

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Immovable Property Environmental Reviews/No Further Action
(LAC 33:I.Chapter 12) (OS072)

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.Chapter 12 (Log #OS072).

This rule was authorized by Act 778 of the 2006 Regular Session of the Louisiana Legislature. The rule provides a procedure for and establishes a fee for reviews by the department of reports of environmental conditions at specified tracts of immovable property when such reports from site investigations are not required or requested by the department. Implementation of the fee will allow the department to recover costs of staff time and administrative processing of these requests. The basis and rationale for this rule are to implement the provisions of Act 778 of the 2006 Regular Session of the Louisiana 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 January 24, 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 OS072. Such comments must be received no later than January 31, 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 OS072. 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 I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 12. Requests for Review of Environmental Conditions

§1201. Applicability and Scope

A. This Chapter applies to reviews by the department of reports of environmental conditions at specified tracts of immovable property when such reports from site investigations are not required or requested by the administrative authority.

B. Nothing herein shall be construed to diminish the responsibility of any person (e.g., owner, operator, employee, agent, contractor, or assign) having knowledge of the presence at any site of any hazardous substance, hazardous waste, hazardous waste constituent, or other pollutant or contaminant, to notify the department pursuant to LAC 33:I.Chapter 39. If additional information becomes available to indicate that the source of the release is a current discharge or a discharge that should have been reported, enforcement action may be taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 20:2001, et seq., and specifically 2011(D)(25).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§1203. Procedure for Submittal of Request

A. All requests for reviews by the department of reports of environmental conditions shall be accompanied by an initial \$1500 minimum fee. All payments shall be made by check, draft, or money order payable to the Department of Environmental Quality.

B. Contents of Request. An applicant requesting a review of environmental conditions for specific immovable property shall furnish the following information:

1. the agency interest number or a completed agency interest form from the department identifying the facility/agency interest;

2. the area of investigation, if different from the facility/agency interest location;

3. the basis for the request;

4. the purpose of the use of the property and the date-range of the use;

5. a brief description of activities that occurred on the property;

6. the future intended use of the property;

7. the types and results of investigations that have occurred, including the following information:

a. report dates;

b. the media investigated;

c. the constituents of concern (COC);

d. the maximum remaining concentration of the COC; and

e. the limiting RECAP standards for the COC;

8. any remedial standards previously developed for the property;

9. any remedial actions taken for the property; and

10. any other information requested by the administrative authority.

C. An applicant shall submit the request for review, in accordance with the requirements of Subsection B of this Section, in triplicate, with the initial minimum fee in Subsection A of this Section, to the administrator of the Office of Environmental Assessment, Remediation Services Division.

D. The administrative authority will issue the result of the review to the owner/operator of the facility and to the person requesting the review.

E. The administrative authority shall keep an accounting of time spent by the department civil service employee processing the review request. Every hour or portion thereof that the department civil service employee works processing the request shall be multiplied by the maximum per-hour overtime salary, including associated related benefits, of the department civil service employee who performed the work. If this amount exceeds the initial minimum fee charged pursuant to R.S. 30:2011(D)(25) and Subsection A of this Section, an additional fee shall be charged for the amount exceeding the initial minimum fee.

1. An invoice for the additional fee shall be transmitted to the person requesting the review after the review is complete.

2. Failure to pay the additional fee by the due date specified on the invoice will constitute a violation of these regulations and shall subject the person requesting the review to relevant enforcement action under the Louisiana Environmental Quality Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 20:2001, et seq., and specifically 2011(D)(25).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

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

LOG #: OS072

Person

Preparing

Statement: Sharon Parker Dept.: Environmental QualityPhone: 219-3559 Office: Environmental AssessmentReturn P.O. Box 4302 Rule Immovable Property Environmental
Address: Baton Rouge, LA Title: Reviews (LAC 33:I.1201 and 1203)

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 implementation costs or savings to the department as a result of this proposed rule. The department will now be recovering expenses incurred as a result of these requests by the process established by the proposed rule. Any costs incurred by local governments will be on a strictly voluntary basis.

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

DEQ estimates that the maximum amount of annual state revenue to be generated by these reviews is \$275,685.

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

These reviews are voluntarily requested; therefore their impact is largely under the control of the person who requests the review. There will be a minimum fee of \$1500 per

request for reviews of environmental conditions of immovable property. A small percentage of the reviews will require overtime work by department staff resulting in additional fee amounts.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment as a result of this proposed rule. These reviews are voluntarily requested and not required by the department.

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).

This rule provides a procedure for the review by the department of reports of environmental conditions at specified tracts of immovable property when such reports from site investigations are not required or requested by the administrative authority, and also provides for the imposition of fees for such reviews. The fee provision introduces a procedure for the department to recover the costs of staff time and administrative processing of these requests.

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

This rule and associated fee was authorized by Act 778 of the 2006 Regular Session of the Louisiana Legislature.

- 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 expenditure of funds will occur as a result of this proposed rule.

- (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?

<u>COSTS</u>	<u>FY 07-08</u>	<u>FY08-09</u>	<u>FY09-10</u>
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.

There will be no costs or savings to the department as a result of the proposed rule. The department will now be recovering expenses incurred as a result of these requests by the process established by the proposed rule.

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

<u>SOURCE</u>	<u>FY 06-07</u>	<u>FY 07-08</u>	<u>FY08-09</u>
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?

Sufficient funding to implement this rule is provided by the fee associated with this 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.

There should be no imposed costs or savings to local governmental units resulting from this proposed rule. These reviews are not required by the department, but are voluntarily requested to establish environmental conditions at certain locations of immovable property. Therefore, if costs are incurred by local governments, it will be on a strictly voluntary basis.

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

Sources of funding for local governments will not be affected.

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 06-07	FY 07-08	FY08-09
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	\$275,685	\$275,685	\$275,685
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.

DEQ anticipates receiving approximately 120 requests per year, 30 of which the cost of the review is anticipated to exceed the \$1,500 minimum fee. For the 30 that exceed the minimum fee, DEQ estimates that it will take an average of 50 hours over the minimum to complete the review. The average hourly rate of a department environmental scientist is \$12.65, and the overtime rate for that position is \$18.98, or \$19.26 including Medicare. The average hourly rate of a department environmental scientist senior is \$41.92, and the overtime rate for that position is \$62.88, or \$63.79 including Medicare. Based on this information, DEQ estimates that the minimum amount of annual revenue to be generated by fees for these reviews is \$208,890 (minimum fee of \$1,500 X 120 reviews = \$180,000, plus 30 reviews exceeding minimum time X maximum environmental scientist employee rate of \$19.26 = \$28,890). DEQ estimates that the maximum amount of annual revenue to be generated by fees for these reviews is \$275,685 (minimum fee of \$1,500 X 120 reviews = \$180,000, plus 30 reviews exceeding minimum time X maximum environmental scientist senior employee rate of \$63.79 = \$95,685).

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.

Financial institutions backing real estate sales and companies entering mergers are entities that normally request these reviews and will be the ones directly affected. These reviews are voluntarily requested; therefore the impact is largely under the control of the person who requests the review. There will be a minimum fee of \$1500 per request for reviews of environmental conditions of immovable property. A small percentage of the reviews will require overtime work by department staff. The fee for this overage will be calculated as stated in Worksheet II.B.

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 impact on receipts and income resulting from this rule should be negligible.

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 by the proposed rule.