

**STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

**AMENDED DECLARATION OF EMERGENCY  
AND ADMINISTRATIVE ORDER**

Pursuant to the authority granted to me by Louisiana Revised Statutes 30:2001 *et seq.*, and particularly La. R.S. 30:2033 and 2011(D)(6), I hereby make the following findings, declaration and order, which supercede the Declaration of Emergency and Administrative Order issued by this agency on August 30, 2005 :

**FINDINGS AND DECLARATION**

1. On the 29th day of August, 2005, Hurricane Katrina (hereinafter "Hurricane") struck Louisiana, causing widespread damage within the parishes of Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge, and West Feliciana, which parishes shall constitute the specific areas covered by this Declaration and Order. These areas shall herein be referred to as the "Emergency Areas."

2. By State of Louisiana Proclamation No. 48 KBB 2005, the Governor declared on August 26, 2005, that a state of emergency exists in the state of Louisiana, as Hurricane Katrina poses an imminent threat, carrying severe storms, high winds and torrential rain that may cause flooding and damage to private property and public facilities and threaten the safety and security of the citizens of the state of Louisiana.

3. On August 29, 2005, FEMA issued a Disaster Declaration, FEMA-1603-DR covering south Louisiana.

4. I find that the Hurricane has created conditions that require immediate action to prevent irreparable damage to the environment and serious threats to life or safety throughout the Emergency Areas.

WHEREFORE, I hereby declare that an emergency exists, and that the following measures are necessary to prevent irreparable damage to the environment and serious threats to life or safety throughout the Emergency Areas.

## ORDER

Within the Emergency Areas:

### 1. Waste water Treatment Systems

a. Permittees with Louisiana Pollutant Discharge Elimination System (LPDES) permits should consider activating the upset provisions in their permits. LAC 33:IX.2701.N.1 defines Upset as the following:

*An exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.*

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of LAC 33:IX.2701.N.3 are met. Under upsets caused by this hurricane, the 24 hour oral notification is waived unless the non-compliance may endanger human health. Authorization is hereby granted to discharge water placed in storage tanks, other containers or vessels for the purpose of stabilization, provided that the tanks, containers or vessels had been emptied of their previous contents prior to filling with the water. To the extent practicable, discharges should not contain free oil, hydrocarbons or other pollutants in other than trace amounts. No free oil shall mean that the discharge shall not

create a visible sheen. Water that accumulates in storage tanks, containers or vessels as a result of rainfall, flooding or tidal surge may be discharged under the same conditions.

Appendix A sets forth guidance to operators of sanitary waste water treatment systems to aid in the return to compliant operations to prevent further damage to the environment and serious threats to life or safety throughout the Emergency Areas.

## **2. Solid Waste Management**

a. Owners and operators of solid waste management facilities permitted by the Department before the Hurricane are authorized to make all necessary repairs to restore essential services and the functionality of stormwater management and leachate collection systems damaged by the Hurricane, without prior notice to the Department. Within thirty days of commencing the work of such repair or replacement, however, the permittee shall notify the Department in writing, describing the nature of the work, giving its location, and providing the name, address, and telephone number of the representative of the permittee to contact concerning the work.

b. Uncontaminated Hurricane-generated trees, leaves, vines, twigs, branches, grass, and other vegetative debris may be disposed of in permitted Type II or Type III landfills. Disposal of any solid waste in unpermitted facilities or areas may be authorized by the Department on a case-by-case basis.

c. Construction and demolition debris that is mixed with other Hurricane-generated debris need not be segregated from other solid waste prior to disposal in a permitted landfill.

d. Except as otherwise specifically provided herein, Hurricane-generated debris shall be disposed of in a Type II or III landfill. Non-recyclables and residuals generated from segregation of Hurricane-generated debris shall also be disposed of in a Type II or III landfill.

e. Ash residue from the combustion of yard trash or clean wood wastes may be disposed of in a permitted disposal facility, or may be land spread in any areas approved by local government officials except in wellhead protection areas or water bodies.

f. Ash from the combustion of other Hurricane-generated debris shall be disposed of in a Type II or III landfill or as otherwise specifically authorized by the Department. Metals or other non-combustible materials segregated from the ash residue may also be disposed of in a permitted landfill.

g. White goods (i.e. unsalvageable refrigerators, freezers, air conditioners, stoves, range tops, etc) shall be stored in an area separate from other solid wastes and shall be stored in a manner that prevents vector and odor problems and shall be removed from the facility within 90 days.

h. Putrescible waste (e.g. rotting food that has been removed from unsalvageable refrigerators and freezers) shall be disposed of in a Type II landfill.

i. The disposal of excessive accumulations of small animal carcasses shall be in accordance with the Louisiana Department of Health and Hospitals sanitary code. The disposal of large animal carcasses (e.g. horses, cows) shall be in accordance with the instructions from the Louisiana Department of Agriculture.

j. Permitted landfills, transfer stations, pickup stations and authorized staging areas that have been authorized by the Department, within or outside of the Emergency Area, which accept Hurricane-generated debris in accordance with the terms of this Order may accept Hurricane-generated debris for disposal or storage without the need to first modify existing permits or certifications. Operators of landfills shall seek modifications of their existing permits to address any long-term impacts of accepting Hurricane-generated debris on operations and closure that are not addressed in existing permits. Long-term impacts are those that will extend past the expiration date of this Order. The requests for modification shall be submitted as soon as possible, but no later than the expiration date of this Order. No permit fee will be required for any modifications necessitated solely by the Hurricane clean-up activities.

k. Authorizations may be issued prior to or following a site inspection by Department personnel for staging areas to be used for temporary storage and chipping, grinding or burning of Hurricane-generated debris. Authorizations may be requested by providing a notice to the Department containing a description of the staging area design and operation, the location of the staging area, and the name, address, and telephone

number of the site manager as described in Department correspondence dated September 13, 2004 to the Parish Governing Authorities.

**3. Hazardous Waste**

Hazardous waste generated as a result of the hurricane event must be separated from other hurricane generated waste and disposed of at a permitted hazardous waste disposal facility. Household wastes collected during this event, which are exempt from the regulatory requirements applicable to hazardous wastes, must be managed not only in an environmentally sound manner but also in accordance with the appropriate LDEQ rules and regulations governing the storage and processing of this type of waste.

**4. Open Burning**

a. The Department authorizes local governments or their agents to conduct the open burning of Hurricane-generated trees, leaves, vines, twigs, branches, grass, and other vegetative debris within or outside of the Emergency Area, without prior notice to the Department and provided that the provisions of LAC 33:III.1109.D.6. are met. This order does not authorize any other outdoor burning of non-listed debris streams. Within seven days of commencing any such burning, the local government or its agent shall notify the Department in writing, describing the general nature of the materials burned, stating the location and method of burning, and providing the name, address, and telephone number of the representative of the local government to contact concerning the work and the anticipated duration of the burning event. This order does not relieve the local government or the agent from any requirement to obtain an open burning authorization from any other governmental entity empowered to grant such authorizations. Notwithstanding the provisions of this paragraph, the burning of asbestos-containing materials or hazardous waste is prohibited.

b. The Department will consider, on an individual basis, requests for approval for open burning, by persons other than local governments or their agents, of Hurricane-generated trees, leaves, vines, twigs, branches, grass, and other vegetative debris. Any such burning approved by the Department must be conducted in compliance with the requirements of LAC 33:III.1109.D.6.

**5. Air Pollution Sources Other than Open Burning**

a. The Department authorizes the minor repair of any previously permitted stationary source of air pollution that was damaged by the Hurricane to restore it to its previously permitted condition without prior notice to the Department. Within thirty days of commencing such repairs, however, the permittee shall notify the Department in writing, stating the location and nature of the work and providing the name, address, and telephone number of the representative of the permittee to contact concerning the work. Minor repairs are repairs that would not constitute reconstruction under any definition of 40 CFR part 60, 61 or 63 and that could not affect potential to emit any pollutant. Repairs that would constitute reconstruction under any definition of 40 CFR Part 60, 61 or 63, or repairs that could affect potential to emit any pollutant are not authorized by this Order.

b. The Department will consider, on an individual basis, requests for approval for the following sources of air pollution:

i. temporary air pollution control devices, such as portable flares, used for vessel and pipeline segment purging and the limited operation of facilities with damaged vapor control equipment;

ii. portable storage tanks, used for interim storage while damaged equipment is being repaired; and

iii. repairs, other than the minor repairs addressed in Section 4.a above, of permitted stationary sources that have been damaged by the hurricane, provided that the sources are restored or replaced with equipment that is identical or the functional equivalent, to meet permit conditions.

c. The throughput of any temporary gasoline storage vessels used exclusively for providing gasoline to employees of the tank operator will not be counted toward the annual or 30-day average throughput for purposes of determining the applicability of control requirements under LAC 33:III.2131. This subparagraph applies only to gasoline provided to employees at or below the operator's cost. This subparagraph does not exempt the operator from any other applicable regulatory requirements, specifically including, but not limited to, the spill prevention and control requirements of the Louisiana Water Quality Regulations (LAC 33:IX).

## **6. Asbestos Clean-up**

a. The Department waives the requirement for prior notification for emergency demolition or emergency cleanup of asbestos-containing material resulting from the Hurricane. Within one business day of commencing such demolition or cleanup, however, the person responsible for such work shall notify the Department in writing. The notification shall be consistent with the information on the Notice for Asbestos Demolition or Renovation form, AAC-2, and shall include the location and nature of the work and the name, address, and telephone number of the operator on the project. The procedures in LAC 33:III.5151 and LAC 33:III.Chapter 27 for handling asbestos-containing material shall be complied with during demolition and cleanup. Asbestos-containing material shall be disposed of in a Type I or II landfill in accordance with LAC 33:VII of the Louisiana Administrative Code. Burning of asbestos containing material is prohibited.

b. The Department waives the requirement pursuant to LAC 33:III.5151.F.1 that an affected facility be thoroughly inspected for the presences of asbestos. Debris generated by the renovation or demolition in the affected area does not need to be handled in accordance with the requirements of LAC 33:III.5151.F unless it is known to be Regulated Asbestos Containing Material. However, appropriate personal protection equipment (e.g., tyvek suits, appropriate respirators ~~dust masks~~, etc.) are recommended.

c. The department waives the requirement pursuant to LAC 33:III.2799.E.2.b.ii, that applicants receiving training from providers not recognized by the state of Louisiana also submit proof of training in current Louisiana asbestos regulations (see LAC 33:III.2799.F.5.g).

d. The department waives the requirement pursuant to LAC 33:III.2799.F.5.c.i that recognized asbestos Training Providers give the department notice at least five days prior to class commencement (Notification must be made at least three days prior to a course when only the state regulations are to be taught.) Notice shall be provided to the department within 24 hours of class commencement.

e. Local education agencies and state government may make emergency use of a building as a school or state building. The agency making use of the building

may request an extension of the deadline to inspect the building within 4 months of the decision to use the building pursuant to LAC 33:III.2707.A.2.

f. The department waives the requirement pursuant to LAC 33:III.2723.A.2 that the local education agency or state government must submit a management plan prior to any building's use as a school or state buildings. A management plan shall be submitted within 6 months of the initial use of the building.

**7. General Conditions**

a. This Emergency Final Order does not convey any property rights or any rights or privileges other than those specified in this Order.

b. This Emergency Final Order only serves as relief for the duration of the Order from the regulatory and proprietary requirements of the Department, and does not provide relief from the requirements of other federal, state, water management districts, and local agencies. This Order therefore does not negate the need for the property owner to obtain any other required permits or authorizations, nor from the need to comply with all the requirements of those agencies.

**8. General Limitations**

The Department issues this Emergency Final Order solely to address the emergency created by the Hurricane. This Order shall not be construed to authorize any activity within the jurisdiction of the Department except in accordance with the express terms of this Order. Under no circumstances shall anything contained in this Order be construed to authorize the repair, replacement, or reconstruction of any type of unauthorized or illegal structure, habitable or otherwise.

**9. Other Authorizations Required**

Nothing in this Order shall eliminate the necessity for obtaining any other federal, state, or local permits or other authorizations that may be required.

**10. Extension of time to comply with specified deadlines**

For facilities regulated by the Department in the Emergency Area, this Order extends the time for a period of 30 days to comply with the following specified deadlines that occur between August 28,2005 and the expiration of this order:

a. The time deadlines to conduct or report periodic monitoring required by permits, other authorizations, enforcement actions, or settlement agreements, except for monitoring required by air permits issued under Title IV or V of the Clean Air Act or under the PSD program;

b. The time deadlines to file an application for renewal of an existing permit, except for air permits issued under Title V of the Clean Air Act.

**11. Completion of Authorized Activities**

a. All activities authorized under this Emergency Final Order must be commenced before the expiration of this Order unless otherwise provided in an authorization or permit. The deadline for commencement under any authorization or permit issued under this order may be extended on a showing that contractors or supplies are not available to commence the work, or if additional time is needed to obtain any required authorization from the Federal Emergency Management Agency, the U.S. Army Corps of Engineers, or other local, state, or federal agencies.

b. A blanket approval of time extensions under Louisiana Administrative Code 33:V.1109.E.2 is necessary within the Emergency Areas for hazardous waste generators and small quantity generators for the storage of their hazardous wastes on site, pending the cleanup of the Hurricane damage and restoration of essential services. The rules authorize a thirty-day extension because of unforeseen and uncontrollable circumstances. The specific effects of the Hurricane were unforeseen and uncontrollable. Therefore, to avoid having to issue a potentially large number of individual approvals on a case-by-case basis and waste limited agency resources during the time of emergency, the Department authorizes a general extension of time of thirty days from the expiration of this Order for all such hazardous waste generators and small quantity generators for the storage of their hazardous wastes on site, in the parishes within the Emergency Areas, and where their 90 day accumulation period expires within the term of this Order.

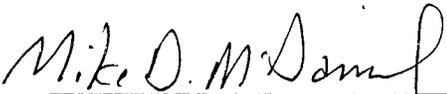
**12. Amendments**

This Order may be amended as required to abate the emergency.

**13. Expiration Date**

This Amended Declaration of Emergency and Administrative Order shall take effect immediately upon execution by the Secretary of the Department, and shall expire in 60 days from the date of execution set forth below, unless modified or extended by further order.

**DONE AND ORDERED** on this 3rd day of September, 2005, in Baton Rouge, Louisiana.

  
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Mike D. McDaniel, Ph.D. Secretary

## APPENDIX A

### GUIDANCE PROTOCOL FOR SANITARY WASTE WATER TREATMENT SYSTEMS

The following protocol is intended to assist operators of sanitary waste water treatment systems in the Emergency Area in start up and operation.

#### **1. Access**

Entrance to the treatment plant should be considered only after flood waters have receded enough to allow safe operation of the treatment plant including the safe conditions for staff. Accessibility to treatment plants in restricted areas may need to be cleared with the Office of Emergency Preparedness. Contact LDEQ (SPOC 225-219-3640) if assistance in gaining access to the treatment plant is required. The use of sound personal protective equipment for safety in unsanitary or unsafe conditions is required. Early return to compliant operation minimizes long term problems within the entire wastewater system.

#### **2. Power Supply**

For use of generator power, arrange for a reliable and continual fuel source. Contact LDEQ (SPOC 225-219-3640) if assistance in obtaining fuel for power generation at your treatment plant is needed. If no generation is available and you must wait for electrical providers; consider notification to residents of the effect on collection lines. If removal of clean out plugs is needed to prevent back up into homes, notify affected customers warning them to remain clear of these areas. If pump trucks are used, LDEQ can advise of locations to dispose of the pumped sewage.

#### **3. Start Up**

Once it is safe, re-power the treatment system, aerators and pumps. The primary goal is to remove sanitary wastewater from contact with humans, while making every effort to do so in a manner that is practical and least impacting on the environment. Activate disinfection units and maintain them. Initial effluent will likely be poorly treated and of a very poor quality. Adequate disinfection will be important to protect human health downstream of the discharge. If the system has been down and/or without power for an extended period of time, resident bacteria used in the treatment process may need to be re-established. Consider reseeded the system with activated sludge from operating aerated treatment plants. Several treatment plants are available for use in reseeded. Contact LDEQ for information regarding system seed sources.

#### **4. Monitoring**

Watch plant operations carefully to confirm it is functioning properly. Ensure that lift stations within the collection system are functional. Without functioning lift stations,

sewage is not being removed from residences and sent for treatment. Visually observe effluent to maximize treatment effectiveness in the short term. If simple tools and/or tests are available to diagnose the plant's operational status ("sludge judge", settle-o-meter, dissolved oxygen meters, BOD analyses) use them frequently. If your plant is discharging poorly treated sewage, consider the impacts to persons, fish and wildlife downstream, including the possibility that drinking water intakes may be located downstream of your effluent. Notification to downstream users may be necessary to protect human health. Sample and analyze your effluent per LPDES requirements as soon as you are able.

## **5. Notifications and Documentation**

Discharges that result in emergency conditions (threat to human health and the environment) must be reported immediately (1-877-925-6595). Discharges that result in emergency conditions (threat to human health and the environment) may require notification to affected persons. Report to the DEQ any discharges that interfere with downstream uses, such as swimming or drinking water sources or if fish kills occur. Discharge Monitoring Reports (per permit requirements) should be used to notify the DEQ of non-emergency conditions. Notification to sewage users may be necessary if problem with the system prevents removal of sewage from residences (or other human contact) on an on-going basis. Notification to downstream users may be necessary to protect human health. Notify the Local Office of Emergency Preparedness when hurricane damage repairs are known – Federal Emergency Management Agency (FEMA) may be able to help with costs associated with hurricane damage.

A permittee who wishes to establish the affirmative defense of upset must document the cause of the upset, that the facility was being properly operated at the time of the upset, that notice of the upset that exceeded effluent limitations was submitted to the DEQ and that the permittee took all reasonable steps to minimize or prevent the likelihood of adversely affecting human health or the environment.

## **6. Records Management**

Hard copy or electronic copies of files associated with environmental issues for your facility may be available at the DEQ. Files destroyed by the hurricane can be obtained by the Responsible Persons for your system from the DEQ free of charge. Please contact Records Management at (225) 219-3172 or online at <http://www.deq.louisiana.gov/pubRecords/>.