

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Statutory Exemption for Air Permits
(LAC 33:III.501) (AQ270)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.501 (Log #AQ270).

Act 547 of the 2008 Regular Session of the Louisiana Legislature provides for exemptions from permitting requirements for certain air emissions sources by enacting R.S. 30:2054(B)(2)(b)(ix). The exemption applies to any source for which facility-wide potential emissions are less than 5 tons per year for each of any regulated air pollutant as defined by the Clean Air Act, 42 U.S.C. 7401 et seq., less than 15 tons per year emitted of all such defined pollutants combined, and less than the minimum emission rate for each toxic air pollutant established pursuant to R.S. 30:2060, unless such source is required to obtain a permit pursuant to the Clean Air Act, 42 U.S.C. 7661 et seq. The Statute also states, "for purposes of this Item, "potential emissions" shall mean the emissions the facility is capable of emitting considering all control measures in place, utilized and properly maintained and historical practices, including hours of operation and number of employees at the facility." This rule will add the statutory exemption to the air quality regulations (LAC 33:III). The basis and rationale for this proposed rule are to add the statutory exemption from the requirement to obtain an air permit to the air quality regulations. This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

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

A public hearing will be held on January 27, 2009, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Christopher A. Ratcliff at the address given below or at (225) 219-3471. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ270. Such comments must be received no later than February 3, 2009, at 4:30 p.m., and should be sent to Christopher A. Ratcliff, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3398 or by e-mail to chris.ratcliff@la.gov. Copies

of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ270. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 5. Permit Procedures

§501. Scope and Applicability

A. - B.1.d. ...

2. Statutory Exemptions. The requirement to obtain a permit in accordance with this Chapter does not apply to:

- a. ...
- b. controlled burning of agricultural by-products in the field or of cotton gin agricultural wastes; ~~or~~
- c. controlled burning in connection with timber stand management, or of pastureland or marshland in connection with trapping or livestock production; or
- d. any source that is not a *Part 70 source*, as defined in LAC

33:III.502, and for which:

- i. facility-wide potential emissions are less than:
 - (a). 5 tons per year for each of any regulated air pollutant as defined by the Clean Air Act;
 - (b). 15 tons per year of all such defined pollutants combined; and
 - (c). the minimum emission rate (MER) for each toxic air pollutant established by Tables 51.1 and 51.3 of LAC 33:III.Chapter 51; and
- ii. for purposes of this exemption, any physical limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment, shall be treated as part of its design.

B.3. - C.13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 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 by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 33:2082 (October 2007), LR 33:2626 (December 2007), LR 35:**.

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

LOG #: AQ270

Person Preparing Statement: Bryan D. Johnston Dept.: Department of Environmental Quality
 Phone: (225) 219-3001 Office: Office of Environmental Services
 Return Address: P.O. Box 4313 Rule Title: Statutory Exemption for Air Permits (LAC 33:III.501)
Baton Rouge, LA 70821-4313
 Date Rule Takes Effect: Upon Promulgation

SUMMARY
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

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

There will be no costs or savings to state or local governmental units as a result of this rule.

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

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

All facilities with air emissions less than the thresholds established by R.S. 30:2054(B)(2)(b)(ix) will be affected by the proposed action. However, no significant effect on costs and/or economic benefits to directly affected persons or non-governmental groups is expected. The proposed rule would merely add the statutory exemption to the state's air quality regulations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition; no effect on employment in the public or private sector will be realized.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

Senate Bill No. 384 of the 2008 Regular Session was signed by Governor Jindal on June 30, 2008, as Act 547. The Act, which became effective on August 15, 2008, provides for exemptions from permitting requirements for certain air emissions sources by enacting R.S. 30:2054(B)(2)(b)(ix) to read as follows:

(b) Nothing in this law shall be deemed to grant to the secretary any jurisdiction or authority to make any rule, regulation, recommendations, or determination with respect to any of the following:

(ix) Permitting regulations, with respect to air quality, requiring authorization to construct or operate any source for which facility-wide potential emissions are less than five tons per year for each of any regulated air pollutant as defined by the Clean Air Act, 42 U.S.C. 7401 et seq., less than fifteen tons per year emitted of all such defined pollutants combined, and less than the minimum emission rate for each toxic air pollutant established pursuant to R.S. 30:2060, unless such source is required to obtain a permit pursuant to the Clean Air Act, 42 U.S.C. 7661 et seq. Notwithstanding the provisions of this Item, the secretary may adopt, promulgate and enforce standards, limitations and other regulations applicable to sources which are not required to obtain a permit. The standards or regulations shall not include any requirement for approval by the department. The standards or regulations may include the requirement to determine, document and maintain records to demonstrate the potential or actual emissions of the facility. For purposes of this Item, "potential emissions" shall mean the emissions the facility is capable of emitting considering all control measures in place, utilized and properly maintained and historical practices, including hours of operation and number of employees at the facility.

This rule revision will add the above statutory exemption to the air quality regulations (LAC 33:III).

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

R.S. 30:2054(B)(2)(b)(ix) exempts certain sources from the need to obtain an air permit. This statutory exemption is not currently in the air quality regulations.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session
 - (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.
No, this proposed rule will not result in any increase in the expenditure of funds.
 - (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?
 - (a) Yes. If yes, attach documentation.
 - (b) No. If no, provide justification as to why this rule change should be published at this time.
This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

No costs or savings to state agencies are anticipated as a result of this proposed rule.

COSTS	FY 08-09	FY 09-10	FY 10-11
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSES	-0-	-0-	-0-
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR.			
POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

There are no costs or savings associated with the proposed rule. No increase or reduction in workload or additional paperwork is anticipated.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 08-09	FY 09-10	FY 10-11
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
OTHER (Specify)	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

No funds are required to implement the proposed action.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

No impact on local governmental units is anticipated.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

There are no costs or savings to local governmental units; as such, no funding is needed.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

There will be no effect on revenue collections of state or local governmental units from the proposed action.

REVENUE INCREASE/DECREASE	FY 08-09	FY 09-10	FY 10-11
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
RESTRICTED FUNDS*	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
LOCAL FUNDS	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

No increase or decrease in revenues will be realized.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

All facilities with air emissions less than the thresholds established by R.S. 30:2054(B)(2)(b)(ix) will be affected by the proposed action. However, no significant effect on costs and/or economic benefits to directly affected persons or non-governmental groups is expected. The proposed rule would merely add the statutory exemption to the state's air quality regulations.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

No impacts on receipts or income will result.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There will be no effect on competition or employment in the public or private sectors.