkeeping and record storage (archives);

5. data reduction, validation, and reporting;

6. correcting erroneous reports;

7. management of laboratory wastes and hazardous materials; and

8. complaints registered against the laboratory's testing procedures, reporting procedures, and/or other general operating procedures.

G. Supervisory staff shall be responsible for quality assurance/quality control implementation and compliance.

H. The following general quality control principles shall apply, where applicable, to all testing laboratories. The manner in which they are implemented is dependent on the types of tests performed by the laboratory (e.g., chemical, microbiological, radiological). The standards for any given test type shall assure that the following applicable principles are addressed:

1. all laboratories shall have protocols in place to monitor the following quality controls:

a. adequate controls to monitor tests such as blanks, spikes, or reference toxicants;

b. adequate tests to define the variability and/or reproducibility of the laboratory results such as duplicates;

c. measures to ensure the accuracy of the test data, including sufficient calibration and/or continuing calibrations, use of certified reference materials, proficiency test samples, or other measures;

d. measures to evaluate test performance, such as method detection limits, or range of applicability such as linearity;

e. selection of appropriate formulae to reduce raw data to final results such as linear regression, internal standards, or statistical packages;

f. selection and use of reagents and standards of appropriate quality; and

g. measures to assure constant and consistent test conditions (both instrumental and environmental) where required by the method, such as temperature, humidity, light, or specific instrument conditions;

2. all quality control measures shall be assessed and evaluated on an ongoing basis, and quality control acceptance limits shall be used to determine the validity of the data. The acceptance/rejection criteria shall be updated at a frequency established by the method or by the department's standards;

3. the laboratory shall have procedures for the development of acceptance/rejection criteria where no method or regulatory criteria exists; and

4. the method-specified and/or method-recommended quality control protocols shall be followed. The essential standards shall be used if no protocols are written into the method or if the method protocols are less stringent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:925 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1437 (July 2000).

## §5303. Equipment and Supplies

A. The laboratory shall be furnished with or have access to all items of equipment required for correct performance of the analytical procedures for which it is accredited.

B. All equipment shall be properly maintained. Maintenance shall be documented.

C. Defective equipment shall be removed from service and labeled until it has been repaired and shown to function satisfactorily.

D. Records shall be maintained for each item of equipment and all reference materials significant to the tests performed. Maintenance logbook(s) and/or an electronic maintenance database with scheduled backups shall be maintained for all major equipment. Each log shall include:

1. the name of the item of equipment;

2. the manufacturer's name, type identification, and serial number;

3. the date received and the date placed in service;

4. the condition of equipment when placed in service (new, used, or reconditioned);

5. the current location;

6. the location of manufacturer's instruction manual (if available); and

7. the details of maintenance, including history of any damage, malfunction, modification, or repair.

E. In the case of measuring equipment, calibration records shall be maintained.

F. Records shall be maintained for acquisition of all equipment, reagents, and support services utilized by the laboratory in the generation of analytical data.

G. Supplies used for environmental testing shall meet the following minimums:

1. analytical reagents:

a. analytical reagent grade (AR) chemicals or equivalent are acceptable, unless individual procedures specify other reagent requirements;

b. stock and working standard solutions shall be checked regularly for signs of decomposition and expiration;

c. all solutions shall be labeled with identification of the compound, concentration, date prepared, analyst who prepared solution, and expiration date;

d. all purchased chemicals, solutions, and standards shall be labeled with dates of receipt, the dates of expiration on the container, and the date when the container is opened;

e. when reagents are removed from a container, they shall be used entirely or the unused portion discarded. Unused portions of a reagent may not be returned to the original container; and

f. compressed gases shall be of commercial grade, unless individual procedures specify other requirements;

2. glassware shall be cleaned and maintained properly as required by the test methodology; and

3. thermometers:

a. the laboratory shall have access to a NIST (National Institute of Standards and Technology) traceable thermometer where applicable;

b. the calibration of working thermometers, with the exception of dial thermometers, shall be checked at least annually against a NIST traceable certified thermometer and results recorded and documented per thermometer;

c. the calibration of dial-type thermometers shall be checked at least quarterly against a NIST traceable thermometer and results recorded per thermometer; and

d. thermometers shall be labeled when calibrated and the correction factor recorded.

H. Equipment used for environmental testing shall meet the following minimums:

1. analytical balances/pan balances:

a. records of balance calibration shall be kept for at least two ranges with a minimum class S or S-1 reference weights or equivalent (weights should be recertified every two years). Records showing daily (or before each use) functional/calibration checks for analytical balances and monthly functional/calibration checks for pan balances shall be maintained;

b. balances shall be calibrated and serviced at a minimum of once per year and service date recorded on the balance; and

c. balances may only be used with suitable support;

2. pH meters:

a. the laboratory shall use a pH meter with appropriate electrode with scale graduations at least 0.1 pH units (calibrated to ± 0.1 pH units for each use period) with temperature correction;

b. either a thermometer or a temperature sensor for automatic compensation shall be in use;

c. records shall be maintained indicating calibration daily or before each use, whichever is less frequent; and

d. aliquots of standard pH 4 and pH 7 or pH 7 and pH 10 shall be used only once;

3. conductivity meter:

a. a conductivity meter and probe of sufficient sensitivity shall be in use;

b. records shall be kept to show a daily or before each use calibration check, whichever is less frequent. Calibration shall be within the range of interest using standard solutions; and

c. records shall be kept showing that the cell constant is determined annually;

4. refrigeration equipment:

a. thermometer(s) in each refrigerator shall be immersed in liquid to the appropriate immersion line;

b. thermometers shall be graduated in increments no larger than 1°C;

c. temperatures for each refrigerator shall be recorded for each day in use for laboratory activities;

d. samples shall be stored in separate refrigerators from all standards where a potential for cross-contamination exists; and

e. refrigerator temperature should be maintained between 1°C and 6°C (inclusive), and freezer temperature shall be less than 0°C;

5. visual comparison devices:

a. visual devices shall be calibrated according to manufacturer's specifications and/or test methodologies; and

b. results shall be recorded and maintained; and

6. ovens/incubators/baths:

a. temperature shall be adequately controlled; and

b. records shall be kept to show that temperature is maintained (e.g., beginning and end of each use cycle or daily for extended drying periods).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:926 (May 1998), repromulgated LR 24:1093 (June 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1438 (July 2000).

## §5305. Calibration

A. Measuring and testing equipment used by the testing laboratory shall be calibrated, where appropriate, before

being put into service and thereafter according to an established program.

B. The overall program of calibration of equipment shall be designed and operated so as to ensure that measurements made in the testing laboratory are traceable (where the concept is applicable) to national standards of measurement and, where available, to international standards of measurement specified by the International Committee of Weights and Measures. Where the concept of traceability to national or international standards of measurement is not applicable, the testing laboratory shall provide satisfactory evidence of correlation or accuracy of test results (e.g., by participation in a suitable program of interlaboratory comparisons).

C. The laboratory shall record all calibration data including frequency, conditions, and standards used for all analytical methodology.

D. The laboratory shall verify and document all standards versus primary (reference) standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:927 (May 1998), repromulgated LR 24:1093 (June 1998).

## §5307. Test Methods and Procedures

A. The laboratory shall have procedures for making and controlling revisions to in-house SOPs, using revised SOPs only after written authorization from the designated laboratory authority.

B. Quality control procedures shall be documented and available to the staff as required in LAC 33:I.5301.C.

C. All manual calculation and data transfers shall be subject to appropriate checks.

1. When manual calculations are checked by a supervisor or another analyst, the results shall be initialed and dated on the work sheet by the individual who verified the results.

2. Where results are derived by electronic data processing techniques, the stability of the system shall be such that the accuracy of the results is not affected. This generally implies an ability to detect malfunctions in the hardware during program execution and take appropriate corrective action. Adherence to good automated laboratory practices (GALP) is recommended; however, at a minimum the laboratory must comply with the following:

a. computer software must be appropriate for the intended use;

b. procedures must be established and implemented for the protection of the integrity of data. Such procedures shall include:

i. integrity of data entry or capture;

ii. data storage;

iii. data transmission; and

iv. data processing;

c. computer and automated equipment must be provided with acceptable environmental operating conditions in order to maintain the operating integrity of the system; and

d. appropriate procedures must be implemented in order to maintain the security of data. These procedures must include prevention of unauthorized access to computer records and prevention of unauthorized amendments or changes to computer records.

D. Whenever samples are subcontracted to another environmental testing laboratory, the original laboratory shall maintain a verifiable copy of results with a chain of custody. This procedure may not be used to circumvent proper accreditation or any state requirements. The original laboratory is responsible for ensuring that the secondary laboratory used is properly accredited for the scope of testing performed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:927 (May 1998).

## §5309. Radiochemistry and Radionuclide Assay

A. General Requirements. Radiochemistry and radionuclide assay laboratories shall be subject to the requirements set forth throughout these regulations and to those specific requirements established in this Section. These are minimum specifications, and more stringent criteria may be utilized.

B. Quality Control Practices

1. The laboratory shall continually evaluate its performance for each method and matrix that includes the determination of accuracy and precision.

2. Supervisory personnel shall conduct a documented review of the data calculations and quality control (QC) results.

3. Deviations or deficiencies shall be reported to management and documented. QC data shall be retrievable for all analyses.

4. Method detection limits shall be determined and documented. Confirmation of detection limits shall be done yearly or as required by the method.

C. Quality Assurance Checks

1. Radiochemistry and Associated Radionuclide Assay. Ten percent of all analyses shall be QC, unless otherwise specified by the specific method. A minimum of three QC samples should be performed for each batch. The lab should repeat all samples if the QC check standard is outside the 95 percent confidence interval (± two standard deviations). Samples should be performed as follows:

a. QC samples should include one spike in 10 or one spike per batch if less than 10;

b. QC samples should include one blank in 10 or one blank per batch if less than 10;

c. QC samples should include one duplicate or spiked duplicate in 10 or one duplicate per batch if less than 10; and

d. spike samples should be representative of specified regulatory limits and/or they should approach the method-specific minimum detectable activities or lower limit of detections.

2. Radionuclide Assay Other than Radiochemistry. Ten percent of all analyses shall be QC, unless otherwise specified by the method. A minimum of three QC samples should be performed for each batch. The lab should repeat all samples if the QC check standard is outside the 95 percent confidence interval ± two standard deviations. Samples should be performed as follows:

a. QC samples should include one spike in 10 or one spike per batch if less than 10;

b. QC samples should include one blank in 10 or one blank per batch if less than 10;

c. QC samples should include one duplicate or spiked duplicate in 10 or one duplicate or spiked duplicate per batch if less than 10;

d. spike samples should be representative of specified regulatory limits and/or they should approach the method-specific minimum detectable activities or lower limit of detections; and

e. standard NIST traceable sources may be substituted for spike analysis.

D. General Equipment and Supplies

1. Supplies

a. Distilled and/or deionized water shall be demonstrated to be free of interferants at applicable detection limits. This may be accomplished through the use of blanks.

b. Analytical reagents shall be demonstrated to be free of interferants at applicable detection limits. This may be accomplished through the use of blanks.

c. Reference sources should be traceable to NIST or an equivalent and shall be replaced after an appropriate period of time, not to exceed five half-lives of a single nuclide or, in the case of mixed nuclide standards, they should be replaced after they have been determined to be unusable. Unusable is determined by the inability to meet calibration criteria as set forth by the method or technical manual.

2. Equipment—Auto Pipetors/Diluters

a. Apparatus having sufficient sensitivity for the application shall be used.

b. Records shall be kept showing delivery volumes are checked periodically.

c. Laboratory technicians shall periodically demonstrate the ability to properly use the equipment. This shall be documented.

E. Analytical Instrumentation. Maintenance logbook(s) shall be maintained on all instrumentation or measuring devices. Each log shall include:

1. information as set forth in LAC 33:I.5303.D;

2. calibration frequency;

3. standards used for calibration;

4. calibration history;

5. the authorized calibration personnel or institute; and

6. records of all maintenance performed.

F. Environmental Testing Equipment. Equipment used for environmental testing shall meet the following minimums:

1. low background alpha/beta counting systems:

a. the systems shall be calibrated at least yearly;

b. the systems shall be calibrated in accordance with the appropriate methodologies or their appropriate technical manual;

c. attenuation curves shall be developed for appropriate alpha/beta energies that best represent the energies of the radionuclide of concern;

d. voltage plateaus shall be performed yearly, whenever counting gas has been changed, or if major maintenance is performed to the system. If the voltage plateau changes by more than 50 volts, the calibration curves shall be performed;

e. daily backgrounds and reference source checks shall be performed when in use or weekly when not in use; and

f. sample logbooks shall be maintained for all samples that were counted/analyzed on the appropriate systems;

2. gamma spectroscopy systems:

a. the systems shall be calibrated at least yearly and shall include energy, peak width, and efficiency;

b. the systems shall be calibrated according to the appropriate methodologies or the manufacturer's technical manual;

c. daily reference source checks shall be performed when in use or weekly when not in use;

d. monthly background checks shall be performed; and

e. sample logbooks shall be maintained for all samples that were counted/analyzed on the appropriate systems;

3. liquid scintillation systems:

a. the systems shall be calibrated at least yearly and shall include energy, peak width, and efficiency;

b. the systems shall be calibrated according to the appropriate methodologies or the manufacturer's technical manual;

c. daily backgrounds and reference source checks shall be performed when in use or weekly when not in use; and

d. sample logbooks shall be maintained for all samples that were counted/analyzed on the appropriate systems;

4. alpha spectroscopy systems:

a. the systems shall be calibrated at least yearly;

b. the systems shall be calibrated according to the appropriate methodologies or the manufacturer's technical manual;

c. daily reference source checks shall be performed when in use or weekly when not in use;

d. monthly background checks shall be performed; and

e. sample logbooks shall be maintained for all samples that were counted/analyzed on the appropriate systems; and

5. analytical instrumentation not mentioned above, such as counter scalers or ionizing radiation detection equipment:

a. the instrumentation shall be calibrated at least yearly or as mandated by a specific regulatory agency such as EPA, Nuclear Regulatory Commission (NRC), or state governments;

b. the instrumentation shall be calibrated according to the appropriate methodologies or to the manufacturer's technical manual;

c. daily backgrounds and reference source checks shall be performed when in use or weekly when not in use, if applicable; and

d. sample logbooks shall be maintained for all samples that were counted/analyzed on the appropriate systems.

G. Laboratory Environment

1. Radiochemistry and radionuclide assay counting rooms, wet chemistry rooms, and sample preparation and sample storage rooms shall be physically separated. Access and egress shall be controlled.

2. Radiochemistry and radionuclide assay counting rooms shall be adequately monitored for room temperature, humidity, pressure, and electrical supply characteristics on a daily basis when in use. These characteristics shall be maintained to ensure proper operation of the analytical equipment. Records shall be maintained.

3. Adequate measures shall be taken to ensure good housekeeping in the laboratory.

H. Waste Disposal. Radioactive waste disposal shall be thoroughly documented. The documentation shall include the following:

1. quantity disposed of;

2. where the radioactive material was disposed;

3. when it was disposed;

4. who disposed of the material; and

5. activity of disposed material, as applicable.

I. Records (Control Charts)

1. Control charts shall be updated at least monthly.

2. Copies of the control charts shall be available for technician review.

3. Control charts shall have at a minimum the following information:

a. all axes labeled;

b. instrument I.D. and/or serial number;

c. one and two sigma values as well as the normal expected values; and

d. applicable units as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:928 (May 1998).

## §5311. Quality Assurance for Biomonitoring Laboratories

A. Quality assurance practices for toxicity testing laboratories must address all activities that affect the quality of the final effluent toxicity data, such as:

1. effluent sampling and handling;

2. the source and condition of the test organisms;

3. condition of equipment;

4. test conditions;

5. instrument calibration;

6. replication;

7. use of reference toxicants;

8. recordkeeping; and

9. data evaluation.

B. Facilities, Equipment, and Test Chambers

1. Separate test organism culturing and toxicity testing areas shall be provided to avoid loss of cultures to cross-contamination. Ventilation systems shall be designed to prevent recirculation of air from chemical analysis

laboratories into organism culturing or testing areas and from sample preparation areas into culture rooms.

2. Laboratory and toxicity test temperature control equipment shall be adequate to maintain recommended test water temperatures.

3. Recommended materials shall be used for test equipment and test chambers.

C. Laboratory Water Used for Culturing and Test Dilution Water

1. The dilution water used in effluent toxicity tests will depend on the objectives of the study or requirements of discharge permits.

2. Water used for culturing organisms, dilutions, and internal quality assurance tests with food, organisms, and reference toxicants shall be analyzed for toxic metals and organics annually or whenever difficulty is encountered meeting minimum acceptability control requirement. The concentration of the metals Al, As, Cr, Co, Cu, Fe, Pb, Ni, and Zn, expressed as total metals, shall not exceed one ug/L each, and Cd, Hg, and Ag, expressed as total metals shall not exceed 100 ng/L. Total organochlorine pesticides plus PCBs shall be less than 50 ng/L. Pesticide levels shall not exceed EPA's ambient water quality chronic criteria values where available.

3. Water used for culturing and test dilutions shall be prepared using methods in the test manuals.

D. Sample holding times and temperatures of effluent samples must conform to conditions described in the test methods and/or the discharge permit.

E. Test Conditions

1. Water temperature shall be maintained within limits specified for each test.

2. Environmental chambers, incubators or equivalent facilities shall be adequately monitored by utilizing a seven-day continuous recording chart for temperature and light/dark cycle. Verification that the light/dark cycle is maintained shall be done at a minimum of twice monthly if a recording device is not utilized. Temperature recording charts shall be maintained in record form.

F. Test Organism Quality

1. If the laboratory does not maintain in-house cultures of test organisms and obtains organisms from an outside source, the sensitivity of each batch of test organisms shall be determined with the appropriate reference toxicant test performed concurrently with the effluent test, unless the organism supplier provides control chart data from, at a minimum, the last five monthly reference toxicity tests.

2. If the laboratory maintains in-house cultures, the sensitivity of the offspring shall be determined with the appropriate toxicity test performed with a reference toxicant at least once each month. If a given species of test organisms is used only monthly, or less frequently, in toxicity tests, a reference toxicant test shall be performed with each effluent and/or receiving water toxicity test.

3. If the laboratory maintains in-house cultures, records shall be maintained on organism health, mortality, water quality, and culture system maintenance.

4. Test organisms shall be positively identified to species.

G. Food Quality

1. Problems with nutritional suitability of food will be reflected in the survival, growth, and reproduction in cultures and toxicity tests. Artemia cysts and other foods shall be obtained and analyzed as described in the test manuals, unless analysis is provided by the supplier, then the certificate of analysis shall be maintained.

2. New batches of food used in culturing and testing should be analyzed for toxic organics and metals or whenever difficulty is encountered meeting minimum acceptability criteria for control survival and reproduction or growth. Foods exceeding the requirements in the test manuals should not be used.

H. Test Acceptability

1. A control shall be run with each toxicity test.

2. The minimum criteria stated in the appropriate test manuals and/or the discharge permit must be met for a test to be valid.

3. Individual tests may be conditionally acceptable if temperature, dissolved oxygen (DO), and other specified conditions fall outside specifications, depending on the degree of departure and objectives of the test. The acceptability will depend on the experience and professional judgment of the laboratory investigator and reviewing staff of the regulatory agency.

I. Analytical methods for analyses of culture and dilution water, food, and test solutions must include established quality assurance practices outlined in EPA manuals (USEPA 1979a and USEPA 1979b).

J. Calibration and Standardization

1. Instruments used for routine measurements of chemical and physical parameters such as pH, DO, temperature, and conductivity must be calibrated and standardized according to the instrument manufacturer's procedures as indicated in LAC 33:I.5301 on quality assurance. Calibration data is recorded in a permanent logbook.

2. Wet chemical methods used to measure hardness, alkalinity, and total residual chlorine must be standardized prior to use each day according to the procedures for these specific EPA methods.

K. The minimum number of replicates stated in the test methods and/or permit shall be used for each toxicity test.

L. It is the laboratory's responsibility to demonstrate its ability to obtain consistent, precise results with reference

toxicants before it performs toxicity tests with effluents for permit compliance purposes. To meet this requirement, the intralaboratory precision, expressed as percent coefficient of variation (CV percent), of each type of test used in the laboratory shall be determined by performing five or more tests with different batches of test organisms, using the same reference toxicant at the same concentrations, with the same test conditions and the same data analysis methods. A reference toxicant concentration series (0.5 or higher) shall be selected that will consistently provide partial mortalities at two or more concentrations.

M. Documenting Ongoing Laboratory Performance

1. Satisfactory laboratory performance shall be demonstrated by performing one acceptable test per month with a reference toxicant for each test method used in the laboratory. For a given test method, successive tests must be performed with the same reference toxicant, at the same concentrations, in the same dilution, and using the same data analysis methods.

2. A control chart should be prepared for each combination of reference toxicant, test species, test conditions, and end points. Control limits are stated in test method manuals.

N. Reference toxicants such as sodium chloride (NaCl), potassium chloride (KCl), cadmium chloride ($CdCl_2$), copper sulfate ($CuSO_4$), sodium dodecyl sulfate ($CH_3(CH_2)OSO_3Na$), and potassium dichromate ($K_2Cr_2O_7$) are suitable for use by the laboratory. Standard reference materials can be obtained from commercial supply houses or can be prepared in-house using reagent grade chemicals.

O. A complete file shall be maintained for each individual toxicity test or group of tests on closely related samples. Original data sheets shall be signed and dated by the personnel performing the tests. The file should contain:

1. a record of the chain of custody;

2. a copy of the sample log sheet;

3. the original bench sheets;

4. chemical analysis data on the sample(s);

5. detailed records of the test organisms used in the test, such as species, source, age, date of receipt, and other pertinent information relating to their history and health;

6. information on calibration of equipment and instruments; and

7. results of reference toxicant tests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:929 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1438 (July 2000).

## §5313. Reports

A. The work carried out by the testing laboratory shall be covered by a report that accurately, clearly, and unambiguously presents the test results and all other relevant information. The report format should be specifically designed for the type of test/analysis reported, but standardized headings should be utilized whenever possible.

B. Each test report shall include at least the following information:

1. name and address of testing laboratory;

2. title of report, unique identification of report (such as log number), identification of each page of the report by number, and total number of pages in the report;

3. description and identification of the sample(s);

4. date of receipt of sample(s) and date(s) of performance of test, as appropriate;

5. identification of the test method;

6. any deviations, additions to, or exclusions from the test method and any other information relevant to a specific test;

7. disclosure of any nonstandard test method utilized;

8. measurements, examinations, and results, accompanied by appropriate quality assurance (QA) documents;

9. a statement on measurement uncertainty (where relevant);

10. a signature and title of person(s) accepting technical responsibility for the test report and date of issue;

11. if applicable, a statement that indicates that the results relate only to the items tested; and

12. if applicable, a statement that indicates that the report shall not be reproduced in full (or in part, if required) without the written approval of the customer.

C. Corrections or additions to a test report after issue shall be made only by a further document suitably marked (e.g., "Supplement to test report log number..." or as otherwise identified) and shall meet the relevant requirements of this Section.

D. In instances where the laboratory transmits a report via telephone, telex, facsimile (FAX), or any other means of electronic transmittal, the laboratory must have in place a written procedure that will provide protection and/or preservation of client confidentiality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:931 (May 1998).

## §5315. Records

A. The laboratory shall maintain a record system that shall produce accurate, readily available records that document all laboratory activities. The testing laboratory shall retain on record all original raw data and observations, calculations and derived data, calibration records, and the

final test report in a manner in which the continuity and integrity of the analytical process is preserved. All records shall be maintained for a minimum of 10 years or as required by regulatory or legal requirement. Where computers or automated equipment are used for the capture, processing, manipulation, recording, reporting, storage, or retrieval of test data, the laboratory shall ensure that:

1. computer software is documented and adequate for use;

2. procedures are established and implemented to protect the integrity of data. Such procedures shall include, at a minimum, integrity of data entry or capture, data storage, data transmission, and data processing;

3. computers and automated equipment are maintained to ensure proper functioning and retrieval of data; and

4. procedures are developed and implemented to maintain security of data, including prevention of unauthorized access to, or unauthorized amendment of, computer records.

B. All records and test reports shall be held securely and in confidence to the client, unless otherwise required by law.

C. The testing laboratory shall maintain a system that provides for retrievability of the chain of custody of the sample source, the analytical method, results (including calibration and instrument checks), the analyst performing the analysis, and the date. If laboratory records indicate that incorrect or questionable data has been generated by defective or improperly operated equipment, erroneous data entry, or other such anomalies, and a report has been issued, then the laboratory shall immediately notify the client. A written, corrected or amended report must be forwarded to the client.

D. Current reference documents (e.g., EPA manuals, CFRs, Standard Methods) shall be maintained and available to the staff.

E. Entries to all laboratory analytical records shall be made in a legible, permanent fashion and corrections made without obliterating original entries. All corrections shall be initialed and dated.

F. A permanent record of employees' signatures and initials shall be maintained.

G. The laboratory shall maintain administrative records (e.g., training records) in a manner in which the continuity, integrity, and retrievability processes are preserved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:931 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1438 (July 2000).

# Chapter 55. Sample Protocol/Sample Integrity

## §5501. Unacceptable Samples

A. When a sample is received by the testing laboratory and it is apparent or suspected that the sample protocol has not been followed, the laboratory should have a written procedure for handling of the questionable sample. The laboratory may choose to notify the customer and either request another sample or, if the customer insists upon analysis of the sample, reserve the right to include a disclaimer in the final report identifying the sample anomaly. This disclaimer must be permanently attached to the final report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:932 (May 1998).

# Chapter 57. Maintenance of Accreditation

## §5701. Display of Accreditation Certificate

A. A current accreditation document shall be displayed at all times in a location visible to the public in each accredited laboratory. In cases of suspension or discreditation, the document shall be immediately removed.

B. The accreditation documents shall note the scope of accreditation (classes/parameters of approved testing) as well as the time frame for which the laboratory is accredited.

C. The accredited laboratory shall not misrepresent its state or NELAP accreditation documents. This shall include use in laboratory reports, catalogs, advertising, business solicitations, or proposals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:932 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1439 (July 2000).

## §5703. Renewal of Accreditation

A. Accreditation shall be renewed annually, provided the testing laboratory has maintained compliance with these regulations, has reported acceptable proficiency test values for accredited classes, and has paid appropriate fees.

B. Failure to receive a renewal notice does not exempt laboratories from meeting the renewal date requirements.

C. Failure to pay the required renewal fees for 30 days shall automatically suspend accreditation of the laboratory until the fee is received by the department.

D. Failure to pay the required renewal fees for 90 days shall automatically result in discreditation of the laboratory. A laboratory whose accreditation has expired may reapply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:932 (May 1998).

### §5705. Discreditation and Suspension

A. The department may suspend or discredit a laboratory in any or all test categories when the laboratory fails to fully meet all requirements of these regulations. Factors such as the gravity of the offense, the danger to the public of the offense, the intent of the violation, the extent of the violation, and the proposed correction of the problem will be considered to determine if suspension or discreditation is to be imposed. An emergency order immediately discrediting the laboratory may be issued if any conditions exist that present an eminent danger to public health and safety.

B. The department shall notify the laboratory by registered or certified letter of the suspension or discreditation and the reasons for the action.

C. Suspensions shall not be withdrawn until the basis for the suspension has been eliminated or rectified.

D. Appeals for laboratories that have received discreditation notices are governed by applicable statutes.

E. If the testing laboratory's accreditation is revoked by the department or another agency having primary enforcement responsibility or delegated administrative responsibility (e.g., out-of-state laboratories), the laboratory management shall notify, in writing, all clients that utilize the laboratory for analysis of samples and reporting of data to the department that the laboratory's accreditation has been revoked. Clients must be advised of the change in accreditation status within 10 calendar days from the official notice of the action.

F. The following shall be considered grounds for discreditation/suspension:

1. violation of a condition of the accreditation;

2. violation of a statute, regulation, or order of the department;

3. misrepresentations or falsifications made to the department, including any documents associated with accreditation applications;

4. demonstrable nonconformance with the requirements of these regulations, including failure to correct deficiencies;

5. nonpayment of applicable fees;

6. demonstrating incompetence or making consistent errors in analyses or erroneous reporting;

7. failure to report, in writing within 30 days, any changes in location, ownership, management and supervisory staff, authorized representative, major facilities of the laboratory, modification of technique, or any revisions to the accreditation application or required support documentation;

8. failure to employ approved testing methods in the performance of analyses;

9. failure to maintain facilities or equipment properly;

10. failure to report analytical test results as required or to maintain required records of test results;

11. failure to participate successfully in a required performance evaluation program;

12. violation or aiding and abetting in the violation of any provision of these regulations or the rules promulgated hereunder;

13. advertising false credentials;

14. failure to indicate clearly in the records when analyses were subcontracted to another laboratory;

15. performing and charging for additional tests or analyses that have not been requested by the customer, falsifying analyses, or engaging in other unethical or fraudulent practices; and

16. subcontracting performance evaluation samples to another laboratory and using the results to satisfy requirements for accreditation.

G. If the department discredits/suspends a laboratory, the laboratory shall return the certificate of accreditation to the department within 10 calendar days from receipt of notification of the discreditation or suspension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:932 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1439 (July 2000).

### §5707. Changes in Laboratory Operation

A. Changes in laboratory name, ownership, location, personnel, facilities, methodology, or any factors significantly affecting the performance of analyses for which the laboratory was originally accredited shall be reported to the Office of Environmental Assessment within 30 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:933 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:2081 (October 2007).

### §5709. Reaccreditation

A. Reaccreditation shall require the submission of a new, revised application demonstrating and documenting corrective action implemented since loss of accreditation status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:933 (May 1998).

# Chapter 59. Accreditation for Laboratories Participating in the NELAP Certification Program

## §5901. Accreditation Process

A. In-state laboratories participating in the National Environmental Laboratory Accreditation Program (NELAP) shall be certified under standards established by these regulations and those of the NELAP program, as found at http://134.67.104.12/html/nelac/standards.htm or by writing NELAP, U.S. Environmental Protection Agency (MD-75A), Research Triangle Park, NC 27711, Attention: NELAP Director, telephone (919) 541-1120. NELAP-certified laboratories shall be required to meet the requirements for reciprocity as set forth in LAC 33:I.4713.

B. The NELAP accreditation process comprises these basic steps:

1. the submittal to the department of a written request from the laboratory in the form of an application provided by the department with the payment of all applicable fees;

2. a review of personnel qualifications;

3. an on-site assessment/evaluation of the laboratory submitting the request/application by authorized representatives of the department with the appropriate laboratory background;

4. the successful participation in the NELAP-approved proficiency evaluations; and

5. a review of the quality assurance/quality control practices, and quality systems in use at the laboratory.

C. When all the requirements for accreditation have been successfully fulfilled, the department shall grant the applicant laboratory a formal notice of accreditation and a certificate of accreditation that lists those fields of testing, methods used by the laboratory, and individual analytes determined by a particular method for which the laboratory is accredited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1439 (July 2000).

## §5903. Categories of Accreditation

A. A laboratory may apply for accreditation in any one or more of the nine fields of testing and in one or more of the 11 test categories applicable to the field(s) of testing selected. The laboratory shall be accredited in those parameters/analytes within the test category(ies) found in LAC 33:I.4705.B. The laboratory shall be accredited in those parameters/analytes within the test category(ies) for which the laboratory demonstrates acceptable performance on proficiency samples (when available) and meets all other requirements of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1439 (July 2000).

## §5905. Inspections of a Laboratory

A. As a condition of obtaining and maintaining NELAP accreditation, the laboratory shall permit and facilitate inspections/assessments by personnel or designated representatives of the department. The specific requirements for an on-site inspection are outlined in LAC 33:I.Chapter 51.

B. Inspectors shall conform to appropriate safety procedures during an on-site inspection. The specific requirements for an inspector are outlined in LAC 33:I.4709.B.

C. A comprehensive on-site inspection/assessment of each accredited laboratory shall be conducted at intervals of not more than two years. The department may make an announced or unannounced inspection or assessment of an accredited laboratory whenever the department, in its discretion, considers such an inspection or assessment necessary to determine the extent of the laboratory's compliance with the conditions of its accreditation and these regulations.

D. The primary accrediting authority shall forward a written report of findings to the laboratory within 30 calendar days from the date of the on-site inspection/assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1439 (July 2000).

## §5907. Corrective Action Reports in Response to On-Site Inspections

A. The laboratory shall submit to the department a corrective action plan/report. The plan/report shall include, at a minimum, the action(s) that the laboratory shall implement to correct each deficiency noted in the on-site inspection/assessment report and the time period required to accomplish each corrective action.

1. If the corrective action plan/report is deemed unacceptable, the laboratory shall have an additional 30 days to submit a revised corrective action plan/report.

2. If the corrective action plan/report is deemed unacceptable after the second submittal, the laboratory shall have its accreditation revoked in accordance with Section 4.4.3 of the NELAP standards for all or any portion of its scope of accreditation for any or all fields of testing.

3. If the laboratory fails to implement the corrective actions as stated in their corrective action plan/report, its accreditation shall be revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1440 (July 2000).

### §5909. Proficiency Testing Participation

A. All laboratories seeking accreditation under NELAP shall participate in the department-approved proficiency testing program as required in LAC 33:I.4711.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1440 (July 2000).

### §5911. Accreditation for Out-of-State Laboratories Seeking NELAP Accreditation

A. Acceptance of accreditation from another NELAP accrediting authority in that field of testing shall be determined by the department. The laboratory must comply with these regulations and the standards established by NELAP. NELAP certified laboratories shall be required to meet the requirements for reciprocity as set forth in LAC 33:I.4713.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1440 (July 2000).

### §5913. Certification of Compliance Statement

A. The Certification of Compliance statement as required in Section 4.1.9 of the NELAP standards shall be required. This statement shall be signed by the laboratory manager and the quality assurance officer or other designated person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1440 (July 2000).

### §5915. Accreditation

A. The period of accreditation shall be one year. To maintain accreditation the laboratory shall meet all requirements of these regulations and the NELAP standards.

B. The department may suspend or discredit a laboratory in any or all of the test categories within the fields of testing for failure to meet the requirements of these regulations and the NELAP standards.

C. The department shall notify the laboratory by registered letter of the suspension or discreditation and the reason for the action.

D. Accreditation shall remain in effect until revoked by the accrediting authority, withdrawn at the written request of the accredited laboratory, or the expiration of the accreditation period.

E. The laboratory may renew accreditation by meeting the requirements outlined in LAC 33:I.5703.

F. Appeals for laboratories that have received discreditation or revocation notices are governed by applicable statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1440 (July 2000).

# Title 33

# ENVIRONMENTAL QUALITY

## Part I. Office of the Secretary

## Subpart 4. Emergency Response Regulations

## Chapter 69. Emergency Response Regulations

### §6901. Applicability

A. The requirements of these regulations apply to:

1. the release or potential release of a pollutant resulting from an off-site emergency condition, as defined by this Chapter;

2. any incident that has been declared an emergency by the secretary in accordance with R.S. 30:2033; and

3. the transportation, receipt, and storage of material resulting from the cleanup and/or abatement of an off-site emergency condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), and (15).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:977 (October 1996).

### §6903. Exclusions

A. The requirements of these regulations do not apply to spills, cleanup, and/or abatement of materials subject to management under the Oil Spill Prevention and Response Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), and (15).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:977 (October 1996).

### §6905. Definitions

A. The following terms as used in this Chapter shall have the meaning listed below.

*Act*—the Louisiana Environmental Quality Act, R.S. 30:2001 et seq.

*Administrative Authority*—the Secretary of the Department of Environmental Quality, or his designee or the appropriate assistant secretary or his designee.

*Cleanup*—all actions taken to contain, collect, control, identify, analyze, treat, disperse, remove, or dispose of pollutants resulting from a release associated with an off-site emergency condition.

*Cleanup Costs*—all costs incurred by the state or any of its political subdivisions, or their agents, or by any other person participating with the approval of the administrative authority in the cleanup of pollutants resulting from an off-site emergency condition.

*Department*—the Department of Environmental Quality.

*Emergency Abatement*—action taken to prevent or control a release or potential release of pollutants that could reasonably be expected to cause an off-site emergency condition.

*Emergency Condition*—any condition that could reasonably be expected to endanger the health and safety of the public, cause significant adverse impact to the land, water, or air environment, or cause severe damage to property. This definition includes transportation related events, abandoned containers, barrels, and other receptacles.

*Emergency Response Storage Facility*—a facility used for storage of material generated from the cleanup and/or abatement of an off-site emergency condition.

*Off-Site*—areas beyond the property boundary of the facility, and areas within the property boundary to which the public has routine and unrestricted access during or outside business hours.

*Pollutant*—any substance introduced into the environment of the state by any means that would tend to degrade the chemical, physical, or biological integrity of such environment.

*Release*—the accidental or intentional spilling, pumping, pouring, emitting, escaping, leaching, or dumping of any pollutants into or on any land, air, water, or groundwater. A release shall not include a federal or state permitted release.

*Responsible Person*—any person owning, handling, storing, transporting, or managing a pollutant that results in an off-site emergency condition. This shall include bailees, carriers, and any other person in control of a pollutant and who may be operating under a lease, contract, or other agreement with the legal owner thereof. For the purposes of this Chapter, responsible persons do not include those innocent landowners who exercise no control or ownership over the materials or activities giving rise to an off-site emergency condition.

*Secretary*—the Secretary of the Department of Environmental Quality.

*SPOC*—the Office of Environmental Compliance, Emergency and Radiological Services Division, Single Point of Contact (SPOC).

*Transportation*—the movement of solid, liquid, or hazardous reusable materials or wastes. This includes, but is not limited to, the transportation of cleanup materials from the site of an off-site emergency condition to a point of collection authorized by the administrative authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), and (15).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:977 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2081 (October 2007).

### §6907. Notification Procedures for Emergencies

A. Upon learning of an off-site emergency condition, the responsible person having control over the material shall notify the administrative authority, if notification is required, in accordance with LAC 33:I.Chapter 39.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), and (15).
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:977 (October 1996).

### §6909. Emergency Abatement and/or Cleanup Responsibilities

A. In the event of an off-site emergency condition resulting in the release or potential release of a pollutant, any responsible person having control over the material shall immediately commence clean up of the release or commence emergency abatement activities to prevent or control the release.

B. Abatement and/or cleanup of an off-site emergency condition identified under Subsection A of this Section shall be to the extent necessary to prevent a hazard to human health and safety and the environment. However, nothing in this Section shall preclude the administrative authority from requiring additional cleanup or remediation measures under the hazardous waste, solid waste, or other applicable department regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), and (15).
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:978 (October 1996).

### §6911. Responsible Person Unwilling or Unknown

A. If a responsible person required to clean up or conduct abatement measures under LAC 33:I.6909 fails or refuses to do so, or does not complete abatement and/or cleanup, the secretary may declare that an emergency exists in accordance with R.S. 30:2033 and abate the emergency and/or cleanup the release or contract for the emergency abatement and/or cleanup of the release or potential release.

B. In the event of an off-site emergency condition resulting in release or potential release of a pollutant in which the responsible person is unknown, the secretary may declare that an emergency exists in accordance with R.S. 30:2033 and initiate emergency abatement and/or cleanup as necessary to protect public health and welfare and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), (15), 2015, and 2033.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:978 (October 1996).

### §6913. Reimbursement for Expenses of Emergency Abatement and/or Cleanup

A. The administrative authority may seek reimbursement for any emergency abatement and/or cleanup costs incurred by the state by any method provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), (15), and 2015.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:978 (October 1996).

### §6915. Transportation, Receipt, and Storage of Material from the Cleanup and/or Abatement of an Off-Site Emergency Condition

A. Transportation, receipt, and storage of any material generated as a result of the cleanup and/or abatement of any off-site emergency condition, and not specifically authorized by the *Louisiana Administrative Code*, Title 33, Part V, Subpart 1, may be authorized by the administrative authority.

B. These regulations supplement and do not replace requirements of 49 CFR Parts 100-177 that remain fully applicable to the transportation of hazardous materials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), and (15).
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:978 (October 1996), repromulgated LR 22:1212 (December 1996).

### §6917. Easements, Rights of Way, Eminent Domain

A. In the event of a declared emergency condition, the secretary shall have the authority to claim comprehensive easement, rights of way, and eminent domain over the immediate site or the location of the emergency condition and all other areas sufficient to secure, contain, cleanup, or abate the emergency condition in accordance with R.S. 30:2036.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), (15), and 2036.
HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:978 (October 1996).

### §6919. Emergency Response Storage Facility Requirements

A. This Section applies to emergency response storage facilities not otherwise authorized by the *Louisiana Administrative Code*, Title 33.

1. Storage Restrictions

a. Storage of material generated from the abatement and/or cleanup of an off-site emergency condition may be authorized by the administrative authority for up to 90 days. Storage of such material maintained in an emergency response facility shall be in accordance with the requirements in Paragraph A.2 of this Section.

b. If required, due to unforeseen, temporary, or uncontrollable circumstances, the administrative authority may authorize storage for longer than 90 days. No extension

granted in accordance with this Section may exceed 30 days in duration.

2. Management of Tanks, Containers, and Storage Area. Tanks or containers used to store material generated from the abatement and/or cleanup of an off-site emergency condition shall be managed in the following manner:

a. a legible label shall be affixed to the outside of the tank or container so that it is readable from the aisle adjacent to where the container is stored and shall contain all pertinent information known regarding its contents including, but not limited to, date of incident, location of the release, emergency abatement/cleanup material transporter name, if known, and, if applicable, EPA identification number, generator name and, if applicable, EPA identification number or temporary Louisiana identification number, waste code, and U.N. number;

b. if a tank or container is not in good condition (e.g., bulging, severe rusting, apparent structural defects) or if it begins to leak, the owner or operator of the emergency response storage facility shall transfer the contents of the tank or container to a tank or container that is in good condition or manage the tank or container's contents in some other way that complies with the requirements of this Section;

c. tanks or containers used shall be made of or lined with materials that will not react with, or be incompatible with, the material to be stored so that the ability of the tank or container to contain the material is not impaired;

d. containers shall not be opened, handled, or stored in a manner that may rupture the container or cause it to leak;

e. at least weekly the emergency response storage facility owner or operator shall inspect tanks, containers, and areas where containers are stored, looking for leaking or deteriorating tanks or containers and at the overall condition of the storage area. Any problems occurring in the storage area shall be immediately corrected by the owner or operator upon discovery; and

f. tanks or containers used for the storage of material generated from the abatement and/or cleanup of an off-site emergency condition shall be free of any incompatible residue from any previous contents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), and (15).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:978 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1671 (August 2004).

## §6921. Reporting Requirements

A. No later than 30 days after material from the cleanup and/or abatement of an off-site emergency condition is removed from an emergency response storage facility, the owner or operator of the facility shall submit a written report detailing the ultimate disposition of the material, by mail or fax to SPOC. The report shall be clearly marked "WASTE DISPOSITION REPORT." The report shall reference the department-issued incident number. Other information in the report may include location and date of the emergency incident, name and address of the company transporting the pollutant that resulted from the emergency incident, name and location of the facility where the pollutant is/was stored, and name and location of the facility accepting the pollutant for disposal, recycling, or reuse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), and (15).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:979 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:2082 (October 2007).

## §6923. Characterization of Stored Material

A. The responsible person must determine the character (chemical composition and regulatory status) of any material stored in an emergency response storage facility before the time allowed for storage in accordance with LAC 33:I.6919 has elapsed and prior to any subsequent management activities, except as authorized by the administrative authority.

B. Except as otherwise provided by this Chapter, materials generated from the abatement and/or cleanup of an off-site emergency condition or cleanup as a result of a discharge of a pollutant must be managed according to the requirements of all applicable regulations including, but not limited to, LAC 33:V and VII.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), (15), and 2025.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:979 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1671 (August 2004).

## §6925. Enforcement

A. Failure to Comply. Failure of any person to comply with any of the provisions of these regulations or order issued hereunder constitutes a violation of the act.

B. Investigations: Purposes, Notice. Investigations may be undertaken to determine whether a violation has occurred or is about to occur, the scope and nature of the violation, and the persons or parties involved. The results of an investigation shall be given to any complainant who provided the information prompting the investigation, upon written request, and if advisable, to the person under investigation if the identity of such person is known.

C. Development of Facts, Reports

1. The administrative authority may conduct inquiries and develop facts in investigations by staff investigatory procedures or formal investigations and may conduct inspections and examinations of facilities and records. The administrative authority or a presiding officer may hold public hearings and/or issue subpoenas in accordance with

R.S. 30:2025(I) and require attendance of witnesses and production of documents, or may take such other action as may be necessary and authorized by the act or rules promulgated by the administrative authority. At the conclusion of the investigation all facts and information concerning any alleged violation shall be compiled by the staff of the department. A report of the investigation shall be presented to the administrative authority for use in possible enforcement proceedings. Any complainant who provided the information prompting the investigation shall be notified of its results.

2. The administrative authority shall have access to and be allowed to copy any records that the department or its representative finds necessary for the enforcement of these regulations. For records maintained in either a central or private office that is open only during normal office hours and is closed at the time of the inspection, the records shall be made available as soon as the office is open, but in no case later than noon the next working day.

D. Enforcement Action. When the administrative authority determines that a violation of the act or these regulations has occurred or is about to occur, he shall initiate one or more of the actions set forth in R.S. 30:2025, or as otherwise provided by appropriate rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), (15), and 2025.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:979 (October 1996).