

## NOTICE OF INTENT

Department of Environmental Quality  
Office of Environmental Assessment  
Environmental Planning Division

Public Notification of Contamination  
(LAC 33:I.101, 103, 105, 107, and 109) (OS042)

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 adopt the Office of the Secretary regulations, LAC 33:I.101, 103, 105, 107, and 109 (Log #OS042).

This rule will establish procedures for notifying persons who are likely to be adversely affected by a release. The proposed rule applies to releases that exceed the applicable federal or state health and safety standard and that pose a risk of adverse human health effects. This action is required to comply with Executive Order No. MJF 2001-46, which required that all agencies affected by the Order adopt rules to notify persons who may be exposed to environmental contamination. The basis and rationale for this rule are to comply with the Governor's Executive Order.

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 May 27, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS042. Such comments must be received no later than June 3, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 765-0389 or by e-mail to [lynnw@deq.state.la.us](mailto:lynnw@deq.state.la.us). Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of OS042.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 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, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

**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:

**§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:

**§105. Effective Date**

A. These regulations shall become effective on [upon promulgation – date to be inserted]. These regulations are only applicable to releases that occur on or after [insert effective date of regulations].

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:

**§107. Definitions**

*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.

*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 subdivisions 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:

**§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 Number	Triggering Event	When to Provide Public Notice	Contents of Public Notice
1	When the department becomes aware of information and determines that a release is likely to have off-site impacts that exceed	When an emergency or exigent circumstance exists, notice shall be given as soon as practicable under the circumstances	1. Physical address of the release site 2. Description of the contaminant 3. Corrective action efforts

	the applicable federal or state health and safety standard and pose a significant risk of adverse health effects	by using any reasonable means or, otherwise, within 30 days of the triggering event	<p>4. Name, phone number, and address of contact person for both the responsible party and the department</p> <p>5. Other information the department determines is necessary to protect human health and the environment</p>
2	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 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	<p>1. Physical address of the release site</p> <p>2. Description of the contaminant</p> <p>3. Corrective action efforts</p> <p>4. Any potential adverse health effects</p> <p>5. Name, phone number, and address of contact person for both the responsible party and the department</p> <p>6. Other information the department determines is necessary to protect human health and the environment</p>

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:

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

LOG #: OS042

Person  
Preparing  
Statement:

Lou BuattDept.: Environmental Quality

Phone:  
E-mail

(225) 765-0252Office: Office of Environmental Assessmentlouisb@ldeq.org

Return  
Address:

P. O. Box 82178Baton Rouge, LA 70884Rule Public Notification of ContaminationTitle: LAC 33:I.101, 103, 105, 107, and 109

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 department currently performs this service under existing funding. The proposed rule will formalize the process.

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

No effect on revenue is anticipated.

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

This rule could affect underground storage tank owners, all types of industrial plants, sewer treatment facilities, transportation companies, etc., in that the responsible party could see a slight increase in workload to respond to information requests from the public regarding the release/cleanup efforts.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule should not impact competition or employment in the public or private sector.

\_\_\_\_\_  
Signature of Agency Head or Designee

James H. Brent, Ph.D., Assistant Secretary

\_\_\_\_\_  
LEGISLATIVE FISCAL OFFICER OR  
DESIGNEE

\_\_\_\_\_  
Date of Signature

LFO 7/1/94

\_\_\_\_\_  
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).

This rule will establish procedures for notifying persons who are likely to be adversely affected by a release. The proposed rule applies to releases that exceed the applicable federal or state health and safety standard and that pose a risk of adverse human health effects.

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

This action is required in order to comply with Executive Order No. MJF 2001-46, which requires that all agencies affected by the Order adopt rules to notify persons who may be exposed to environmental contamination.

- C. Compliance with Act II 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.

The source of funding is expected to come from existing revenues.

- 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)   X   No. If no, provide justification as to why this rule change should be published at this time.

The governor's executive order requires that the department adopt this rule.

**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 02-03	FY 03-04	FY 04-05
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.	--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.

The department performs this service under current rules. The proposed rule formalizes the procedure. However, the department estimates that it takes approximately 3 person-days or 24 hours to process the public notice required by this rule. This includes researching courthouse records, developing and distributing the notice, responding to questions from the public resulting from the notice, and administrative tracking to ensure compliance with the rule. Over the first year of implementation the proposed rule will require that the department issue notices for approximately 120 existing sites currently under remediation.

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

SOURCE	FY 02-03	FY 03-04	FY 04-05
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
DEDICATED			
FEDERAL FUNDS			
OTHER (Specify)			
TOTAL	N/A	N/A	N/A

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 agency currently has sufficient funds to implement the proposed rule.

**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.

This rule is not expected to result in costs or savings to local governmental units.

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

This section is not applicable.

**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 02-03	FY 03-04	FY 04-05
STATE GENERAL FUND _____			
AGENCY SELF-GENERATED _____			
RESTRICTED FUNDS* _____			
FEDERAL FUNDS _____			
LOCAL FUNDS _____			
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

\*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 effect on revenue is anticipated.

**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.

This rule could affect underground storage tank owners, all types of industrial plants, sewer treatment facilities, transportation companies, etc., in that the responsible party could see a slight increase in workload to respond to information requests from the public regarding the release/cleanup efforts.

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 impact on receipts or income is expected as a result of this rule.

**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.

This rule should not impact competition or employment in the public or private sector.