

## NOTICE OF INTENT

Department of Environmental Quality  
Office of Environmental Assessment  
Environmental Planning Division

Bacterial Criteria for Primary and Secondary Contact Recreation Uses  
and Drinking Water Supply  
(LAC 33:IX.107, 1105, 1111, 1113, and 1123) (WQ053)

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 Water Quality regulations, LAC 33:IX.107, 1105, 1111, 1113, and 1123 (Log #WQ053).

This proposed rule clarifies criteria and assessment methods that may be used by the department to assess whether designated uses of water bodies for primary and secondary contact recreation and drinking water supply are being supported. This revision clarifies existing criteria and assessment methods in order to better define the intent of the original regulation. The basis and rationale for this proposed rule are to more accurately reflect the department's intent and responsibilities regarding bacterial water quality criteria and assessments used to determine support for designated uses.

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 25, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 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. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ053. Such comments must be received no later than June 1, 2004, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3582 or by e-mail to [judith.schuerman@la.gov](mailto: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 WQ053.

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; 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.louisiana.gov/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

**Title 33  
Environmental Quality**

**Part IX. Water Quality  
Subpart 1. Water Pollution Control**

**Chapter 1. General Provisions**

**§107. Definitions**

\* \* \*

*Designated ~~Water Use~~*—a use of the waters of the state as established by the ~~W~~water Quality S~~t~~andards: provided in LAC 33:IX.1111. These uses include, but are not limited to, primary and secondary contact recreation, propagation of fish and other aquatic life and wildlife including shellfish propagation, public drinking water supply, oyster propagation, agricultural activities, and outstanding natural resource waters.

\* \* \*

*Primary Contact Recreation*—any recreational or other water contact use in which there is involving prolonged and intimate or regular full-body contact with the water and in which the probability of ingesting appreciable amounts of water is considerable. involving considerable risk of ingesting water in quantities sufficient to pose a significant health hazard, such as. Examples of this type of water use include swimming, water skiing, skin and diving, wading, and other similar activities.

\* \* \*

*Secondary Contact Recreation*—any recreational or other water contact use in which body contact with the water is either incidental or accidental and in which the probability of ingesting appreciable quantities amounts of water is minimal, such as. Examples of this type of water use include fishing, wading, commercial and recreational boating, and any limited contact incident to shoreline activity.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074 (B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2538 (November 2000), LR 30: \*\*

**Chapter 11. Surface Water Quality Standards**

**§1105. Definitions**

\* \* \*

*Designated Use*—a use of the waters of the state as established by the water quality standards provided in LAC 33:IX.1111. These uses include, but are not limited to, primary and secondary contact recreation, propagation of fish and other aquatic life and wildlife propagation, drinking water supply, oyster propagation, public water supply, agricultural activities, and outstanding natural resource waters.

\* \* \*

*Primary Contact Recreation*—any recreational or other water contact use involving prolonged or regular full-body contact with the water and in which the

probability of ingesting appreciable amounts of water is considerable. Examples of this type of water use include swimming, skiing, and diving.

\* \* \*

Secondary Contact Recreation—any recreational or other water contact use in which body contact with the water is either incidental or accidental and the probability of ingesting appreciable amounts of water is minimal. Examples of this type of water use include fishing, wading, and boating.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2401 (December 1999), LR 26:2545 (November 2000), LR 29:557 (April 2003), LR 30:\*\*

### **§1111. Water Use Designations**

There are seven water uses designated for surface waters in Louisiana: primary contact recreation, secondary contact recreation, fish and wildlife propagation, drinking water supply, oyster propagation, agriculture, and outstanding natural resource waters. Designated uses assigned to each subsegment apply to all water bodies (listed water body and tributaries/distributaries of the listed water body) contained in that subsegment unless unique chemical, physical, and/or biological conditions preclude such uses. However, the designated uses of drinking water supply, oyster propagation, and/or outstanding natural resource waters apply only to the water bodies specifically named in Table 3, (LAC 33:IX.1123), and not to any tributaries and distributaries to such water body, which are typically contained in separate subsegments. A description of each designated use follows.

A. Primary Contact Recreation. Primary contact recreation is ~~defined as any recreational or other water contact use in which there is involving prolonged and intimate or regular full-body contact with the water and in which the probability of ingesting appreciable amounts of water is considerable involving considerable risk of absorbing waterborne constituents through the skin or of ingesting constituents from water in quantities sufficient to pose a significant health hazard.~~ defined as any recreational or other water contact use in which there is involving prolonged and intimate or regular full-body contact with the water and in which the probability of ingesting appreciable amounts of water is considerable involving considerable risk of absorbing waterborne constituents through the skin or of ingesting constituents from water in quantities sufficient to pose a significant health hazard. Examples of this type of water use include swimming, ~~water~~skiing, and ~~skin~~diving.

B. Secondary Contact Recreation. Secondary contact recreation is ~~defined as any recreational or other water contact use in which body contact with the water is either incidental or accidental, and in which the probability of ingesting appreciable quantities amounts of water is minimal. Such Examples of this type of water uses include fishing, wading, commercial or recreational and boating, and any limited contact incident to shoreline activity.~~ defined as any recreational or other water contact use in which body contact with the water is either incidental or accidental, and in which the probability of ingesting appreciable quantities amounts of water is minimal. Such Examples of this type of water uses include fishing, wading, commercial or recreational and boating, and any limited contact incident to shoreline activity.

C. – G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738

(September 1989), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2401 (December 1999), LR 26:2546 (November 2000), LR 30: \*\*

### §1113. Criteria

A. – C.4.c. ...

#### 5. Bacteria.

~~\_\_\_\_\_a. The applicability of bacterial criteria to a particular stream subsegment depends upon the use designation of that individual stream subsegment. Limitations are placed on either the most probable number (MPN) fecal or total coliform concentration, or on a combination of both in order to achieve the stream sanitary quality required for the most restrictive designated use classification. Criteria are established to protect water quality commensurate with the most stringent designated use assigned to the subsegment. Applicable bacterial criteria for the most stringent designated use of each individual Louisiana stream subsegment are listed in the “BAC” column of Table 3, LAC 33:IX.1123. For water quality monitoring and assessment purposes the following criteria shall be used to determine support for the designated uses.~~

~~b. The tables in this document listing applicable criteria for each individual Louisiana stream segment designate one of the following four criteria as applicable according to present and/or anticipated water usage of the segment.~~

~~a.i. Primary Contact Recreation. Based on a minimum of not less than five samples taken over not more than a 30-day period, the fecal coliform content shall not exceed a log mean of 200/100 mL, nor shall more than 10 percent of the total samples during any 30-day period or 25 percent of the total samples collected annually exceed 400/100 mL. No more than 25 percent of the total samples collected on a monthly or near-monthly basis shall exceed a fecal coliform density of 400/100 mL. These~~  
This primary contact recreation criterion shall apply only during the defined recreational period of May 1 through October 31. During the nonrecreational period of November 1 through April 30, the criteria for secondary contact recreation shall apply.

~~b.ii. Secondary Contact Recreation. Based on a minimum of not less than five samples taken over not more than a 30-day period, the fecal coliform content shall not exceed a log mean of 1,000/100 mL, nor shall more than 10 percent of the total samples during any 30-day period or 25 percent of the total samples collected annually exceed 2,000/100 mL. No more than 25 percent of the total samples collected on a monthly or near-monthly basis shall exceed a fecal coliform density of 2,000/100 mL.~~  
This secondary contact recreation criterion shall apply year round.

~~c.iii. Drinking Water Supply. The monthly arithmetic mean of total coliform most probable number (MPN) shall not exceed 10,000/100 mL, nor shall the monthly arithmetic mean of fecal coliforms exceed 2,000/100 mL. No more than 30 percent of the total samples collected on a monthly or near-monthly basis shall exceed a fecal coliform density of 2,000/100 mL.~~

~~d.iv. Oyster Propagation. The fecal coliform median most probable number (MPN) shall not exceed 14 fecal coliforms per 100 mL, and not more than 10 percent of the samples shall exceed an MPN of 43 per 100 mL for a five-tube decimal dilution test in those portions of the area most probably exposed to fecal contamination during the most unfavorable hydrographic and pollution conditions.~~

C.6. – Table 1A.Footnote d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:967 (October 1991), repromulgated LR 17:1083 (November 1991), amended LR 20:883 (August 1994), LR 24:688 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2402 (December 1999), LR 26:2547 (November 2000), LR 27:289 (March 2001), LR 30: \*\*

**§1123. Numerical Criteria and Designated Uses**

A. – C.2. ...

3. Designated Uses. The following are the category definitions of Designated Uses that are used in Table 3 under the subheading "Designated Uses."

- A—Primary Contact Recreation
- B—Secondary Contact Recreation
- C—~~Propagation of Fish and Wildlife~~ Propagation
- L—Limited Aquatic Life and Wildlife Use
- D—Drinking Water Supply
- E—Oyster Propagation
- F—Agriculture
- G—Outstanding Natural Resource Waters

Numbers in brackets, e.g. [1], refer to endnotes listed at the end of the table.

Table 3. Numerical Criteria and Designated Uses									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C- <del>Propagation of Fish And Wildlife</del> <u>Propagation</u> ; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
* * *									
[See Prior Text in 010101– 120806]									

ENDNOTES:

[1] – [23] ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1130 (November 1996), LR 24:1926 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2405 (December 1999), LR 27:289 (March 2001), LR 28:462 (March 2002), LR 28:1762 (August 2002), LR 29:1814, 1817 (September 2003), LR 30:\*\*

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

Person

Preparing

Statement: Kris Pintado  
Phone: (225) 219-3593

Dept.: Environmental Quality  
Office: Environmental Assessment

Return P.O. Box 4314  
Address: Baton Rouge, LA 70821-4314

Rule Bacterial Criteria for  
Title: Primary and Secondary Contact  
Recreation Uses and Drinking Water  
Supply (LAC 33:IX.107, 1105, 1111,  
1113, and 1123)

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)**

This proposed rule is expected to have no significant effect on state or local governmental expenditures.

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

No significant effect on state or local governmental revenue collections is anticipated.

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

No significant costs and/or economic benefits to directly affected persons or non-governmental groups are anticipated.

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

No significant effect on competition or employment is anticipated.

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

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

James H. Brent, Ph.D., Assistant Secretary  
Typed Name and Title of Agency Head  
or Designee

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

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

LFO 7/1/94

**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).

The revised rule clarifies existing criteria and assessment methods that may be used by the Louisiana Department of Environmental Quality (LDEQ) to assess whether designated uses of water bodies for primary and secondary contact recreation and drinking water supply are being supported. This revision clarifies existing language to more accurately reflect the intent of the regulation.

- 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 to clarify existing criteria and assessment methods in order to better define the intent of the original regulation.

- 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 proposed rule will not result in any increase in the expenditure of funds by the state.

- 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 significant increase or decrease in costs to implement this rule is anticipated.

COSTS	FY 03-04	FY 04-05	FY 05-06
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.

This is not applicable.

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

This is not applicable.

SOURCE	FY 03-04	FY 04-05	FY 05-06
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 currently has sufficient funds to implement the amendment.

**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 significant impact is anticipated on local governments, including adjustments in workload or paperwork requirements.

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

No significant effect on any sources of funding of local governmental units is anticipated to result from the implementation of the proposed rule.

**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?  
 No significant increase or decrease in revenues is anticipated.

REVENUE INCREASE/DECREASE	FY 03-04	FY 04-05	FY 05-06
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
<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.  
 This is not applicable.

**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 significant effect on directly affected persons or non-governmental groups is anticipated.

- 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 significant impact on receipts and/or income is anticipated.

**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 significant impact is anticipated on competition or employment in the public or private sector.