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Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Advanced Notice of Rulemaking and Solicitation of Comments on
Comprehensive Toxic Air Pollutant Emission Control Program, Log #AQ297
(LAC 33:III.211, 5101, 5103, 5105, and 5107) (0905Pot2)

The Louisiana Department of Environmental Quality is requesting comments on the proposed revision to the regulations in LAC 33:III.211, 5101, 5103, 5105, and 5107 (AQ297). This is a preliminary step in the rulemaking process. Official rulemaking will be initiated after review and consideration of the comments received on this advanced notice. Some of the revisions include the following: changes made to the applicability provisions to clarify when major sources are subject to all or part of the provisions in Chapter 51; an amended definition for *Virgin Fossil Fuel* to exclude catalytic coke; removal of the electric utility steam generating exemption; new exemption for ammonia emissions from the controls of nitrogen oxide emissions; new exemption for sulfuric acid emissions from the regeneration of the catalyst from the catalytic cracking process; and consolidated reporting requirements. The department particularly wishes to receive comments on the anticipated costs due to the removal of the electric utility steam generating exemption.

All interested persons are encouraged to submit written comments on the draft proposal. Comments are due no later than 4:30 p.m., June 25, 2009, and should be submitted to Gilberto Cuadra, Office of Environmental Assessment, Plan Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3240 or by email to gilberto.cuadra@la.gov. Persons commenting should reference this document as AQ297. If you have any questions regarding this document please contact Gilberto Cuadra at (225) 219-3507. Copies of this draft proposed rule can be purchased by contacting DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ297. This draft rule is available on the internet at <http://www.deq.louisiana.gov/portal/tabid/1669/Default.aspx>.

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

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Title 33
ENVIRONMENTAL QUALITY

Part III. Air

Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs

§211. Methodology

A. Formula to Apportion Fees

Air Toxics Permits Application Fee for major sources of toxic pollutants (based on type of facility and on rated production capacity/throughput)	Surcharge of 10% of the permit application fee to be charged when there is an increase in toxic air pollutant emissions above the Minimum Emission Rates (MER) listed in LAC 33:III.5112, Table 51.1
Air Toxics Annual Emissions Fee for major sources of toxic air pollutants (based on air toxic pollutants emitted submitted on the annual emissions inventory) [†]	Variable
Annual Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Variable
New Application Fee (based on type of facility and on rated production capacity/throughput)	Variable
Major and Minor Modification Modified Permit Fee (based on type of facility and on rated production capacity/throughput)	Variable
PSD Application Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 50% of the application fee when a PSD permit application is being processed
"NESHAP" Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 25% of the Annual Maintenance Fee for that particular process/plant to be added to the Annual Maintenance Fee
"NSPS" Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 25% of the permit application fee to be charged for any permit application that includes the addition of new equipment subject to NSPS regulation

~~† Fees shall be assessed on major sources as defined in LAC 33:III.5103. Sources that have reduced emissions below major source thresholds are not required to submit annual emissions reports in accordance with LAC 33:III.5107.~~

B. – B.15.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:611 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), LR 18:706 (July 1992), LR 19:1419 (November 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:17 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:264 (February 2000), LR 26:2444 (November 2000), LR 29:2776 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:2082 (October 2007), LR 33:2620 (December 2007), LR 35:**.

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter A. Applicability, Definitions, and General Provisions

§5101. Applicability

A. The provisions of this Subchapter and LAC 33:III.905 apply to the owner or operator of any *major source*, as of or after December 20, 1991, as defined in LAC 33:III.5103, unless exempted under LAC 33:III.5105.B.

B. The provisions of LAC 33:III.905, 5105.A.1, 3, and 4, and 5113 apply to the owner or operator of: ~~any stationary source that was a major source upon promulgation of this Subchapter (as of December 20, 1991), but~~

1. any major source, as of December 20, 1991, that has achieved minor source status through reduction of emissions and/or reduction of potential to emit; and
2. any minor source that became a major source after December 20, 1991, then achieved minor source status through reduction of emissions and/or reduction of potential to emit.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1362 (December 1992), LR 23:56 (January 1997), LR 24:1276 (July 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2620 (December 2007), LR 35:**.

§5103. Definitions, Units, and Abbreviations

A. The terms in this Subchapter are used as defined in LAC 33:III.111 except for those terms defined herein as follows.

* * *

Virgin Fossil Fuel—any solid, refined solid, refined liquid, or refined or natural gaseous fossil fuel with a Btu content greater than 7,000 Btu/lb that is not blended with reprocessed or

recycled fuels. Group 1 *virgin fossil fuels* consist of natural gas, liquid petroleum gas, distillate fuel oil, gasoline, and diesel fuel. Group 2 *virgin fossil fuels* consist of coal, residual fuel oil, and petroleum coke. Catalytic coke, which is coke deposited on the catalyst used in some petroleum refining processes, such as those in a fluid catalytic cracker, is not a *virgin fossil fuel*.

* * *

B. – B.4.std. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1362 (December 1992), LR 23:57 (January 1997), LR 24:1276 (July 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2621 (December 2007), LR 35:**.

§5105. Prohibited Activities and Special Provisions

A. – B.1. ...

~~2. Electric utility steam-generating units are exempt from the requirements of this Subchapter.~~

~~23. Each of the following emissions are exempt from the requirements of this Subchapter:~~ Each of the byproduct toxic air pollutant (TAP) emissions listed in Subparagraphs B.2.a, b, c, d, and e of this Section are subject to the reporting provisions in LAC 33:III.5107 but are exempt from all other provisions of this Subchapter:

- a. emissions from the combustion of Group 1 virgin fossil fuels;
- b. emissions from the combustion of Group 2 virgin fossil fuels vented from a stack that has downwash minimization stack height or a height approved by the department; ~~and~~
- c. emissions from the combustion of gas streams with a Btu value of greater than 7,000 Btu/lb that are generated by onsite operations, collected by a *fuel gas system* as defined in 40 CFR Part 63, Subpart G, and used as fuel; ~~-~~
- d. emissions from ammonia injected upstream of a combustion process used in a control device to control oxides of nitrogen; and
- e. sulfuric acid emissions from the regeneration of the catalyst from the catalytic cracking process.

34. Any source, as defined in accordance with rules promulgated by the United States Environmental Protection Agency under provisions in Section 112(i)(5) of the federal Clean Air Act, that is in compliance with an enforceable commitment approved by the administrative authority* to achieve early reductions of 90 percent or more (95 percent for particulates), or that has demonstrated early reductions of 90 percent or more (95 percent for particulates), in accordance with such rules, shall be exempt from MACT requirements under LAC 33:III.5109.A. The term of exemption shall extend until such time as the compliance extension granted by the administrative authority or the U.S. Environmental Protection Agency has expired, or until nine years from the anticipated date of promulgation of applicable federal MACT standards according to the schedule published by the U.S. Environmental Protection Agency in accordance with Section 112(e)(3) of the federal Clean Air Act, whichever date is earlier. Under no circumstances shall this provision be used to grant an exemption to a source under conditions that do not result in a net air quality benefit for the state of Louisiana, as

determined by the administrative authority. Under no circumstances shall the granting of such an exemption to a source relieve any source of other obligations under state or federal law.

45. In accordance with R.S. 30:2060, except under circumstances that may reasonably be expected to pose a threat to human health, whether or not such units are in a contiguous area or under common control, in determining the applicability of emission standards or technical control standards the administrative authority shall not aggregate:

- a. emissions from any oil or gas exploration or production well and its associated equipment;
- b. emissions from any pipeline compressor or pump station; or
- c. emissions from other similar units.

56. The emissions from the remediation of a RCRA, CERCLA, or any nonregulated inactive or abandoned waste site cleanup shall be exempt from the ambient air standards of LAC 33:III.5112, Table 51.2, upon approval of the cleanup plan by the administrative authority.

67. Emissions from the combustion of wood residue fuel from pulp and paper mills are exempt from the provisions of LAC 33:III.5109.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:2104 (December 1991), amended LR 18:1362 (December 1992), LR 21:370 (April 1995), LR 23:58 (January 1997), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2621 (December 2007), LR 35:**.

§5107. Reporting Requirements, Availability of Information, and Public Notice Provisions

A. Annual Emissions ~~Inventory Reporting~~. The owner or operator of any major source that meets the applicability requirements in LAC 33:III.5101.A and emits any toxic air pollutant listed in LAC 33:III.5112, Table 51.1 or 51.3, shall submit a completed annual emissions ~~inventory report~~ to the Office of Environmental Assessment in a format specified by the department. The owner or operator shall identify on the emissions ~~inventory report~~ the quantity of emissions in the previous calendar year for any such toxic air pollutant emitted. Beginning with the ~~inventory report~~ due in 2009~~8~~, the annual emissions ~~inventory report~~ shall meet the following requirements.

1. The owner or operator of any major source subject to the requirements in this Subsection shall submit a completed annual emissions ~~inventory report~~ for all emissions, ~~regardless of whether the emissions are submitted in a Title V report or a 40 CFR Part 63 periodic report~~, to the Office of Environmental Assessment on or before ~~April 30~~~~March 31~~ of each year, unless otherwise directed by the administrative authority, that shall identify the quantity of emissions of all toxic air pollutants listed in LAC 33:III.5112, Table 51.1 or 51.3, for the previous calendar year, ~~January 1 to December 31~~. The annual emissions inventory shall be submitted in accordance with the provisions set forth in LAC 33:III.919.

2. Annual emissions ~~inventories reports~~ and revisions to any emissions ~~inventory report~~ shall include a certification statement that attests that the information contained in the emissions ~~inventory report~~ is true, accurate, and complete, and that is signed by a *responsible official*, as defined in LAC 33:III.502. The certification statement shall include the full name of the responsible official, his or her title and signature, the date of the signature, and

the phone number of the responsible official.

B. Unauthorized Atmospheric Discharge Reporting Requirements for Toxic Air Pollutants

1. TAP discharges that cause emergency conditions shall be reported in accordance with the provisions set forth in LAC 33:I.3915, *Notification Requirements for Unauthorized Discharges That Cause Emergency Conditions*. ~~Emergency Conditions. For any discharge of a toxic air pollutant into the atmosphere that results or threatens to result in an emergency condition (a 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), the owner or operator of the source shall immediately, but in no case later than one hour, notify the Department of Public Safety 24-hour Louisiana Emergency Hazardous Materials Hotline at (225) 925-6595 (collect calls accepted 24 hours a day).~~

2. Discharges that do not cause emergency conditions shall be reported in accordance with the provisions set forth in LAC 33.I.3917, *Notification Requirements for Unauthorized Discharges That Do Not Cause an Emergency Condition*, and as follows.

~~2.~~ a. Emission Control Bypasses. Except as provided in SubpParagraph B.2.b6 of this Section, for any unauthorized discharge into the atmosphere of a toxic air pollutant as a result of bypassing an emission control device, when the emission control bypass was not the result of an upset, and the quantity of the unauthorized bypass is greater than or equal to the lower of the Minimum Emission Rate (MER) in LAC 33:III.5112, Table 51.1, or a reportable quantity (RQ) in LAC 33:I.3931, or the quantity of the unauthorized bypass is greater than one pound and there is no MER or RQ for the substance in question, the owner or operator of the source shall provide prompt notification to SPOC of the bypass no later than 24 hours after the beginning of the bypass in the manner provided in LAC 33:I.3917~~23~~. Where the emission control bypass was the result of an upset, the owner or operator shall comply with LAC 33:I.3917 and SubpParagraph B.2.c3 of this Section.

b. Leaks. Leaks detected pursuant to specific leak detection and repair requirements of any Subchapter of this Chapter shall be recorded and/or reported as required in that Subchapter and shall not be subject to this Paragraph.

~~3.~~ Nonemergency Conditions. Except as provided in Paragraph B.6 of this Section, for any unauthorized discharge of a toxic air pollutant into the atmosphere that does not cause an emergency condition, the rate or quantity of which is in excess of that allowed by permit, compliance schedule, or variance, or for upset events that exceed the reportable quantity in LAC 33:I.3931, the owner or operator of the source shall immediately, but in no case later than 24 hours, provide prompt notification to SPOC in the manner provided in LAC 33:I.3923.

~~4.~~ Written Reports. For every such discharge or equipment bypass as referred to in Paragraphs B.1, 2, and 3 of this Section, the owner or operator shall submit to SPOC a written report by certified mail within seven calendar days of learning of the discharge.

- ~~a.~~ The report shall contain the following information:
- ~~i.~~ the identity of the source;
 - ~~ii.~~ the date and time of the discharge;
 - ~~iii.~~ the cause of the discharge;
 - ~~iv.~~ the approximate total loss during the discharge;
 - ~~v.~~ the method used for determining the loss;
 - ~~vi.~~ any action taken to prevent the discharge;

- vii. ~~the action taken to minimize the discharge; and~~
- viii. ~~the measures adopted to prevent future discharges.~~

b. ~~If written notification of the discharge or bypass is required to be submitted pursuant to LAC 33:I.3925, such notification shall fulfill the obligation to submit a written report under this Paragraph.~~

5. ~~c. All~~Unauthorized ~~discharges to the atmosphere of a toxic air pollutant from a safety relief device, a line or vessel rupture, a sudden equipment failure, or a bypass of an emission control device, regardless of quantity, if they~~that can be measured and can be reliably quantified using good engineering practices, and that are not included in any Title V report or any 40 CFR Part 63 periodic report, must be reported to the department along with the annual emissions ~~inventory~~report and where otherwise specified in the applicable subchapters.

The report shall include the following information:

- a. i. the identity of the source;
- b. ii. the date and time of the discharge; and
- c. iii. the approximate total loss during the discharge.

6. ~~Leaks detected pursuant to specific leak detection and elimination requirements of any Subchapter of this Chapter shall be recorded and/or reported as required in that Subchapter and shall not be subject to Paragraphs B.2, 3, and 4 of this Section.~~

C. Availability of Information. The availability to the public of information provided to, or otherwise obtained by, the administrative authority under this Subchapter, shall be governed by R.S. 30:2030, and applicable Rules and Regulations promulgated thereunder.

D. – D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and 2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:890 (July 1993), amended by the Office of the Secretary, LR 19:1022 (August 1993), repromulgated LR 19:1142 (September 1993), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:58 (January 1997), LR 24:1276 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2004 (September 2000), LR 26:2460 (November 2000), LR 29:2778 (December 2003), LR 30:1673 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2447 (October 2005), LR 33:2093 (October 2007), LR 33:2622 (December 2007), LR 35:**.