

## NOTICE OF INTENT

Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division

Expedited Penalties for Asbestos and Lead  
(LAC 33:I.807) (OS081)

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 Office of the Secretary regulations, LAC 33:I.807 (Log #OS081).

This rule makes additions to the list of violations that may qualify for expedited penalties in LAC 33:I.807 for certain asbestos and lead violations. The additions to the qualifying violations will abate delays that have occurred in correcting violations of the Environmental Quality Act in the asbestos and lead programs. Delays in enforcement reduce the effectiveness of the enforcement action and unnecessarily utilize resources. The Expedited Penalty Agreement program provides an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty agreements in appropriate cases, reducing staff time and increasing efficiency in addressing such violations. The Expedited Penalty Agreement program is a flexible program that will be continually expanded to accommodate minor to moderate violations of the regulations. The basis and rationale for this rule are to abate the delay in correcting minor to moderate violations of the Environmental Quality Act to achieve expeditious protection of the public health and the environment. 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 25, 2008, 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 OS081. Such comments must be received no later than December 2, 2008, at 4:30 p.m., and should be sent to Christopher A. Ratcliff, 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](mailto: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 OS081. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://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 8. Expedited Penalty Agreement**

**§807. Types of Violations and Expedited Penalty Amounts**

A. The types of violations listed in the following tables may qualify for coverage under this Chapter; however, any violation listed below, which is identified in an expedited penalty agreement, must also meet the conditions set forth in LAC 33:I.805.E.

<b>EXPEDITED PENALTIES</b>			
<b>ALL MEDIA</b>			
<b>Violation</b>	<b>Citation</b>	<b>Amount</b>	<b>Frequency</b>
* * *			
[See Prior Text]			

<b>EXPEDITED PENALTIES</b>			
<b>AIR QUALITY</b>			
<b>Violation</b>	<b>Citation</b>	<b>Amount</b>	<b>Frequency</b>
* * *			
[See Prior Text]			

<b>EXPEDITED PENALTIES</b>			
<b>AIR QUALITY—Asbestos</b>			
<b>Violation</b>	<b>Citation</b>	<b>Amount</b>	<b>Frequency</b>
<u>Failure to teach courses meeting the minimum criteria and length of training specified, including hands-on training specific to the discipline taught.</u>	<u>LAC 33:III.2799.C and F.5.i</u>	<u>\$200</u>	<u>Per occurrence</u>
<u>Failure to renew training provider or trainer recognition prior to teaching a class.</u>	<u>LAC 33:III.2799.F</u>	<u>\$200-Training Provider \$100-Trainer</u>	<u>Per occurrence</u>

<p><u>Failure to submit any applicable course notification in writing prior to class commencement, including changes in instructors, location, or time, or course cancellation.</u></p>	<p><u>LAC 33:III.2799.F.5.c.i-ii and e</u></p>	<p><u>\$150</u></p>	<p><u>Per occurrence</u></p>
<p><u>Failure to timely submit a complete class roster of trainees.</u></p>	<p><u>LAC 33:III.2799.F.5.d</u></p>	<p><u>\$100</u></p>	<p><u>Per occurrence</u></p>
<p><u>Failure to thoroughly inspect the affected facility or part of the facility where a demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM, prior to the commencement of the demolition or renovation.</u></p>	<p><u>LAC 33:III.5151.F.1</u></p>	<p><u>\$500</u></p>	<p><u>Per occurrence</u></p>
<p><u>Failure to provide a typed notice of intention to demolish or renovate, using the latest version of Form AAC-2, Notification of Demolition and Renovation.</u></p>	<p><u>LAC 33:III.5151.F.2.a</u></p>	<p><u>\$200</u></p>	<p><u>Per occurrence</u></p>
<p><u>Failure to provide notice of a new start date to the DEQ regional office if an asbestos renovation or demolition operation will begin on a date other than the one contained in the original notice.</u></p>	<p><u>LAC 33:III.5151.F.2.c.iv</u></p>	<p><u>\$100</u></p>	<p><u>Per occurrence</u></p>
<p><u>Failure to submit a typed notification as specified in LAC 33:III.5151.F.2.d and e within five working days after an emergency asbestos notification has been made by phone.</u></p>	<p><u>LAC 33:III.5151.F.2.f.ii</u></p>	<p><u>\$200</u></p>	<p><u>Per occurrence</u></p>
<p><u>Acceptance of an invalid Asbestos Disposal Verification Form (ADVF) by a waste transporter or disposal site owner or operator.</u></p>	<p><u>LAC 33:III.5151.F.2.g.vii</u></p>	<p><u>\$200</u></p>	<p><u>Per occurrence</u></p>

<b><u>EXPEDITED PENALTIES</u></b>
<b><u>AIR QUALITY—Lead</u></b>

<u>Violation</u>	<u>Citation</u>	<u>Amount</u>	<u>Frequency</u>
<u>Failure by a training provider to receive recognition prior to offering or claiming to provide, or providing, lead training courses for accreditation purposes.</u>	<u>LAC 33:III.2805.A and B.14</u>	<u>\$200</u>	<u>Per occurrence</u>
<u>Failure by a training provider to employ qualified principal instructors; in particular, allowing trainers to teach courses without current accreditation in the disciplines they teach.</u>	<u>LAC 33:III.2805.B.2.c</u>	<u>\$100</u>	<u>Per occurrence</u>
<u>Failure to teach courses meeting the minimum criteria and length of training specified, including required hands-on training.</u>	<u>LAC 33:III.2805.B.6 and 14.b</u>	<u>\$200</u>	<u>Per occurrence</u>
<u>Failure to timely submit a complete class roster of trainees within 10 days of course completion.</u>	<u>LAC 33:III.2805.B.9</u>	<u>\$100</u>	<u>Per occurrence</u>
<u>Failure to submit any applicable course notification in writing prior to class commencement, including changes in instructors, location, or time, or course cancellation.</u>	<u>LAC 33:III.2805.E</u>	<u>\$100</u>	<u>Per occurrence</u>

<b>EXPEDITED PENALTIES</b>			
<b>AIR QUALITY—Stage II Vapor Recovery</b>			
<b>Violation</b>	<b>Citation</b>	<b>Amount</b>	<b>Frequency</b>
* * *			
[See Prior Text]			

<b>EXPEDITED PENALTIES</b>			
<b>HAZARDOUS WASTE—Used Oil</b>			
<b>Violation</b>	<b>Citation</b>	<b>Amount</b>	<b>Frequency</b>
* * *			
[See Prior Text]			

<b>EXPEDITED PENALTIES</b>			
<b>SOLID WASTE</b>			
<b>Violation</b>	<b>Citation</b>	<b>Amount</b>	<b>Frequency</b>
* * *			
[See Prior Text]			

<b>EXPEDITED PENALTIES</b>			
<b>SOLID WASTE—Waste Tires</b>			
<b>Violation</b>	<b>Citation</b>	<b>Amount</b>	<b>Frequency</b>
* * *			
[See Prior Text]			

<b>EXPEDITED PENALTIES</b>			
<b>WATER QUALITY</b>			
<b>Violation</b>	<b>Citation</b>	<b>Amount</b>	<b>Frequency</b>
* * *			
[See Prior Text]			

<b>EXPEDITED PENALTIES</b>			
<b>UNDERGROUND STORAGE TANKS</b>			
<b>Violation</b>	<b>Citation</b>	<b>Amount</b>	<b>Frequency</b>
* * *			
[See Prior Text]			

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2243 (December 2006), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1393 (July 2008), LR 34:\*\*.

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

LOG #: OS081

Person

Preparing

Statement: Sharon Parker Dept.: Environmental Quality  
Sharon.Parker@la.gov (email address)

Phone: 225-219-3470 Office: Environmental Compliance

Return Address: P.O. Box 4302 Rule Title: Expedited Penalties for Asbestos and Lead (LAC 33:1.807)  
Baton Rouge, LA 70802-4302

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 proposed rule will enhance the current program with no additional state cost. The Expedited Penalty Agreement Program has produced a significant decrease in the backlog of enforcement action referrals for the categories of violations that it covers. Many prior enforcement referrals for minor and moderate violations had not been addressed in a timely manner due to more complex enforcement issues taking precedence. The ability to address the additional classes of violations with expedited penalty agreements that are provided for in this proposed rule will result in savings in staff time and paperwork. The impact of potential additional penalties that may be incurred by local government due to expedited penalties is relatively small. The expedited enforcement process benefits regulated entities by reducing staff time and cost due to reductions in paperwork and legal fees addressing formal enforcement actions, thereby making more funds and staff time available for complying with environmental rules.

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

The violations being added to the Expedited Penalty Agreement Program by the proposed rule do not impose high-value penalties and, experience has shown, will have a higher rate of collection as a result of the Expedited Penalty Agreement Program. Therefore, there will be a minimal increase in revenue to the department.

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

No new costs will occur as a result of this proposed rule. The expedited enforcement process benefits regulated entities by reducing staff time in paperwork response and legal fees addressing formal enforcement actions for minor violations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment will result from this proposed rule.

\_\_\_\_\_  
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 proposed rule adds additional violations to the expedited penalty tables in LAC 33:I.807 for asbestos and lead program violations.

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

These amendments will abate delays that have occurred in correcting violations of the Environmental Quality Act concerning asbestos and lead. Delays in enforcement reduce the effectiveness of the enforcement action and unnecessarily utilize resources. This proposed rule will provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty agreements in appropriate cases, reducing staff time and increasing efficiency in addressing such violations. The Expedited Penalty Agreement Program is a flexible program that will be continually expanded to accommodate minor to moderate violations of the 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 increase in the expenditure of funds should occur.

(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	FY08-09	FY09-10	FY10-11
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSES	(minimal)	(minimal)	(minimal)
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
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.

The proposed rule will enhance the current program with no additional cost. The Expedited Penalty Agreement Program has produced a significant decrease in the backlog of enforcement action referrals for the categories of violations that it covers. Many prior enforcement referrals for minor and moderate violations had not been addressed in a timely manner due to more complex enforcement issues taking precedence. The ability to address the additional classes of violations with expedited penalty agreements that are provided for in this proposed rule will result in savings in staff time and paperwork.

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

SOURCE	FY08-09	FY09-10	FY10-11
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?

The department has sufficient funding 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.

The impact of potential additional penalties that may be incurred by local government due to expedited penalties is relatively small. The expedited enforcement process benefits regulated entities by reducing staff time and cost due to reductions in paperwork and legal fees addressing formal enforcement actions, thereby making more funds and staff time available for complying with environmental rules.

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

Funding sources for environmental management may experience a slight savings due to the reduction of personnel time spent on paperwork responding to formal enforcement actions for the added violations.

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	FY08-09	FY09-10	FY10-11
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	Minimal	Minimal	Minimal
RESTRICTED FUNDS*	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
LOCAL FUNDS	-0-	-0-	-0-
TOTAL	Minimal	Minimal	Minimal

\*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 violations being added to the Expedited Penalty Agreement Program by the proposed rule do not impose high-value penalties and, experience has shown, will have a higher rate of collection as a result of the Expedited Penalty Agreement Program. Therefore, there will be a minimal increase in revenue to the department.

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.

No new costs will occur as a result of this proposed rule. The expedited enforcement process benefits regulated entities by reducing staff time in paperwork response and legal fees addressing formal enforcement actions for minor violations.

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.

Savings could be realized by regulated entities committing these added minor to moderate environmental violations that will result in expedited penalty agreements. The expedited penalties are, in most cases, lower than formal penalties. To the extent that penalty and administrative costs to private enterprises are decreased, their net income could be increased.

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.

No effect on competition or employment will result from this proposed rule.