

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Evidentiary Hearings on Hazardous Waste Permit Applications
(LAC 33:V.709) (HW101)

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 Hazardous Waste regulations, LAC 33:V.709 (Log #HW101).

This rule revises the circumstances for which an evidentiary hearing is held for operating permit applications for commercial hazardous waste treatment, storage, disposal, or recycling facilities under LAC 33:V.709. Currently, evidentiary hearings are conducted for all commercial hazardous waste facilities. The department is proposing to mandate evidentiary hearings only for initial permit applications for proposed, nonexistent facilities (consistent with LAC 33:V.Chapter 4, Requirements for Commercial Treatment, Storage, and Disposal Facility Permits) and to have the discretionary authority to hold evidentiary hearings for permit renewal applications at existing facilities when deemed beneficial to do so by the department. R.S. 30:2181 originally required an evidentiary hearing for operating permit applications for commercial hazardous waste treatment, storage, disposal, or recycling facilities. That statute was repealed by Act No. 947 of the 1995 Legislature, effective January 1, 1996. This act created R.S. 30:2016, which gives the department discretionary authority to hold either a fact-finding (evidentiary) hearing or a public comment hearing for any kind of permit application, policy decision, or rule development. During the last 10 years there have been approximately 6 evidentiary hearings. There were no interveners for any of these hearings and no additional substantial information was gathered that had not already been provided during the application process and public comment period. Evidentiary hearings will continue to be public noticed and held for initial permit applications in order to encourage involvement from all entities with a substantial interest in the hearing. In addition, a public comment period will be held on the draft permitting decision pursuant to LAC 33:V.713.A, and a public hearing may be held on the draft permitting decision pursuant to LAC 33:V.707.A. Evidentiary hearings for other permit applications may be held when deemed beneficial by the department. The basis and rationale for this rule are to align the hazardous waste regulations with the intent of Act No. 947 of the 1995 Legislature.

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 November 28, 2007, 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free 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 HW101. Such comments must be received no later than December 5, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@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 HW101. 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 V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

**Chapter 7. Administrative Procedures for Treatment, Storage, and Disposal
Facility Permits**

Subchapter B. Hearings

**§709. Evidentiary Hearings on Operating Permit Applications for Commercial
Hazardous Waste Treatment, Storage, Disposal, or Recycling Facilities**

A. ...

B. Applicability

1. An evidentiary hearing shall be held after the technical review of an initial permit application for the operation of a proposed, nonexistent commercial hazardous waste treatment, storage, disposal, or recycling facility.

2. An evidentiary hearing may be held after the technical review of a permit application, other than an initial application for a proposed, nonexistent facility, for the operation of a commercial hazardous waste treatment, storage, disposal, or recycling facility upon a determination by the administrative authority that the hearing would be beneficial in making a permit decision. Considerations by the administrative authority in making this determination include, but are not limited to, fact-finding or clarification of issues.

3. Permit applications for which evidentiary hearings may be held pursuant to Paragraph B.2 of this Section include, but are not limited to:

a. initial permit applications for interim status facilities;

b. renewal permit applications for existing facilities; and

c. major modification (Class 2 or 3) applications for existing

facilities (including requests for conversion of noncommercial status to commercial status).

C. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:683 (August 1990), LR 17:362 (April 1991), LR 21:565 (June 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2469 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:**.

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

LOG #: HW101

Person Preparing Statement: Mike Hahn Dept.: Environmental Quality
(email) mike.hahn@la.gov

Phone: 225-219-3099 Office: Environmental Services

Return Address: 602 N. Fifth Rule Title: Evidentiary Hearings for Commercial
Baton Rouge, LA 70802 Hazardous Waste Facilities (LAC 33:V.709)

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)

The state should realize minimal savings because of the proposed rule change. Over the next three years it is estimated that the agency will review six operating permit applications for commercial hazardous waste facilities. All of these applications will be for renewal permits for existing facilities; none will be for initial permits for proposed, non-existent facilities. The proposed rule change will give the agency discretionary authority to hold evidentiary hearings for renewals; therefore, it is estimated that fewer evidentiary hearings will be held under this rule change.

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 by this proposed rule change.

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

Commercial hazardous waste facilities with renewal operating permit applications may realize minimal savings from this proposed rule change. Historically, facilities that have been required to have an evidentiary hearing have used their consultants to prepare brief presentations for the hearings. The usual extent of this information is a summary of the application. If the agency uses its discretionary authority under the proposed rule change and does not hold an evidentiary hearing for a renewal application for a facility, the costs associated with the presentation would not be incurred by the facility.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no appreciable effect on competition or employment by this proposed rule change since there are only six potentially affected facilities, and outside expenditures involved with an evidentiary hearing are limited to advertisement in the local newspaper, possible rental of space at a public building, hiring a consultant for a brief presentation, procuring a hearing officer, and procuring a court reporter.

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 change.

- 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).

The proposed rule change revises the circumstances for which the Department of Environmental Quality will hold evidentiary hearings for operating permit applications for commercial hazardous waste treatment, storage, disposal, or recycling facilities under LAC 33:V.709. Currently, evidentiary hearings are conducted for all commercial hazardous waste facilities. The department is proposing to mandate evidentiary hearings only for initial permit applications for proposed, nonexistent facilities (consistent with LAC 33.V. Chapter 4 – Requirements for Commercial Treatment, Storage, and Disposal Facility Permits), and to have the discretionary authority to hold evidentiary hearings for permit renewal applications at existing facilities when deemed beneficial by the department.

When held, evidentiary hearings will continue to be public noticed in order to encourage involvement from all entities with a substantial interest in the hearing. In addition, a public comment period will be held on the draft permitting decision pursuant to LAC 33:V.713.A, and a public hearing may be held on the draft permitting decision pursuant to LAC 33:V.707.A.

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

The proposed rule change will align the hazardous waste regulations with the intent of Act No. 947 of the 1995 Legislature.

La. R.S. 30:2181 was the statute that originally required an evidentiary hearing for operating permit applications for commercial hazardous waste treatment, storage, disposal or recycling facilities. That statute was repealed by Act No. 947 of 1995, effective January 1, 1996. The same act that removed this mandatory requirement for commercial hazardous waste facilities created La. R.S. 30:2016. La. R.S. 30:2016 gives the department discretionary authority to hold either a fact-finding (evidentiary) hearing or a public comment hearing for any kind of permit application, policy decision or rule development.

LAC 33:V.709.A states that “the purpose of an evidentiary hearing is to develop a record of facts, documents, testimony, and pleadings for submission to the administrative authority for consideration in making a permit decision.” During the last 10 years there have been approximately six evidentiary hearings. There were no interveners for any of these hearings and no additional substantial information was gathered that had not already been provided during the application process and public comment period.

- 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.

There will be no increase in the expenditure of funds because of this proposed rule change.

- (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?

COSTS	FY 07-08	FY 08-09	FY 09-10
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSE	(Minimal)	(Minimal)	(Minimal)
PROFESSIONAL SERVICES	(Minimal)	(Minimal)	(Minimal)
OTHER CHARGES	(Minimal)	(Minimal)	(Minimal)
EQUIPMENT	-0-	-0-	-0-
TOTAL	(Minimal)	(Minimal)	(Minimal)
MAJOR REPAIR & CONSTR	-0-	-0-	-0-
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.

Over the next three years it is estimated that the agency will review six operating permit applications for commercial hazardous waste facilities. All of these applications will be for renewal permits for existing facilities; none will be for initial permits for proposed, non-existent facilities. The proposed rule change will give the agency discretionary authority to hold evidentiary hearings for renewals; therefore, it is estimated that fewer evidentiary hearings will be held under this rule change.

Since there are certain administrative expenses associated with these hearings, this will result in a reduced cost to the state.

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

SOURCE	FY 07-08	FY 08-09	FY 09-10
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?

The proposed rule change will not require any additional funds to implement.

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.

The proposed rule change will not affect local governmental units.

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

The proposed rule change will not affect sources of funding of local governmental units.

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?

REVENUE INCREASE/DECREASE	FY 07-08	FY 08-09	FY 09-10
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			

*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.

The proposed rule change will not affect revenue collections of state and local governmental units.

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.

Commercial hazardous waste facilities with renewal operating permit applications may see minimal savings from this proposed rule change. Historically, facilities that have been required to have an evidentiary hearing have used their consultants to prepare brief presentations for the hearings. The usual extent of this information is a summary of the application. If the agency uses its discretionary authority under the proposed rule change and does not hold an evidentiary hearing for a renewal application for a facility, the costs associated with the presentation would not be incurred by the facility.

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.

The proposed rule change will not impact receipts and/or income for the affected commercial hazardous waste facilities.

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 appreciable effect on competition or employment by this proposed rule change since there are only six potentially affected facilities, and outside expenditures involved with an evidentiary hearing are limited to advertisement in the local newspaper, possible rental of space at a public building, hiring a consultant for a brief presentation, procuring a hearing officer, and procuring a court reporter.