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TITLE 30
MINERALS, OIL, AND GAS AND ENVIRONMENTAL QUALITY
SUBTITLE II. ENVIRONMENTAL QUALITY

CHAPTER 1. GENERAL

§2001. Short title

This Subtitle shall be known and may be cited as the "Louisiana Environmental Quality Act."

Acts 1983, No. 97, §1, eff. Feb. 1, 1984.

§2002. Findings and declaration of policy

The legislature finds and declares that:

(1) The maintenance of a healthful and safe environment for the people of Louisiana is a matter of critical state concern.

(2) It is necessary and desirable for the protection of the public welfare and property of the people of Louisiana that there be maintained at all times, both now and in the future, clean air and water resources, preservation of the scenic beauty and ecological regimen of certain free flowing streams, and strictly enforced programs for the safe and sanitary disposal of solid waste, for the management of hazardous waste, for the control of hazards due to natural and man-made radiation, considering sound policies regarding employment and economic development in Louisiana.

(3) It is necessary and essential to the success of the regulatory program established in this Subtitle that the enforcement procedures include unannounced regular inspections of all facilities which may be regulated by this Subtitle or any facility in violation of this Subtitle.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984.

§2003. Purposes

A. The maintenance of a healthful and safe environment in Louisiana requires governmental regulation and control over the areas of water quality, air quality, solid and hazardous waste, scenic rivers and streams, and radiation.

B. In order to accomplish these goals most efficiently, it is necessary to provide for comprehensive policies on a statewide basis to unify, coordinate, and implement programs to provide for the most advantageous use of the resources of the state and to preserve, protect, and enhance the quality of the environment in Louisiana.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 2003, No. 933, §3.

§2004. Definitions

The following terms as used in this Subtitle, unless the context otherwise requires or unless redefined by a particular Chapter hereof, shall have the following meanings:

(1) Repealed by Acts 1997, No. 26, §1.

(2) "Department" means the Department of Environmental Quality.

(3) "Implementation plan" means any pollution control or other environmental regulatory plan prepared by a state agency in compliance with the terms of the Clean Air Act,* the Federal Water Pollution Control Act,** the Resource Conservation and Recovery Act,*** or other federal environmental legislation.

(4) "Secretary" means the secretary of the Department of Environmental Quality.

(5)-(6) Repealed by Acts 1997, No. 26, §1.

(7) "Variance" means a special authorization granted to a person for a limited period of time which allows that person a specified date for compliance with a requirement pursuant to the provisions of this Subtitle.

(8) "Person" means any individual, municipality, public or private corporation, partnership, firm, 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, the state of Louisiana, political subdivisions of the state of Louisiana, commissions, and interstate bodies.

(9) "Natural resources committees" means the Natural Resources Committee of the House of Representatives and the Environmental Quality Committee of the Senate of the Louisiana Legislature.

(10) "Discharge" means the placing, releasing, spilling, percolating, draining, pumping, leaking, seeping, emitting, or other escaping of pollutants into the air, waters, subsurface water, or ground as the result

of a prior act or omission; or the placing of pollutants into pits, drums, barrels, or similar containers under conditions and circumstances that leaking, seeping, draining, or escaping of the pollutants can be reasonably anticipated.

(11) "Response fund" means the Environmental Trust Fund created in R.S. 30:2015.

(12) "Abandoned site fund" shall mean the Hazardous Waste Site Cleanup Fund as created by R.S. 30:2205 and formerly known as the Abandoned Hazardous Waste Site Fund.

(13) "Pollution source" means the immediate site or location of a discharge or potential discharge, including such surrounding property necessary to secure or quarantine the area from access by the general public.

(14) "Facility" means a pollution source or any public or private property or facility where an activity is conducted which is required to be regulated under this Subtitle and which does or has the potential to do any of the following:

(a) Emit air contaminants into the atmosphere.

(b) Discharge pollutants into waters of the state.

(c) Use or control radioactive materials and waste.

(d) Transport, process, or dispose of solid wastes.

(e) Generate, transport, treat, store, or dispose of hazardous wastes.

(15) "Pollutant" means those elements or compounds defined or identified as hazardous, toxic, or noxious, or as hazardous, solid, or radioactive wastes under this Subtitle and regulations, or by the secretary, consistent with applicable laws and regulations. For the purposes of the Louisiana Pollutant Discharge Elimination System, as defined in R.S. 30:2073(6), "pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, except those regulated under the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq., as amended, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. For the purposes of the Louisiana Pollutant Discharge Elimination System, as defined in R.S. 30:2073(6), "pollutant" does not mean:

(a) Water, gas, waste, or other material which is injected into a well for disposal in accordance with a permit approved by the Department of Natural Resources or the Department of Environmental Quality.

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(16) "Adjudication" means formal or informal proceedings for the formulation of a decision or order.

(17) "Aggrieved person" means a natural or juridical person who has a real and actual interest that is or may be adversely affected by a final action under this Subtitle.

(18) "Assistant secretary" means the assistant secretary to whom a given function or responsibility has been allocated by this Subtitle or delegated by the secretary.

(19) "Compliance order" means an order issued by the secretary or an assistant secretary requiring a respondent to comply with specified provisions of this Subtitle, a rule, or a permit within a specified period of time.

(20) "Respondent" means the person against whom an enforcement action is directed.

(21) "Violation" means a failure to comply with the requirements of this Subtitle, the rules issued under this Subtitle, and conditions of permits under this Subtitle.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Amended by Acts 1980, No. 194, §1; Acts 1981, No. 198, §1; Acts 1982, No. 655, §1; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1983, No. 467, §1, eff. July 6, 1983; Acts 1984, No. 116, §1, eff. June 22, 1984; Acts 1989, No. 392, §1, eff. June 30, 1989; Acts 1991, No. 21, §1, eff. June 14, 1991; Acts 1995, No. 708, §1; Acts 1995, No. 947, §2, eff. Jan. 1, 1996; Acts 1997, No. 26, §1.

*42 U.S.C.A. §7401 et seq.

**33 U.S.C.A. §1251 et seq.

***42 U.S.C.A. §6901 et seq.

§2005. Repealed by Acts 2001, No. 1137, §1.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

§2011. Department of Environmental Quality created; duties; powers; structure

NOTE: Paragraphs (A)(1) and (2) as amended by Acts 2006, No. 445, §§1, 2, eff. June 15, 2006, until July 1, 2007:

A.(1) There is hereby created the Department of Environmental Quality which shall be the primary agency in the state concerned with environmental protection and regulation. The department shall have jurisdiction over matters affecting the regulation of the environment within the state, including but not limited to the regulation of air quality, water pollution control, the regulation of solid waste disposal, the protection and preservation of the scenic rivers and streams of the state, the regulation and control of radiation, the management of hazardous waste, and the regulation of those programs which encourage, assist, and result in the reduction of wastes generated within Louisiana.

(2) Repealed by Acts 2006, No. 445, §2, eff. June 15, 2006.

NOTE: Paragraphs (A)(1) and (2) as amended by Acts 2006, No. 445, §3, eff. July 1, 2007:

A.(1) There is hereby created the Department of Environmental Quality which shall be the primary agency in the state concerned with environmental protection and regulation. The department shall have jurisdiction over matters affecting the regulation of the environment within the state, including but not limited to the regulation of air quality, noise pollution control, water pollution control, the regulation of solid waste disposal, the protection and preservation of the scenic rivers and streams of the state, the regulation and control of radiation, the management of hazardous waste, and the regulation of those programs which encourage, assist, and result in the reduction of wastes generated within Louisiana.

(2) However, the jurisdiction of the department relative to the regulation of noise pollution control shall not prevent local governments from adopting local noise pollution control ordinances which are at least as strict as state regulations pertaining to the regulation of noise pollution.

(3) The department is authorized and empowered to administer, maintain, and operate the Municipal Facilities Revolving Loan Fund as created and provided in R.S. 30:2078 et seq. In connection with such administration, maintenance, and operation, the department is authorized to incur debt and issue bonds, notes, or other evidences of indebtedness, and is authorized to pledge the sums in, credited to, or payable to the Municipal Facilities Revolving Loan Fund as security for the debt of other entities, and is authorized to arrange, provide for, and pay the cost of credit enhancement devices for its debt and the debt of other entities in order to provide funds in connection with the Municipal Facilities Revolving Loan Fund Program. Any such evidence of indebtedness, guarantee, pledge, or credit enhancement device shall be authorized, executed, and delivered by the secretary or his designee in accordance with the provisions and subject to the limitations provided in R.S. 30:2011(D)(23) and 2080 through 2088 for the Municipal Facilities Revolving Loan Fund.

B. The department shall be headed by the secretary who shall be appointed by the governor with the consent of the Senate. The secretary shall serve at the pleasure of the governor and shall be paid a salary which shall be fixed by the governor as provided in R.S. 36:233.

C.(1) The department shall be divided into offices.

(a)(i) The executive office of the secretary shall provide for the general oversight and supervision of the department in addition to providing internal audits, technical advisors, and communications.

(ii) The executive office of the secretary shall also include a legal division which shall provide legal consultation and representation to the various offices of the department with regard to permitting, enforcement, grants, contracts, personnel, legislation, intergovernment agreements, or such other matters as may be necessary.

(b) The office of environmental assessment shall provide for environmental air quality assessment, water quality assessment, laboratory services, and technology and shall administer all remediation services.

(c) The office of environmental compliance shall provide for surveillance of the regulated community, enforcement of the environmental laws, and the issuance of necessary licenses, registrations, exemptions, and certifications of radiation sources.

(d) The office of environmental services shall provide for environmental assistance and the issuance of necessary permits, licenses, registrations, variances, exemptions, and certifications, except as provided in Subparagraph (c) of this Paragraph.

(2) Each of the above offices except for the executive office of the secretary shall be under the immediate supervision and direction of an assistant secretary who shall be appointed by the governor with the

consent of the Senate. The assistant secretary shall serve at the pleasure of the governor and shall be paid a salary which shall be fixed by the governor as provided in R.S. 36:237.

D. The secretary shall have the following powers and duties:

(1) To adopt, amend, or repeal all rules, regulations, and standards for the protection of the environment as is provided by this Subtitle. All rules and regulations shall be promulgated in accordance with the procedure set forth in R.S. 49:950 et seq. Prior to the adoption of any rule or regulation, the secretary shall hold a public hearing to receive comments and recommendations from all interested parties and the public.

(2) To grant or deny permits, licenses, registrations, variances, or compliance schedules as are provided for in this Subtitle. The secretary shall have the general power to require such conditions in individual instances as are necessary to assure compliance with applicable federal laws and regulations relating to this Subtitle. In those instances in which a permit or license is required prior to construction of a new or modified facility, the secretary may issue construction authorizations prior to issuance of a permit in appropriate circumstances where there is a positive human health or environmental benefit. The secretary may establish an escrow account, to be maintained in accordance with regulations adopted hereunder, which account shall be utilized by the secretary for receipt and disbursement of deposits supplied by any environmental quality permit applicant to defray specific costs of holding an adjudicatory hearing on that applicant's permit. The secretary shall promulgate regulations regarding such account and requiring such deposits.

(3) To delegate the power to grant or deny permits, licenses, registrations, variances, or compliance schedules to the appropriate assistant secretary. The authority to execute minor permit actions and to issue registrations, certifications, notices of deficiency, and notification of inclusion under a general permit may be delegated by the secretary or the appropriate assistant secretary to an authorized representative, notwithstanding the provisions of R.S. 30:2050.26.

(4) To apply for and accept grants of money from the United States Environmental Protection Agency or other federal agencies for the purpose of making funds available to political subdivisions in this state for the planning, design, construction, and rehabilitation of wastewater treatment facilities and other related activities. The department may contract to receive such grants, agree to match the grant in whole or in part when required, and to comply with applicable federal laws and regulations in order to secure the grants. Money received through these grants and state matching funds shall be deposited into the Municipal Facilities Revolving Loan Fund or used for appropriate administrative purposes.

(5) To hold meetings or hearings on his own motion or upon complaint for purposes of fact-finding, receiving public comments, conducting inquiries and investigations, or other purposes under this Subtitle, and, in connection therewith, to issue subpoenas in accordance with R.S. 30:2025(I) requiring the attendance of such witnesses and the production of such documents as are related to the meeting or hearing. The secretary shall hold no less than three public fact-finding hearings in the state to investigate issues concerning environmental equity in the administration of department programs with respect to resident populations who do not have the economic resources to participate in the environmental decisionmaking affecting their area. The secretary shall prepare and file a report to the legislature on the findings of such hearings, along with recommendations within sixty days of the final hearing.

(6) To issue such orders or determinations as may be necessary to effectuate the purpose of this Subtitle, to issue cease and desist orders as provided in R.S. 30:2025, and to delegate the power to issue such orders to the appropriate assistant secretary.

(7) To advise, consult, and cooperate with other agencies of the state, the federal government, other states, and interstate agencies and with affected groups, political subdivisions, interested agricultural, industrial, professional, and environmental groups and individuals in furtherance of the purposes of this Subtitle.

(8) To encourage, participate in, or conduct, studies, investigations, training programs, research, and demonstrations to further the purposes of this Subtitle.

(9) To collect and disseminate information on certain aspects of environmental protection and control; notwithstanding R.S. 43:31(A), such information may be disseminated by publication of bulletins, circulars, house organs, leaflets, newsletters, or reports. However, no advertisement shall be allowed in such publications.

(10) To receive and budget duly appropriated monies and to accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out the provisions and purposes of this Subtitle. The department may match federal grants in whole or in part when required and may agree to comply with applicable federal laws and regulations in order to secure the grants.

(11) To assume authority, when such authority is delegated, for the administration of the National Pollution Discharge Elimination System (NPDES) Permit Program and the Construction Grants Program, as

well as any other such programs existing under the provisions of the Federal Water Pollution Control Act, as amended, or any other federal environmental legislation. Upon delegation of the Construction Grants Program to the state, the department shall utilize such Construction Grants funds as may be authorized by federal regulations to supplement costs of administering the program.

(12) To assume authority, when such authority is delegated, for the program administration and issuance of required permits of the New Source Review (NSR) that is directed at construction in Prevention of Significant Deterioration (PSD) areas, and to assume authority to implement and enforce the National Emission Standards for Hazardous Air Pollutants (NESHAPS) for stationary sources located in the state, as well as any other such programs existing under the provisions of the Clean Air Act of 1972, as amended.

(13) To conduct inspections and investigations and enter facilities as provided in R.S. 30:2012.

(14) To exercise all incidental powers necessary or proper to carry out the purposes of this Subtitle.

(15) To formulate contingency plans for environmental emergencies, including interagency agreements with state, local, and federal agencies and with private agencies and persons.

(16) To prepare and present to the United States Environmental Protection Agency a priority list for funding of treatment works under the Construction Grants Program and the criteria used to develop the priority list as required under both Section 106 and Section 303 of the Federal Water Pollution Control Act, as amended, and any other sections of that act requiring the ranking of applicants for grants for construction of treatment works. The criteria and any modifications thereof shall be submitted to the House Committee on the Environment and to the Senate Environmental Quality Committee for their consideration.

(17) To assign certain duties to hearing officers.

(18)(a) To require the owners or operators of each facility subject to the provisions of this Subtitle to submit to the secretary the name of a facility environmental coordinator or the names of the members of the facility environmental committee.

(b) To require the owners or operators of each facility subject to the provisions of this Subtitle to notify the secretary of any change of the facility environmental coordinator or members of the facility environmental committee.

(c) To maintain a register on which the names and addresses of the facility environmental coordinators shall be listed by owner or operator represented.

(19) To make grants to colleges and universities within Louisiana for theoretical and practical research and development of alternative and environmentally sound methods and technologies for reducing, destroying, recycling, neutralizing, and, to the least extent possible, disposing of hazardous waste from those funds generated from the imposition of the fee provided for in R.S. 30:2014(C).

(20) To develop and implement a non-point source management and ground water quality protection program and a conservation and management plan for estuaries, to receive federal funds for this purpose and provide matching state funds when required, and to comply with terms and conditions necessary to receive federal grants. The nonpoint source conservation and management plan, the groundwater protection plan, and the plan for estuaries shall be developed in coordination with, and with the concurrence of the appropriate state agencies, including but not limited to, the Department of Natural Resources, the Department of Wildlife and Fisheries, the Department of Agriculture and Forestry and the State Soil and Water Conservation Committee in those areas pertaining to their respective jurisdictions.

(21) To create the division of local programs and public participation with the following powers and duties:

(a) To prepare and implement a general plan to enhance public access to nonconfidential information in the department's files, consistent with R.S. 30:2030.

(b) To develop programs to assist local governments in developing and implementing local environmental programs consistent with the department's statewide programs that would assist the state in its planning and public participation efforts. Such programs shall include local governments. Such local governments shall be selected for inclusion in the programs based upon but not limited to the following criteria: necessity for planning for solid and hazardous waste management and capacity, necessity for planning for adequate sewage treatment, necessity for planning for and implementation of the beneficial reuse of sewage sludge, number of public buildings potentially requiring asbestos removal, and such other criteria as the secretary deems appropriate.

(c) To assist the local governments included in establishing guidelines for the environmental programs of parishes and cities consistent with the department's statewide programs.

(d) Nothing herein shall authorize the division of local programs and public participation to adopt or enforce any rule or regulation or enforce a statute, or require any political subdivision to comply with such rules, regulations, or statutes.

(e) The secretary shall provide a detailed report to the legislative oversight committees of the House Committee on the Environment and the Senate Environmental Quality Committee on June first of each year. This report shall include specific activities, accomplishments, and recommendations on these programs. It shall include comments provided by individuals, organizations, private business, local governments, municipalities, or others affected by this Section.

(22)(a) To adopt and promulgate rules and regulations providing for certification of commercial laboratories providing chemical analysis, analytical results, or other appropriate test data to the department which is required as a part of any permit application, required by order of the agency, required to be included on any monitoring reports submitted to the agency, or otherwise required by the regulations adopted pursuant to this Subtitle. For the purpose of this Paragraph, "commercial laboratory" means a laboratory which performs analyses or tests for third parties for a fee or other compensation, except those commercial laboratories certified by the Department of Health and Hospitals pursuant to R.S. 49:1001 et seq.

(b) Notwithstanding the provisions of R.S. 30:2014(D)(3) or R.S. 49:971(A), the secretary is hereby authorized to establish a fee schedule in accordance with Subparagraph (c) for any application for accreditation by a commercial laboratory under the provisions of Subparagraph (a).

(c) The fee schedule authorized by Subparagraph (b) shall not exceed the following amounts:

(i) Accreditation application fee payable every three years. $660.00

(ii)(aa) Per major test category payable every year, or $330.00

(bb) Minor conventional category payable every year. $264.00

(iii) Annual surveillance and evaluation applicable to minor conventional facilities and facilities applying for only one category of accreditation. $330.00

(iv)(aa) Proficiency samples biannually to be purchased by the laboratory.

(bb) Bioassay/biomonitoring annually to be purchased by the laboratory.

(v) Third party audit to be billed directly to the laboratory.

(23) To authorize by executive order, the issuance, sale, execution, and delivery of bonds, notes, or other evidences of indebtedness of the department, obligations representing guarantees by the department of the debt of other entities, and the granting of pledges of the sums deposited in, credited to, or payable to the Municipal Facilities Revolving Loan Fund as created and provided in R.S. 30:2078 et seq., including sums to be received pursuant to letters of credit, as security for the debts of other entities, subject to the approval of the State Bond Commission.

(24)(a) Notwithstanding any other provision of the law to the contrary, the secretary shall issue no permit that authorizes the construction or operation of any new or expanded commercial hazardous waste incineration facility of any type until rules and regulations are promulgated which govern the design, siting, construction, operation, emissions limitations, and the disposal methods of incineration facilities.

(b) The prohibition in this Paragraph shall not apply to the regulation or permitting of any such facility possessing a permit or an interim permit on July 24, 1991. Any interim permit issued to a commercial hazardous waste incineration facility by the secretary on or after July 24, 1991 shall expire within ninety days after the date of the promulgation of the regulations governing the design, siting, construction, operation, emissions limitations, and disposal methods of incineration facilities.

(c) In no event shall any such permit be issued without the following:

(i) Prior notification of legislators representing the area which includes the proposed site of the facility.

(ii) Prior public hearing in that area.

(d) If rules and regulations which govern the design, siting, construction, operation, emissions limitations, and disposal methods of commercial hazardous waste incineration facilities are not promulgated by April 1, 1992, the secretary shall issue or reissue any permit or interim permit previously issued to any commercial incineration facility under the existing rules and regulations.

(e) The provisions of this Paragraph shall not apply to the construction or operation of a medical waste incinerator which is permitted pursuant to the provisions of R.S. 30:2154(C) or 30:2180(D)(4).

(25) To promulgate rules and regulations providing for conducting requested reviews of environmental conditions of a specified tract of immovable property, including but not limited to requests for no further action letters. Such rules may provide for a fee for each request by the landowner or a party with an interest in a real estate transaction involving the specified property not to exceed the maximum per hour overtime salary,

including associated-related benefits, of a civil service employee of the department per hour or portion thereof required to conduct the review plus reasonable indirect costs calculated as a percentage of the hourly fee. Such percentage shall be determined annually by agreement between the department and the United States Environmental Protection Agency for use on grants and contracts. However, the department shall require a requestor to pay a minimum fee not exceeding one thousand five hundred dollars prior to conducting the review.

E. The department shall succeed to and perform all of the powers and duties of the office of science, technology, and environmental policy relating to the Resource Conservation and Recovery Act of 1976, serving as environmental advisor to the governor, and on other matters relating to the protection and improvement of environmental quality within the state of Louisiana.

F. The basic personnel and necessary scientific, technical, administrative, and operational services, including laboratory facilities as may be necessary to carry out the provisions of this Subtitle, shall be employed or provided by the department; however, the department may, by contract, secure such services as it may deem necessary from any other department, board, or agency of the state government, any educational institution, or the federal government; may arrange for compensation for such services; and may employ and compensate, within appropriations available therefor, such consultants and legal and technical assistance on a full or part-time basis as may be necessary to carry out the provisions of this Subtitle, and prescribe their duties.

G. The assistant secretaries shall have such powers and duties as are assigned to them by the secretary or by law.

Acts 1990, No. 594, §1, eff. July 18, 1990; Acts 1991, No. 21, §1, eff. June 14, 1991; Acts 1991, No. 846, §1, eff. July 23, 1991; Acts 1991, No. 993, §1, eff. July 24, 1991; Acts 1992, No. 984, §9; Acts 1993, No. 622, §1; Acts 1993, No. 767, §1; Acts 1995, No. 806, §1, eff. June 27, 1995; Acts 1995, No. 947, §2, eff. Jan. 1, 1996; Acts 1996, 1st Ex. Sess., No. 36, §1, eff. May 7, 1996; Acts 1997, No. 27, §1; Acts 1997, No. 480, §1, eff. June 30, 1997; Acts 1997, No. 1119, §1; Acts 1997, No. 1345, §1; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 2002, 1st Ex. Sess., No. 134, §1, eff. July 1, 2002 and §2, eff. July 1, 2003; Acts 2003, No. 67, §1, eff. May 28, 2003; Acts 2005, No. 21, §1; Acts 2006, No. 445, §§1, 2, eff. June 15, 2006; Acts 2006, No. 445, §3, eff. July 1, 2007; Acts 2006, No. 778, §1.

§2011.1. Toxics release inventory; annual report

A. The department shall prepare and disseminate an annual toxics release inventory (TRI) report presenting data submitted by manufacturing facilities within the state reporting the releases and transfers during the previous calendar year of chemicals designated by the United States Environmental Protection Agency as toxic.

B. The annual TRI report shall be used by the department in its efforts to improve the quality of the environment and to provide summary information for the education of the public.

C. The annual TRI report shall include summary information as follows: background information on the federal requirements for annual TRI reporting, businesses required to report releases, the types of data which must be reported, explanations of the types of releases, amounts of releases by media, releases by parish, releases by facility for the highest volume manufacturers, and any other data and information reasonably necessary to enhance the public's understanding of the TRI information. The department shall also present such data in tabular and chart formats to facilitate its use and understanding.

D. The department shall not impose any new or additional fees upon the regulated community in order to prepare, publish, and disseminate the annual toxics release inventory report.

Acts 1995, No. 290, §1.

§2011.2. Environmental justice

A. The department shall examine and study the relationship between the emission of air pollutants and the discharge of wastes by facilities located in or near residential areas. The study shall determine the amount of such emissions and discharges in each residential area of the state. The study shall include permitted and unpermitted emissions and discharges. The study shall determine and set out any correlations that may exist between the emissions and discharges and residential areas.

B. The department shall deliver the report to the members of the House Committee on the Environment and to the members of the Senate Committee on Environmental Quality no later than February 1, 1998. The legislative committees are hereby authorized to meet to receive testimony with regard to the report.

C. The department shall not commence the study authorized in this Section until funds have been specifically approved for the study by the legislature. The department shall not divert existing funds or fees

from other budgeted programs to fund this study but may provide in-kind services to match any federal grants received.

Acts 1997, No. 995, §1.

§2012. Enforcement inspections

A. The protection of the environment and public health requires timely and meaningful inspections of all facilities subject to the provisions of this Subtitle. Inspections of such facilities are essential to assure compliance with this Subtitle and the regulations issued pursuant thereto. The purpose of such inspections is to determine whether any of the following conditions exist:

(1) Environmental standards have been achieved.

(2) There is an emergency under the provisions of this Subtitle.

(3) There is a present or potential danger to the health or environment.

(4) A violation of the provisions of this Subtitle or rules, regulations, or orders issued pursuant thereto has occurred.

(5) Under the provisions of this Subtitle, there is an abandoned waste site.

B. Every permit shall as a matter of law be conditioned upon the right of the secretary or his representative to make an annual monitoring inspection and, when appropriate, an exigent inspection of the facility operating thereunder.

C.(1) In order to assure effective enforcement of the provisions of this Subtitle and the rules and regulations issued pursuant thereto, the inspections may be made without obtaining a warrant from the courts.

(2) When an inspection is authorized by this Section or by the regulations adopted pursuant hereto, the secretary or his authorized representative shall:

(a) Upon announcing the purpose of the inspection, have a reasonable right of entry to, upon, or through any premises of a permittee or of an industrial user of a publicly owned treatment works in which premises an effluent source is located. Any such right of entry shall be subject to the reasonable safety rules of the affected permittee or industrial user.

(b) At reasonable times, have access to and be entitled to copy at his expense, records required to be maintained under the permit, this Subtitle, or rules adopted pursuant thereto. Such inspections of records generally shall be made during normal working hours when the custodian of such records is available. The secretary shall allow a reasonable time to locate the records.

(c) Have access to and sample any discharges of any pollutants to state waters or to publicly owned treatment works resulting from the activities or operations of the permittee or an industrial user.

(d) Inspect any monitoring equipment, control equipment, and practices or operations regulated or required by law or by permit.

D.(1) Monitoring inspections of facilities operating with a permit issued pursuant to this Subtitle shall be conducted to assure compliance with this Subtitle and the regulations issued pursuant thereto. The secretary shall prepare, implement, and revise, as needed, a compliance monitoring strategy designed to achieve meaningful environmental results. Inspections shall be both intensive, designed to accomplish meaningful environmental results and routine to ensure a compliance presence in the field. The compliance monitoring strategy shall explicitly recognize that a variety of compliance monitoring tools including but not limited to self-certifications, deviation reports, stack testing reports, discharge monitoring reports, semiannual monitoring reports, and on-site inspections are available and should be used to evaluate compliance. The strategy must address inspection frequency and in doing so, the secretary shall consider the following:

(a) Facility compliance history.

(b) Location of facility.

(c) Potential environmental impact.

(d) Operational practices being steady state or seasonal.

(e) Any grant or funding commitments made by the department.

(f) Any other relevant environmental, health, or enforcement factors.

(2) The strategy shall provide for reasonable times during which inspections may be conducted.

E. Whenever there exists an imminent danger to the environment or health, an emergency under this Subtitle, an abandoned hazardous waste site, or a violation of this Subtitle or the rules or regulations issued pursuant thereto, the secretary may cause a special inspection to be made of the facility where such exigent conditions are reasonably believed to exist. While conducting the inspection the inspector shall inform the owner, operator, or any responsible person at the facility of the particular exigent condition believed to exist.

The scope of the inspection shall be limited to those matters which are reasonably related to the exigent condition. However, this limitation shall not preclude the prosecution of any other violation discovered in the course of the investigation.

F. The secretary may institute a civil action to compel inspections under this Section and to obtain a permanent or temporary injunction, restraining order, or any other appropriate order. The venue of such an action shall be in East Baton Rouge Parish or in the parish in which the facility is located or has an office. The court shall enter, ex parte or after a hearing, an appropriate order or decree upon a showing that the owner or operator of the facility has acted to or is about to do any of the following:

(1) Interfere with the secretary or his authorized representative in carrying out the provisions of this Subtitle.

(2) Refuse to admit the secretary or his representative to a facility as necessary for the enforcement of the Subtitle.

(3) Refuse to furnish information requested by the secretary or his representative as necessary for the enforcement of this Subtitle.

(4) Refuse access to, or the copying of, such records as the secretary or his representative determines are necessary for the enforcement of this Subtitle or refuse to provide reasonable copies of such records within a reasonable time.

G. Any person who in any way impedes an inspection authorized under this Section shall be liable for the penalties provided in this Subtitle unless a court finds that the inspection was unconstitutional. In any such action involving a refusal to provide copies as provided in Subsection (F)(4) of this Section, the respondent shall have the burden of proving that the request to provide copies of records was unreasonable.

H. The secretary or his representative shall make inspections upon the presentation of identification and shall, to the extent practicable under the circumstances, observe the rules concerning safety, internal security, and fire protection of any facility inspected under this Section.

I. If the secretary or his representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and, if requested and if practical, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

Acts 1982, No. 655, §1; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1990, No. 141, §1; Acts 1993, No. 270, §1; Acts 2003, No. 217, §1.

§2012.1. Monitoring equipment operation liability

A. Any person who operates monitoring equipment or allows such equipment to be placed on his property, where such equipment is operated for the purpose of voluntarily providing monitoring data at the request of and on behalf of the department, shall not be liable to any third party for damages of any kind resulting from the data or information obtained from the operation of such monitoring equipment or from the failure to obtain such monitoring data.

B. The department shall not be liable for damages of any kind resulting from the operation of or failure to operate monitoring equipment owned by the department but placed or located on the property of another when the equipment is operated by anyone other than a department employee.

C. Nothing in this Section shall limit the liability of any person required by the department to report any data under any air, water, or waste permit issued to that person.

Acts 1999, No. 1333, §1.

§2013. Environmental Control Commission authority; transfer to secretary

All powers and duties granted to the Environmental Control Commission prior to the effective date of this Section are hereby transferred to and shall be vested in the secretary. Where the term "commission" is used in this Subtitle, it shall mean the secretary of the Department of Environmental Quality.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984. Acts 1984, No. 795, §1, eff. July 13, 1984.

§2014. Permits, licenses, registrations, variances, and monitoring fees

A.(1) All permits, licenses, registrations, variances, and compliance schedules authorized by this Subtitle shall be granted by the secretary. The power to grant or deny permits, licenses, registrations, variances, or compliance schedules may be delegated by the secretary to the appropriate assistant secretary, subject to his continuing oversight. The authority to execute minor permit actions and to issue registrations, certifications, notices of deficiency, and notification of inclusion under a general permit may be delegated by

the secretary or the appropriate assistant secretary to an authorized representative, notwithstanding the provisions of R.S. 30:2050.26.

(2) However, prior to the grant of any permit, license, registration, variance, or compliance schedule to any facility, the assistant secretary for the office of environmental services shall consider the history of violations and compliance for that facility. In considering the granting or denial of the permit, license, registration, or variance, due consideration shall be given to the violation and compliance history of that facility.

(3) No permit, license, registration, variance, or compliance schedule shall be granted for the construction or modification of any facility to be used in receiving sulphur in the solid state in bulk quantities and from which sulphur particulate matter will be emitted.

(4) The secretary shall act as the primary public trustee of the environment, and shall consider and follow the will and intent of the Constitution of Louisiana and Louisiana statutory law in making any determination relative to the granting or denying of permits, licenses, registrations, variances, or compliance schedules authorized by this Subtitle.

B. In order to provide for adequate permitting, monitoring, investigation, administration, and other activities required for the maintenance of a healthful and safe environment, an initial fee and an annual monitoring and maintenance fee shall be charged for all permits, licenses, registrations, or variances authorized by this Subtitle. These fees shall be determined, except as otherwise provided in this Subtitle relative to maximum amounts of fees, using a formula developed by rules to be based upon a cost equal to the cost of the annual maintenance, permitting, monitoring, investigation, administration, and other activities required therewith, including any effects the volume of emissions or effluents may have on such activities. Any such formula or fees shall be adopted by the department by rule in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. Funds generated from these fees shall be deposited in the Environmental Trust Fund as provided in R.S. 30:2015.

C. Repealed by Acts 1997, No. 124, §2.

D.(1) The formulas used in determining the fees provided for in Subsection B of this Section shall be designed so as to discourage land disposal of hazardous waste and to encourage alternative and environmentally sound methods of reducing, destroying, recycling, neutralizing, and, to the least extent possible, disposing of hazardous waste. Such formulas shall be submitted to and approved by the legislative oversight committees prior to implementation thereof and shall be consistent with the policy and purposes provided for in the Louisiana Waste Reduction Law.

(2) Unless otherwise provided by law, the department is prohibited from adjusting, modifying, or otherwise changing the formula for any fee authorized under this Section in a manner that would increase the fee paid by any person by more than five percent of the relevant fee paid by such person in the previous fiscal year. However, this Paragraph shall not apply to fees imposed by the department for any underground storage tanks as provided in R.S. 30:2194.

(3) The department is prohibited from creating any new fees under this Subtitle.

(4) In accordance with the provisions of Article VII, Section 2.1 of the Constitution of Louisiana, and notwithstanding any other provision of law, the Department of Environmental Quality may modify any fee that is in effect on June 30, 2002, is authorized by this Title, and is required to be deposited into the Environmental Trust Fund. Such a modification may increase the rate in effect on June 30, 2002, over the two-year fiscal period beginning July 1, 2002, as follows: the department may increase any such fee by a maximum of twenty percent, effective on or after July 1, 2002, and by a maximum of ten percent above the rate in effect on June 30, 2003, effective on or after July 1, 2003. Within ninety days of the promulgation and adoption of any regulation necessary to implement the fees herein, the Department of Environmental Quality shall submit a written report to the Joint Legislative Committee on the Budget for its approval which details the proposed use for the fee increase, efforts to decrease the processing time for permits, efforts to increase the number of inspections conducted at regulated facilities, enforcement activities, and efforts to increase the collection of fines imposed by the Department of Environmental Quality.

(5) Except as provided in R.S. 30:2155.1, the department shall collect from each facility permitted as a construction or demolition debris landfill, as part of the annual monitoring and maintenance fee, a fee not exceeding twenty cents per ton of construction or demolition debris deposited in the facility. The fee provided for in this Paragraph shall only apply to construction or demolition debris which is subject to a fee imposed by the facility. The secretary is authorized to promulgate rules and regulations to implement this Paragraph.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Amended by Acts 1982, No. 671, §1; Acts 1982, No. 805, §1; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1983, No. 538, §1; Acts 1984, No. 795, §1, eff. July 13, 1984; Acts 1984, No. 803, §1; Acts 1986, No. 385, §1, eff. July 2, 1986; Acts 1986, No. 905, §1, eff. July 10, 1986;

Acts 1986, No. 943, §2, eff. July 11, 1986; Acts 1987, No. 657, §1; Acts 1987, No. 748, §1; Acts 1988, No. 465, §1; Acts 1989, No. 392, §1, eff. June 30, 1989; Acts 1995, No. 191, §1, eff. June 9, 1995; Acts 1997, No. 124, §§1, 2; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 2001, No. 596, §1; Acts 2002, 1st Ex. Sess., No. 134, §1, eff. July 1, 2002; Acts 2006, No. 718, §1, eff. July 1, 2006.

§2014.1. Permit review; prohibition

A. No permit issued under the authority of this Subtitle, including the Louisiana Pollutant Discharge Elimination System, shall be reviewed for approval by any board, body, or person who receives or has received, during the previous two years, a significant portion of income directly or indirectly from the applicant. If any person receives or has received significant income from the applicant he shall recuse himself from the permit approval process for that permit.

B. As used in this Section, the following terms shall have the following meanings:

(1) "Applicant" does not include any department or agency of state government.

(2) "Board" or "body" includes any individual, including the secretary, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal.

(3) "Income" includes retirement benefits, consulting fees, and stock dividends.

(4) "Significant portion of income" means ten percent or more of gross personal income for a calendar year, except that it means fifty percent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension, or similar arrangement.

(5) "Permit holders" does not include any department or agency of state government.

C. Income is not received directly or indirectly from applicants for a permit when it is derived from mutual fund payments or from other diversified investments for which the recipient does not know the identity of the primary source of income.

D. Any employee within the department who was convicted of a felony prior to his employment and did not disclose that conviction in his application for employment at the department is prohibited from being involved in the review or issuing of any permit, license, registration, variance, or compliance schedule authorized by this Subtitle.

E. In addition to all other terms and conditions specified in this Section, the following shall apply to all Louisiana Pollutant Discharge Elimination System (LPDES) permit applications received by the department for review:

(1) Persons who approve all or any portion of LPDES permit applications shall not have received, during the two years previous to such review, a significant portion of income, directly or indirectly, from any federal National Pollutant Discharge Elimination System (NPDES) or state LPDES permit holder or applicant.

(2) The recusal provided for in Subsection A of this Section is not permitted for LPDES permit applications. The approval of any portion of an LPDES permit application is prohibited by any person described in Paragraph (1) of this Subsection.

Acts 1993, No. 451, §1; Acts 1995, No. 602, §1.

§2014.2. Permits; qualifications

A. The secretary shall, by July 1, 1998, adopt rules which set out the qualifications and requirements for a person to be granted a permit or to acquire an ownership interest in a permit. The rules shall require a person seeking such permit or ownership interest to include a list of the states where the applicant has federal or state environmental permits identical to or of a similar nature to the permit for which application is being made.

B. The term "person" shall mean an individual, partnership, corporation, or other entity who owns a controlling interest in a company or who participates in the environmental management of the facility for an entity applying for a permit or an ownership interest in a permit.

Acts 1997, No. 1087, §1.

§2014.3. Review of secretary's public trustee decisions

A. This Section shall apply to the department and all permit applicants and shall apply only with respect to the public trustee issues, as provided in Article IX, Section 1 of the Constitution of Louisiana and by the Supreme Court of Louisiana in the case of Save Ourselves, Inc. v. Louisiana Environmental Control Commission, 452 So2d 1152 (La. 1984). Subsequent case law and laws interpreting said decisions and the rules and regulations adopted by the department in accordance with those decisions may be used to implement the public trustee issues, to be addressed by the secretary when making decisions with respect to permits, licenses, registrations, variances, or compliance schedules authorized by this Subtitle.

B. The applicant and any person who may become a party to an administrative or judicial proceeding to review the secretary's decision on an application must raise all reasonably ascertainable issues and submit all reasonably available evidence supporting his position on the permit application prior to the issuance of the final decision by the department so that the evidence may be made a part of the administrative record for the application.

C. No evidence shall be admissible by any party to an administrative or judicial proceeding to review the secretary's decision on the application that was not submitted to the department prior to issuance of a final decision or made a part of the administrative record for the application, unless good cause is shown for the failure to submit it. No issues shall be raised by any party that were not submitted to the department prior to issuance of a final decision or made a part of the administrative record for the application unless good cause is shown for the failure to submit them. Good cause includes the case where the party seeking to raise new issues or introduce new evidence shows that it could not reasonably have ascertained the issues or made the evidence available within the time established for public comment by the department, or that it could not have reasonably anticipated the relevance or materiality of the evidence or issues sought to be introduced.

Acts 1997, No. 1111, §1, eff. July 14, 1997.

§2014.4. Transfer of permits; disclosure

When a permit or license issued or under review by the Department of Environmental Quality for a commercial hazardous waste disposal facility is to be transferred to another person, the permittee, licensee, or holder of such permit or license shall disclose the identity of the person to whom the permit or license is to be transferred to the department so that the department can obtain the information required in R.S. 30:2014.2. The department shall then provide notice of the intended transfer of ownership of a permit or license for such facility to each member of the legislature in whose district the facility is located, in accordance with R.S. 30:2181.

Acts 2001, No. 596, §2.

§2014.5. Expedited permitting program

The secretary is authorized to develop and implement a program to expedite the processing of permits, modifications, licenses, registrations, or variances for environmental permit applicants who may request such services and the secretary shall adopt rules in accordance with the Administrative Procedure Act which shall include a notice that indicates such permit is an expedited permit.

Acts 2006, No. 586, §1.

§2014.6. Expedited permit program

A. The department shall report to the House Committee on Environment and the Senate Committee on Environmental Quality no later than May 1, 2007, on the status and progress of the expedited permit program. The report shall include a comparison of the average time required for the expedited permit process and the average time required to process similar permits under the normal permit process.

B. In addition to the fees charged pursuant to R.S. 30:2014, the fee for an expedited permit shall not exceed the maximum per hour overtime salary, including associated related benefits, of a civil service employee of the department. This fee shall be charged each applicant for every overtime hour or portion thereof a department employee works processing the expedited permit or for every hour or portion thereof a contractor works processing the expedited permit.

Acts 2006, No. 779, §1.

NOTE: See Acts 2006, No. 779, §3, relative to effectiveness as of Jan. 1, 2009.

§2015. Environmental Trust Fund

A. In order to fulfill the constitutional mandate of Article IX of the Louisiana Constitution to protect, conserve and replenish the natural resources of the state, the legislature hereby declares that sufficient funds shall be available to the Department of Environmental Quality to fulfill that mandate. It is the intent of this Section to insure that all funds generated by the department are used to fulfill and carry out its powers, duties, and functions as provided by law.

B. There is hereby established a fund in the state treasury to be known as the "Environmental Trust Fund", hereafter referred to as the "trust fund", into which the state treasurer shall each fiscal year deposit the revenues received from those sources provided for by Subsection C of this Section and other sources as provided for by law after those revenues have been deposited in the Bond Security and Redemption Fund. Out of the funds remaining in the Bond Security and Redemption Fund after a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state that become due and payable

within each fiscal year, the treasurer, prior to placing such funds in the state general fund, shall pay into the trust fund an amount equal to the revenue generated from collection from those sources provided for by Subsection C of this Section and other sources as provided for by law. No expenditures shall be made from the trust fund unless first appropriated by the legislature. The monies in the trust fund shall be invested by the state treasurer in the same manner as monies in the state general fund. All interest earned on money from the fund and invested by the state treasurer shall be credited to the Environmental Trust Fund.

C. The Environmental Trust Fund shall consist of all revenues generated from the following sources:

(1) All fees assessed pursuant to the authority granted in R.S. 30:2014, R.S. 39:55.2, and any other provision of law authorizing the department to assess a fee. Such fees shall be used only for the purpose for which they were assessed.

(2) All sums in excess of that required to fully fund the Hazardous Waste Site Cleanup Fund recovered through judgments, settlements, or assessments of civil or criminal penalties, or under this Subtitle or any other applicable law for any violation of this Subtitle.

(3) Any donations, grants, and sums appropriated or allocated to the trust fund by the legislature.

(4) Reimbursements for funds expended by the department for any response activities conducted due to any pollution discharge or disposal, environmental emergency, or remedial action.

(5) Any grants or allocations made to the state of Louisiana from the United States government for any purpose provided by the grant or allocation.

(6) Reimbursement or a judgment awarding damages for restoration or damages to the state's natural resources.

(7) Any costs assessed as part of any administrative hearing or enforcement action or reimbursement of costs associated with the granting of any permit, license, variance, or registration.

D. The monies in the Environmental Trust Fund shall be used for the following purposes:

(1) To defray the cost to the state of permitting, monitoring, investigating, maintaining, and administering the programs provided for under the Louisiana Environmental Quality Act. All monies in the fund in excess of that amount necessary to administer such programs shall remain in the fund, to be invested by the treasurer, until such time as either state or federal funds become unavailable for these purposes. These excess funds shall be retained for the purpose of supplanting lost and reduced state environmental funding, or federal environmental funding presently granted to the state.

(2) To defray the costs of emergency response activities or to pollution discharges, the containment, control, and abatement of pollution sources and pollutants, to provide money or services as the state share of matching funds for federal grants, the costs of securing and quarantining pollution sources, including the acquisition of rights of way, and easements or title to pollution sources.

(3) To defray the cost of investigation, testing, containment, control, and cleanup of hazardous waste or solid waste sites, to provide money or services as the state share of matching funds for federal grants, and to defray the cost of securing and quarantining hazardous waste sites, including the acquisition of rights of use, servitudes, or title when necessary.

(4) To implement the Environmental Emergency Response Training Program established by R.S. 30:2035.

(5) For the identification and determination of hazardous wastes which are inappropriate for certain methods of land disposal as required in R.S. 30:2193.

(6) To insure adequate scientific, technical, and legal support of litigation seeking recovery of costs of response activities, penalties sought under this Subtitle, or environmental damages.

(7) To make grants to colleges and universities within Louisiana for the purpose of theoretical and practical research and development of alternative and environmentally sound methods and technologies for reducing, destroying, recycling, neutralizing, and, to the least extent possible, disposing of hazardous waste. Research and development of alternative methods and technologies for the purpose of waste reduction shall receive priority consideration from the secretary in the granting of any monies authorized by this Subsection.

(8) To make reimbursements to local political subdivisions or volunteer fire departments which incurred expenses in performing services approved by the secretary in response to a declared emergency.

E. In any cases where monies from the trust fund are expended, the attorney general shall institute a civil action to recover from the responsible persons all such monies expended from the trust fund. If the secretary requests that the attorney general institute a civil action to recover monies expended from the trust fund and the attorney general declines to institute such action or does not respond within sixty days of such request and agree to institute a civil action, an attorney from the department may, with the concurrence of the

attorney general, institute a civil action to recover monies expended from the trust fund. Any monies so recovered shall be paid into the trust fund.

F. Upon a declaration of emergency, the secretary may enter into contracts providing for environmental emergency responses after informal negotiations without any other requirement of law; however, such contracts shall be subject to the prior written approval of the commissioner of the division of administration.

Acts 1989, No. 392, §1, eff. June 30, 1989; Acts 1995, No. 1160, §1; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 1999, No. 348, §1, eff. June 16, 1999.

§2015.1. Purpose; remediation of usable ground water

A. The legislature hereby finds and declares that Article IX, Section 1 of the Constitution of Louisiana mandates that the natural resources of the state, including water, are to be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people and further mandates that the legislature enact laws to implement this policy.

B. Notwithstanding any law to the contrary, upon the filing of any litigation, action, or pleading by any plaintiff in the principal demand, or his otherwise making a judicial demand which includes a claim to recover damages for the evaluation and remediation of any contamination or pollution that is alleged to impact or threaten usable ground water, such plaintiff filing same shall provide written notice by certified mail, return receipt requested, which notice shall contain a certified copy of the petition in such litigation, to the state of Louisiana through the Department of Environmental Quality. To the extent that any such litigation or action seeks to recover for the evaluation and remediation of any contamination or pollution that is alleged to impact or threaten usable ground water, the Department of Environmental Quality, in accordance with its respective areas of constitutional and statutory authority and regulations adopted pursuant thereto, shall have the right to intervene in such litigation or action in accordance with the Louisiana Code of Civil Procedure. The department shall not have the right to independently assert a plea for damages to usable ground water beyond that stated by the plaintiff in the principal demand. However, nothing in this Section shall diminish the authority of the department from independently bringing any civil or administrative enforcement action. No judgment or order shall be rendered granting any relief in such litigation, nor shall the litigation be dismissed, without proof of notification to the state of Louisiana as set forth in this Subsection.

C.(1) If, prior to judgment on the merits, a party admits responsibility or the court makes a determination that contamination of usable ground water exists which poses a threat to the public health, and that evaluation or remediation is required to protect usable ground water and determines the responsible party, the court shall either order the responsible party or a court-appointed expert to develop a plan for evaluation or remediation of the contamination. The court shall also consider any plan submitted by the plaintiff. The court shall order the Department of Environmental Quality to respond to any plan submitted within sixty days from the date of submission.

(2) Within sixty days of the submission of a plan as provided in Paragraph(C)(1) of this Section, any other party may file written objections to or request modification of the plan or submit an alternative plan. If proposed modifications to the plan or an alternative plan is filed by any other party, the court shall order the Department of Environmental Quality to respond within sixty days from the date of submission.

(3) After hearing, the court shall adopt or structure a plan which the court determines to be the most feasible plan to evaluate and remediate the contamination and protect the usable ground water consistent with the health, safety, and welfare of the people. Upon adoption of the plan, the court shall order the responsible party to fund implementation of the plan and shall order the estimated cost of implementation deposited in the registry of the court.

(4) No plan shall be adopted by the court without the court having provided the Department of Environmental Quality an opportunity to provide input into the formulation of the plan and without the court having given consideration to any input provided by the department.

D. After a trial on the merits, if the court makes a determination that contamination exists which poses a threat to public health as to which evaluation or remediation is required to protect usable ground water and determines the party responsible, the court shall render judgment adopting the plan which the court determines is the most feasible plan to evaluate or remediate the contamination and protect the usable ground water consistent with the health, safety, and welfare of the people. To the extent the judgment requires the evaluation or remediation to protect usable ground water, the court shall order the responsible party to deposit the estimated cost to implement the plan in the registry of the court. The court shall order the Department of Environmental Quality to respond to any plan submitted within sixty days from the date of submission. No plan shall be adopted by the court without the court having provided the Department of Environmental Quality

an opportunity to provide input into the formulation of the plan and without the court having given consideration to any input provided by the department.

E.(1) Whether or not the Department of Environmental Quality becomes a party, and except as provided in Subsection I of this Section, all damages or payments in any civil action, including interest thereon, awarded for the evaluation and remediation of contamination or pollution that impacts or threatens to impact usable ground water shall be paid exclusively into the registry of the court as provided in this Section.

(2) The district court may allow any funds to be paid into the registry of the court to be paid in increments as necessary to fund the evaluation and remediation. In any instance in which the court allows the funds to be paid in increments, whether or not an appeal is taken, the court shall require the posting of a bond for the implementation of the plan of remediation in such amount as provided by and in accordance with the procedures set forth for the posting of suspensive appeal bonds.

(3) The court shall issue such orders as may be necessary to ensure that any such amount is actually expended for the evaluation and remediation of the contamination of the usable ground water for which the award or payment is made.

(4) In all such cases, the district court shall retain jurisdiction over the funds deposited and the party cast in judgment until such time as the evaluation and remediation is completed. The court shall, on the motion of any party or on its own motion, order the party cast in judgment to deposit additional funds into the registry of the court, if the court finds the amount of the initial deposit insufficient to complete the the evaluation or remediation and, upon completion of the evaluation and remediation, shall order any funds remaining in the registry of the court to be returned to the depositor.

F.(1) In any civil action in which a party is adjudicated responsible for damages or payments for the evaluation and remediation of contamination or pollution that impacts or threatens to impact usable ground water, the party or parties providing evidence, in whole or in part, upon which the judgment is based shall be entitled to recover from the party cast in judgment, in addition to any other amounts to which they may be entitled, all costs, including expert witness fees and reasonable attorney fees attributable to producing that portion of evidence that directly relates to the claims of contamination or pollution that impacts or threatens to impact usable ground water.

(2) In any civil action in which the Department of Environmental Quality or its employees are parties or witnesses, provide evidence, or otherwise contribute to the determination of responsibility or evaluation or remediation, such agency shall be entitled to recover from the party cast in judgment all costs, including evaluation and review costs, expert witness fees, and reasonable attorney fees.

G. Any judgment adopting a plan of evaluation or remediation of usable ground water pursuant to this Section and ordering the responsible party to deposit funds for the implementation thereof into the registry of the court pursuant to this Section shall be considered a final judgment pursuant to the Code of Civil Procedure for purposes of appeal. The review or appeal of any judgment which consists in whole or in part of an order adopting a plan of evaluation or remediation of usable ground water shall be heard with preference and on an expedited basis.

H. The provisions of this Section are intended to ensure evaluation and remediation of usable ground water. When the court does not find contamination or pollution or a threat of contamination or pollution to usable ground water, the court may dismiss the Department of Environmental Quality from the litigation.

I. This Section shall not preclude an owner of land from an award for personal injury or damage suffered as a result of contamination that impacts or threatens usable ground water. This Section shall not preclude an owner of land from an award for damages to or for remediation of any other part of the surface or subsurface of his property and any award granted in connection therewith shall not be paid into the registry of the court, but shall be made directly to the owner of the land. This Section shall not preclude a judgment ordering damages for or implementation of additional remediation in excess of the requirements of the Department of Environmental Quality as may be required in accordance with the terms of an expressed or implied contractual provision. This Section shall not be interpreted to create any cause of action.

J. For the purposes of this Section, the following terms shall have the following meanings:

(1) "Usable ground water" shall mean any ground water defined as Groundwater Classification I or Groundwater Classification II under the terms of the Risk Evaluation Corrective Action Program (RECAP) regulations promulgated by the Louisiana Department of Environmental Quality and in effect on January 1, 2003.

(2) "Evaluation and remediation" shall include but not be limited to investigation, testing, monitoring, containment, prevention, or abatement.

K. The Department of Environmental Quality shall establish rules and procedures for the receipt, evaluation, and approval or modification of plans for evaluation or remediation. The rules established by the agency shall be based upon risk-based standards sufficient to protect human health and the environment.

L. This Section shall not apply to oilfield sites or exploration and production (E&P) sites regulated by the Department of Natural Resources, office of conservation. "Oilfield site"or "exploration and production (E&P) site" means any oilfield site or exploration and production site as defined in R.S. 30:29(I)(4).

Acts 2003, No. 1166, §1, eff. July 2, 2003; Acts 2006, No. 312, §1, eff. June 8, 2006.

NOTE: See Acts 2003, No. 1166, §2, relative to retroactivity.

§2016. Public hearing; fact-finding; investigation; inquiry; rulemaking

A. A public hearing for the purpose of fact-finding or establishing policy may be held at the discretion of the secretary. The hearing may be in the nature of an inquiry or an investigation, or for receiving public comments on a proposed rule, or a policy matter, or for other purposes.

B. A hearing which is an investigation or an inquiry shall be held in the parish in which the activity that gives rise to the hearing has occurred, is occurring, or may occur. Otherwise, a hearing may be held in any locality.

C. The secretary may issue subpoenas in accordance with R.S. 30:2025(I) requiring the attendance of witnesses and the production of such documents as are relevant to the objectives of the hearing.

D. Members of the public may present their oral statements, views, recommendations, opinions, and information at a hearing under this Section. They may file written statements and other documents such as charts, data, tabulations, and recommendations with the person conducting the hearing during the public hearing or after the hearing until the record of the hearing is closed.

E. The proceedings of the hearing shall be recorded and the verbatim transcript recording shall be filed in the record of the hearing. All written statements and other documents such as charts, data, tabulations, and recommendations filed with the person conducting the hearing shall be entered into the record of the hearing.

F. The person conducting the hearing shall prepare a report of the hearing and shall file the report in the record of the hearing.

Acts 1995, No. 947, §2, eff. Jan. 1, 1996.

§2017. Public hearings; presiding officer; authority

A. Subject to other provisions of this Section, the presiding officer at a public hearing shall have the authority to regulate the course of the proceeding, including the authority to begin and terminate the proceeding, to continue the hearing to another time or location, and to limit testimony which would be excessively cumulative or not related to the purpose of the hearing; however nothing herein shall be construed to prevent the right of any citizen to speak at a public hearing within the time limit set forth by the presiding officer.

B.(1) Regarding public hearings on permits for facilities, the presiding officer shall give preference for speaking up to one hour after the initial thirty-minute presentation of each hearing: first to those citizens who live within a two-mile radius of the location of the facility; second to those citizens who work within a two-mile radius of the location of the facility; and third to those citizens who live within the parish of the location of the facility. Thereafter, each hour of the hearing shall alternate between those who are in support of the proposed permit and those who are opposed to the proposed permit.

(2) Prior to the first hour of the hearing provided for in Paragraph (1) of this Subsection, the presiding officer shall provide for an introductory presentation of up to thirty minutes by the applicant to discuss and explain the proposed permit.

(3) Notwithstanding the provisions of this Subsection, the presiding officer at a public hearing may give preference to a public official to speak at any time during the public hearing. However, any time limit set by the presiding officer for citizen testimony shall apply to public officials.

Acts 1993, No. 557, §1; Acts 1997, No. 805, §1; Acts 2004, No. 72, §1.

§2018. Environmental assessment hearings

A. The applicant for a new permit or a major modification of an existing permit as defined in rules and regulations that would authorize the treatment, storage, or disposal of hazardous wastes, the disposal of solid wastes, or the discharge of water pollutants or air emissions in sufficient quantity or concentration to constitute

a major source under the rules of the department shall submit an environmental assessment statement as a part of the permit application.

B. The environmental assessment statement provided for in this Section shall be used to satisfy the public trustee requirements of Article IX, Section 1 of the Constitution of Louisiana and shall address the following issues regarding the proposed permit activity:

(1) The potential and real adverse environmental effects of the proposed permit activities.

(2) A cost-benefit analysis of the environmental impact costs of the proposed activity balanced against the social and economic benefits of the activity which demonstrates that the latter outweighs the former.

(3) The alternatives to the proposed activity which would offer more protection to the environment without unduly curtailing non-environmental benefits.

C. The department may, and if requested, shall, conduct a public hearing on the environmental assessment statement in the parish where the facility is located. Any public hearing on the environmental assessment statement, whether requested or at the discretion of the department, may be combined with a public hearing on the proposed permit. If the facility is located in more than one parish, the department may conduct a single hearing to serve all the affected parishes in the vicinity of a centrally located facility. Simultaneously with the submission of the statement to the department, the applicant shall also submit copies of the statement to the local governmental authority and designated public library where the facility is located, at no cost to the local governmental authority or the designated public library.

D. If public hearings are conducted pursuant to this Section, they shall be controlled by R.S. 30:2017.

E. The following are not subject to this Section:

(1) An application for a minor modification, minor variance, or exemption from or administrative amendment to a permit, license, registration, variance, or compliance schedule authorized by this Subtitle.

(2) An application for a minor source of air emissions, hazardous wastes, or solid wastes, or for a facility or activity which is not a major facility for water discharges.

(3) An application for authority to commence construction, a groundwater certification, or any decision regarding remedial action, remediation, response, corrective action, or cleanup of soil, groundwater, or surface water related to the facility or such immovable property.

(4) An application for renewal or extension of existing permits, licenses, registrations, exemptions, variances, or compliance schedules, unless said renewal or extension encompasses changes that need to be addressed as major applications.

(5) Any rulemaking by the department.

F. The provisions of this Section shall not apply to permits applied for prior to September 15, 1997.

G. The department shall rely on its applicable rules and regulations to determine whether a source, facility, or modification is considered as major or minor for the purposes of this Section.

H. Nothing in this Section shall relieve permit applicants or the department from the public trustee requirements set forth in Article IX, Section 1 of the Constitution of Louisiana and by the Supreme Court of Louisiana in Save Ourselves v. Louisiana Environmental Control Commission, 452 So.2d 1152 (La. 1984). Subsequent case law and laws interpreting said decisions and the rules and regulations adopted by the department in accordance with those decisions may be used to implement these requirements.

Acts 1997, No. 1006, §1; Acts 2004, No. 72, §1.

§2019. Promulgation of rules and regulations

A. The procedure for the adoption, amendment, or repeal of any rule or regulation shall be in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

B. A rule or regulation or any amendment thereof may differ in its terms and provisions as between particular conditions, sources, and areas of the state.

C. Except for R.S. 49:953(B)(1), promulgation of rules or regulations requiring a permit, license, or compliance schedule of a previously unregulated industry or practice shall not be initiated prior to a public hearing being held. Such hearing shall be held in accordance with the Administrative Procedure Act.

D.(1)(a) Notwithstanding any other provision of this Subtitle to the contrary, this Subsection shall be complied with prior to or concurrent with the proposal of any rule.

(b) The secretary or his designee shall make a written determination, based on sound scientific information, that the environmental and public health benefits to be derived from the proposed rule outweigh the social and economic costs reasonably expected to result from the proposed rule. This written determination shall be submitted to the legislative fiscal office for its review. The written determination shall

be submitted at the same time to the Joint Legislative Committee on the Budget for its approval. The written determination, at a minimum, shall include an assessment of the environmental and public health benefits to be derived from the proposed rule; the estimated economic cost to all persons directly affected by the proposed rule; and an explanation of the data, assumptions, and methods used in making the determination. These factors shall be identified to the maximum extent practical and, where feasible, quantified. A statement that the environmental and public health benefits to be derived from the proposed rule outweigh the social and economic costs reasonably expected to result from the proposed rule, which has been submitted for review to the legislative fiscal office, shall be included in any notice required under R.S. 49:953(A).

(2) Subparagraph (1)(b) of this Subsection shall not apply to any rule that meets any of the following criteria:

(a) Is required for compliance with a federal law or regulation.

(b) Is identical to a federal law or regulation applicable in Louisiana.

(c) Will cost the state and affected persons less than one million dollars, in the aggregate, to implement.

(d) Is an emergency rule under R.S. 49:953(B).

(3) For purposes of this Subsection, the term "identical" shall mean that the proposed rule has the same content and meaning as the corresponding federal law or regulation.

(4) Prior to proposal of any rule which meets an exception allowed in Paragraph (2) of this Subsection, the secretary or his designee shall certify for the public record that the proposed rule complies with any of the exceptions provided for in Paragraph (2) of this Subsection.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1987, No. 546, §1, eff. July 9, 1987; Acts 1991, No. 190, §1; Acts 1995, No. 600, §1, eff. June 18, 1995; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 2005, No. 21, §1.

§2019.1. Promulgation of rules and regulations affecting agriculture

A. No rule, regulation, or permit fee shall be adopted, amended, or repealed which affects the agriculture industry, including both production and processing and their various operations and industries, prior to compliance with this Section.

B. The governor shall designate a person from the office of the governor to act as a liaison between the department and the agriculture industry, including both production and processing and their various operations and industries.

C.(1) The department shall inform the chancellor of the Louisiana State University Agricultural Center and the commissioner of agriculture and forestry of proposed rules, regulations, or permit fees and the reasons for such.

(2) The chancellor shall designate appropriate research, extension, or other personnel under his authority who shall provide documentation to the department and the governor's appointed liaison with respect to:

(a) The environmental effects of agricultural practices.

(b) The economic impact of the proposed rules, regulations, or fees.

(c) The acceptable and unacceptable risk levels associated with traditional and proposed agricultural practices.

(d) The alternative methods of achieving environmental goals.

(e) The probable effectiveness of any proposed rules, regulations, or fees.

(f) Any other information that should be considered.

D. The positions of the Department of Environmental Quality and the agriculture community, as supported by the chancellor and the commissioner of agriculture and forestry, shall be communicated to the governor through his designated liaison for his participation in implementing or limiting the implementation of any such rule, regulation, or practice change.

E. Unless an emergency is initially declared by the governor and action is taken as provided for in R.S. 49:953(B)(1), no rule, regulation, or permit fee may be adopted, amended, or repealed which affects the agriculture industry unless statements from the secretary of the department, the chancellor, and the commissioner of agriculture and forestry accompany the rule, regulation, or permit fee which outline their individual opinions on the issues of whether the rule, regulation, or permit fee is justified, practical, and worthy of implementation, and public hearings have been held in accordance with the Administrative Procedure Act. Such statements from the secretary of the department, the chancellor, and the commissioner of agriculture and forestry shall be provided to the appropriate legislative oversight committee by the respective

official. The failure of an official to provide a statement shall constitute support for the rule, regulation, or permit fee.

Acts 1991, No. 860, §1, eff. July 23, 1991; Acts 1993, No. 173, §1.

§2020. Implementation plans, rules, regulations, and orders unaffected

All implementation plans, rules, regulations, and orders in effect at the time of the enactment of this Subtitle and those implementation plans presently approved by the state and pending approval before the Environmental Protection Agency shall continue to be in effect unless amended or repealed.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984.

§2021. Interstate compacts on environmental control; environmental impact statements

A. The department shall represent the state of Louisiana in compacts on environmental control as is provided by this Subtitle and shall administer any such compacts.

B. Notwithstanding any state law to the contrary, the department shall serve as a clearinghouse for all statements of environmental impact to be prepared or reviewed by state agencies other than the Department of Transportation and Development in accordance with PL 91-190, The National Environmental Policy Act. The Department of Wildlife and Fisheries shall have the responsibility to review and comment on any environmental impact statements relative to fish and wildlife resources or their habitat and to review and comment on the discharge of the dredge and fill material into the waters of the state. The Department of Health and Hospitals shall have the responsibility to review and comment on any environmental impact statements relative to public health.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Acts 1983, No. 97, §1, eff. Feb. 1, 1984.

§2022. Permit applications and variance requests; notification

A.(1) Any person seeking a permit, license, registration, variance, or LPDES variance shall file a written application for such with the secretary. Excluding applications relative to medical and dental devices, the secretary shall promptly send a notice of the subject matter of each application to the governing authority of the parish affected by the application and any public interest group or individual within the affected parish who has requested notice in writing and provided a mailing address. The notice of a permit, license, or registration application shall be provided within thirty days after receipt of the application. The parish governing authority shall promptly notify each municipality within said parish affected by the application.

(2) The secretary shall promptly consider such application and take such action thereon as he deems appropriate in accordance with law. However, the failure by the secretary or the parish governing authority to give the notice required by this Section shall not affect the validity of the action taken on the application.

(3) For the purposes of this Subsection, "any public interest group within the affected parish" shall mean any association having not less than twenty-five members who reside in the parish in which the relevant facility is or will be located.

B. No later than April 20, 1991, the secretary shall promulgate rules and regulations establishing procedures for the processing and review of permit applications for new facilities and applications for substantial permit modifications, including but not limited to administrative completeness reviews, checklists of required information, and maximum processing times, and which shall specify:

(1) Procedures for administrative completeness review to determine whether an application contains the information required to substantively review the application. The administrative completeness review procedure shall not extend beyond sixty days from the date the application is submitted, except where additional time is required to correct information or deficiencies in the application.

(2) The final decision shall not extend beyond three hundred days from the date the application is submitted, except where additional time is required for the applicant to revise or supplement technical information or deficiencies in the application, or for adjudicatory or judicial proceedings under R.S. 30:2024, or for required review by the United States Environmental Protection Agency, or for consideration of comments received at a public hearing in the case of an extraordinary public response, however in no case shall the extension for consideration of comments exceed forty-five days.

(3) Applications undergoing technical review shall not be subject to rule changes which occur during the technical review unless such changes are made in accordance with R.S. 49:953(B)(1) or are required by federal law or regulation to be incorporated prior to permit issuance. However, such a rule change made prior to the issuance of the permit may constitute grounds for a modification of the final permit.

(4) The deadlines established by this Section may be extended upon mutual agreement of the secretary and the applicant.

C.(1)(a) Notwithstanding any other law to the contrary, the secretary shall, after notification by the department to the applicant that the application is complete, grant or deny all applications for permits, licenses, registrations, variances, or compliance schedules relating to oil and gas wells and pipelines within sixty days. The notification of completeness shall be issued within fourteen days, exclusive of holidays, by the department. If the application is not complete, the department shall notify the applicant in writing of the deficiencies which cause the application not to be complete.

(b) If the secretary does not grant the application, he shall provide written reasons for his decision to deny, and copies of the decision shall be provided to all parties.

(c) The secretary may delegate the power to grant or deny permits, licenses, registrations, variances, or compliance schedules to the appropriate assistant secretary. The authority to execute minor permit actions and to issue registrations, certifications, notices of deficiency, and notification of inclusion under a general permit may be delegated by the secretary or the appropriate assistant secretary to an authorized representative, notwithstanding the provisions of R.S. 30:2050.26.

(2) If the secretary does not grant or deny the application within the time period provided for herein, the applicant may file a rule as provided for in R.S. 49:962.1; however, the provisions of this Paragraph shall not apply to permit applications submitted under the Louisiana Pollutant Discharge Elimination System (LPDES) program.

Acts 1990, No. 686, §1; Acts 1990, No. 996, §1; Acts 1991, No. 828, §1; Acts 1993, No. 269, §1; Acts 1995, No. 601, §1; Acts 1995, No. 1007, §1; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 2006, No. 117, §1, eff. June 2, 2006.

§2022.1. Permits; application; listing

A. An applicant for a permit shall file an application in the manner and at the place specified by rule.

B. The secretary shall maintain, in a place accessible to the public, a list of all permit applications which have been filed and on which no permit action has become final. The list shall identify the applicant, the location of the activity described in the application, and the type of permit that the applicant seeks. However, the failure by the secretary to prepare or maintain the required list of permit applications shall not affect the validity of the actions taken on such permit applications.

Acts 1995, No. 815, §1.

§2023. Existing permits, registrations, variances, and licenses

A. All permits, registrations, variances, and licenses granted for any activity covered by this Chapter shall have, as a matter of law, a term of not more than ten years, unless otherwise specified by rule or regulation for all facilities of a particular class or category, or unless a period of greater than ten years was specified when the existing permit, registration, variance, or license was granted, or specified in the permit, registration, variance, or license. At the end of the term the department may in accordance with rules and regulations extend or reissue a permit, registration, variance, or license for another term of up to ten years.

B. The department may at any time:

(1) Revoke a permit, registration, variance, or license for cause in accordance with law, rule, or regulation.

(2) After notice to the permittee and an opportunity for a hearing, modify a permit for cause in accordance with rule or regulation.

C. At the end of the term of any permit, registration, variance, or license the provisions of R.S. 49:961(B) shall apply with regard to any request for an extension or renewal. No permit, registration, variance, or license shall be terminated pursuant to this Section if the department has taken no action to extend, modify, or revoke the grant of authority. The grant shall remain in effect until such action is taken.

Acts 1989, No. 472, §1; Acts 1993, No. 116, §1.

§2024. Finality of action; trial de novo

A. Any permit action shall be effective upon issuance unless a later date is specified therein. Such action shall be final and shall not be subject to further review unless, no later than thirty days after the notice of the action is served by certified mail or by hand upon the applicant, he files with the secretary a request for hearing.

B. Upon timely filing of the request, the secretary shall either grant or deny the request within thirty days. If the request for hearing is granted, the issues raised in the request shall be resolved by an adjudicatory hearing before a hearing officer. Any appeal from a final decision of the secretary shall be in accordance with the provisions of Chapter 2-A of this Subtitle.

C. If the secretary does not grant the hearing within the time provided for in Subsection B, the applicant shall, within thirty days thereafter, be entitled to file an application for de novo review of the secretary's action in the Nineteenth Judicial District Court for the parish of East Baton Rouge.

D. Notwithstanding the provisions of Subsection A of this Section, with respect to the effectiveness of a permit action, a final decision of the secretary which will result in the practical closing and elimination of a lawful business by either the denial or restriction of a permit shall become effective no sooner than one hundred twenty days after notice of the action is served upon the respondent. In such an instance the existing permit will continue in effect until such decision becomes effective.

Acts 1983, No. 97,§1, eff. Feb. 1, 1984. Acts 1984, No. 795, §1, eff. July 13, 1984; Acts 1984, No. 825, §1, eff. July 13, 1984; Acts 1990, No. 197, §1, eff. July 2, 1990; Acts 1991, No. 231, §1; Acts 1991, No. 846, §1, eff. July 23, 1991; Acts 1993, No. 567, §1, eff. June 10, 1993; Acts 1995, No. 947, §2, eff. Jan. 1, 1996; Acts 1995, No. 1208, §2, eff. June 29, 1995.

§2025. Enforcement

A. General enforcement power.

Any civil action necessary to carry out the provisions of this Subtitle shall be brought by the secretary. In such suits, the secretary shall be represented by the attorney general. If the secretary requests that the attorney general bring a civil action to enforce a provision of this Subtitle and the attorney general declines to institute such action or does not respond to the secretary's request for representation within sixty days of such request and agree to institute a civil action, an attorney from the department may, with the concurrence of the attorney general, institute a civil action to carry out the provisions of this Subtitle.

B. Civil suit for damages.

(1)(a) The department may bring a civil action in the name of the state to recover any damages or penalties resulting from a violation of any requirement of this Subtitle or any rule, regulation, or order adopted thereunder. In such suits the department shall be represented by the attorney general and such actions shall be brought in a district court. Proper venue shall be any parish in which damage has occurred or any parish where the defendant resides, is domiciled, or has his principal place of business. The attorney general may file a suit for assessment of a penalty or collection of a penalty on those cases referred to him.

(b) If the court determines that a violation of this Subtitle has occurred, in assessing damages the court shall take into consideration the cost of restoring the affected area to its condition as it existed before the violation and its present market value and shall include therein the costs of all reasonable and necessary investigations made or caused to be made by the state in connection therewith.

(c) No civil proceedings brought under this Subsection shall limit or prevent any other actions or proceedings which are authorized by Subsections A, C, D, E, and G of this Section or by any other provision of this Subtitle which authorizes any action.

(d) If the secretary requests that the attorney general bring a civil action in the name of the state to recover any damages or penalties resulting from a violation of any requirement of this Subtitle or any rule, regulation, or order adopted thereunder or file a suit for assessment of a penalty or collection of a penalty on a case referred to him and the attorney general declines to bring a civil action or file a suit or does not respond to the secretary's request for representation within sixty days of such request and agree to institute a civil action or file suit, an attorney from the department may, with the concurrence of the attorney general, bring a civil action or file a suit to recover damages or penalties or assess or collect a penalty resulting from a violation of any requirement of this Subtitle or any rule, regulation, or order adopted thereunder.

(2) If a penalty is assessed against the violator under Subsection E of this Section, any amount paid by the violator shall be credited toward the amount for which he is held liable to the state in a judgment or settlement in any suit brought under this Subsection and which is based on the same violation or violations.

C. Compliance orders; emergency cease and desist orders.

(1) Upon a determination that a violation of this Subtitle is occurring or is about to occur which is endangering or causing damage to public health or the environment, the secretary may issue an emergency cease and desist order.

(2) Upon determining that a violation of any requirement of this Subtitle has occurred or is about to occur, notice may be given to the respondent of his failure to comply with such requirement or proceed pursuant to Paragraph (3) of this Subsection. If such violation extends beyond the thirtieth day after notification, the assistant secretary for the office of environmental compliance shall either issue an order requiring compliance within a specified time period, or the secretary shall commence a civil action for appropriate relief, including a temporary or permanent injunction.

(3) Upon determining that a violation of any requirement of this Subtitle has occurred or is about to occur, the assistant secretary for the office of environmental compliance shall issue an order requiring compliance within a specified time period, or the secretary shall commence a civil action for appropriate relief, including a temporary or permanent injunction.

D. Expedited enforcement program.

(1) The secretary may adopt rules and regulations establishing a program for expedited enforcement for minor violations of this Subtitle and regulations adopted pursuant to this Subtitle. Such citations may include the assessment of civil penalties and orders requiring compliance within a specified time period. The secretary may delegate the authority to operate such program to the appropriate personnel. Enforcement actions under this program will not be subject to the requirement for legal review under R.S. 30:2050.1(C). Citations issued pursuant to this Section are limited to minor or moderate violations not to exceed fifteen hundred dollars per violation or an aggregate total of three thousand dollars per violator.

(2) For the purpose of this program, the following shall apply:

(a) The department shall develop a plan for the implementation of a pilot program which shall provide that:

(i) Persons affected by the program shall have the option to proceed under any other applicable enforcement process, including legal review under R.S. 30:2050.1(C).

(ii) Enforcement actions shall not be considered a violation until either paid under this Subsection or considered a violation under any other applicable enforcement process.

(iii) The pilot program shall include one of the following programs administered by the department: water, air, solid waste, hazardous waste, radiation protection, or underground storage tanks.

(b) The department shall evaluate the pilot program and provide a report on such evaluation to the House Committee on Environment and the Senate Committee on Environmental Quality by March 1, 2004.

E. Civil penalties.

(1)(a) Any person found to be in violation of any requirement of this Subtitle may be liable for a civil penalty, to be assessed by the secretary, the assistant secretary of the office of environmental compliance, or the court, of not more than the cost to the state of any response action made necessary by such violation which is not voluntarily paid by the violator, and a penalty of not more than thirty-two thousand five hundred dollars for each day of violation. However, when any such violation is done intentionally, willfully, or knowingly, or results in a discharge or disposal which causes irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health, such person may be liable for an additional penalty of not more than one million dollars.

(b) If the penalty assessed by the department is upheld in full or in part, the department shall be entitled to legal interest as provided in Civil Code Article 2924 from the date of imposition of the fine or penalty until paid.

(c) Any person found to be in violation of any requirement of this Subtitle may be subject to the revocation or suspension of any permit, license, or variance which has been issued to the person.

(2) Any person to whom a compliance order or a cease and desist order is issued pursuant to Subsection C of this Section who fails to take corrective action within the time specified in said order shall be liable for a civil penalty to be assessed by the secretary, the assistant secretary of the office of environmental compliance, or the court of not more than fifty thousand dollars for each day of continued violation or noncompliance.

(3)(a) In determining whether or not a civil penalty is to be assessed and in determining the amount of the penalty or the amount agreed upon in compromise, the following factors shall be considered:

(i) The history of previous violations or repeated noncompliance.

(ii) The nature and gravity of the violation.

(iii) The gross revenues generated by the respondent.

(iv) The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.

(v) The monetary benefits realized through noncompliance.

(vi) The degree of risk to human health or property caused by the violation.

(vii) Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the department and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.

(viii) Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by his noncompliance or violation.

(ix) The costs of bringing and prosecuting an enforcement action, such as staff time, equipment use, hearing records, and expert assistance.

(b) The secretary may supplement such criteria by rule. In the event that the order with which the person failed to comply was an emergency cease and desist order, no penalty shall be assessed if it appears upon later hearing that said order was issued without reasonable cause.

(c) The secretary by rule may establish classifications or levels of violations and the appropriate enforcement response.

(4) Repealed by Acts 1995, No. 947, §3, eff. Jan. 1, 1996.

(5) After submission for a penalty determination at a hearing, the secretary or assistant secretary shall provide an opportunity for relevant and material public comment relative to any penalty which may be imposed.

(6) If the penalty assessed by the department is upheld in full or in part, the department shall be entitled to legal interest as provided in Civil Code Article 2924 from the date of imposition of the fine or penalty until paid. If any penalty assessed by the department under the provisions of this Subtitle is vacated or reduced as the result of an appeal of the assessment, the court shall award to the respondent legal interest as provided in Civil Code Article 2924 on the amount required to be refunded by the department.

F. Criminal penalties.

Except as otherwise provided by law:

(1)(a) Any person who willfully or knowingly discharges, emits, or disposes of any substance in contravention of any provision of this Subtitle, of the regulations, or of the permit or license terms and conditions in pursuance thereof, when the substance is one that endangers or that could endanger human life or health, shall be guilty of a felony and shall be fined not more than one million dollars or the cost of any cleanup made necessary by such violation and in addition may be fined not more than one hundred thousand dollars per violation, which may be assessed for each day the violation continues, and costs of prosecution, or imprisoned at hard labor for not more than ten years, or both, provided that a continuous violation extending beyond a single day shall be considered a single violation.

(b) However, the discharge of air contaminants into the air of this state in violation of the provisions of this Subtitle, of the regulations, or of the permit or license terms and conditions in pursuance thereof, by the incineration of cardboard by a retail or wholesale merchant or by his employee or agent shall not subject such person to the fine herein provided for, unless such incineration would violate an applicable requirement of the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended and the emission source meets any of the following:

(i) Emits or has the potential to emit, in the aggregate, ten tons per year or more of any toxic air pollutant listed by the department pursuant to R.S. 30:2060, or twenty-five tons per year or more of any combination of such toxic air pollutants.

(ii) Emits or has the potential to emit one hundred tons per year of any regulated air pollutant.

(iii) Is located in an ozone nonattainment area and emits or has the potential to emit one hundred tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate", fifty tons per year or more in areas classified as "serious", twenty-five tons per year or more in areas classified as "severe", and ten tons per year or more in areas classified as "extreme".

(2)(a) Any person who willfully or knowingly discharges, emits, or disposes of any substance in contravention of any provision of this Subtitle of the regulations, or of the permit or license terms and conditions in pursuance thereof, when the substance does not endanger or could not endanger human life or health, or who willfully or knowingly violates any fee or filing requirement, or who willfully or knowingly makes any false statement, representation, or certification in any form, application, record, label, manifest, report, plan, or other document filed or required to be maintained under this Subtitle, or under any permit, rule, or regulation issued under this Subtitle, or who willfully or knowingly falsifies, intentionally tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Subtitle, or under any permit, rule, or regulation issued under this Subtitle, shall be guilty of a misdemeanor and may be fined not more than twenty-five thousand dollars per violation, which may be assessed for each day the violation continues, and costs of prosecution, or imprisoned for not more than one year, or both, provided that a continuous violation extending beyond a single day shall be considered a single violation. A finding that this Paragraph has been violated shall be a responsive verdict when the defendant has been charged with a violation of Paragraph (1) of this Subsection.

(b) For the purposes of this Section, a person shall not be considered to willfully or knowingly violate a fee requirement if a payment of the fee is made under protest in accordance with R.S. 30:2042.

(c) For the purposes of this Section, a person shall not be considered to willfully or knowingly violate a fee or filing requirement if such requirement was not complied with through excusable neglect.

(3) Repealed by Acts 1992, No. 1126, §2.

(4) Upon a determination that a criminal violation may have occurred, notification shall be given to the district attorney in whose jurisdiction such possible violation has occurred. The department shall provide the district attorney with any and all information necessary to evaluate the alleged violation for criminal prosecution. The criminal prosecution of such violations shall be at the direction of the district attorney. The department shall cooperate fully with the district attorney.

(5) The court may suspend the execution of a sentence imposed on any offender convicted under this Subtitle of illegally disposing of solid waste as defined under R.S. 30:2153, if the offender is placed on supervised probation for at least two years and, as a condition of probation, cleans up the site or removes the illegally disposed waste from the site to the satisfaction of the Department of Environmental Quality.

G. Civil actions.

(1) The attorney general shall have charge of and shall prosecute all civil cases arising out of violation of any provision of this Subtitle including the recovery of penalties. If the secretary requests that the attorney general take charge of and prosecute a civil case arising out of violation of any provision of this Subtitle and the attorney general declines to prosecute such civil case or does not respond to the secretary's request for representation within sixty days of such request and agrees to prosecute a civil case arising out of violation of any provision of this Subtitle, an attorney from the department may, with the concurrence of the attorney general, prosecute such civil case.

(2)(a) In all cases wherein the secretary has issued an order assessing a penalty or requiring specific compliance actions to be undertaken, which order has become final but where the penalty assessed has not been paid or the actions undertaken, the attorney general shall file an ex parte petition in the Nineteenth Judicial District Court, in accordance with Code of Civil Procedure Article 2782, attaching a certified copy of the order to the petition, seeking to make the order of the secretary a judgment of the district court and making the judgment executory for all purposes provided by law.

(b) If the secretary requests that the attorney general file an ex parte petition to make an order of the secretary a judgment of the district court and the attorney general declines to file such petition or does not respond to the secretary's request for representation within sixty days of such request and agree to file such petition, an attorney from the department may, with the concurrence of the attorney general, file a petition seeking to make such order of the secretary a judgment of the district court and making the judgment executory for all purposes provided by law.

(c) The district court shall grant the relief prayed for and issue a judgment without a trial de novo of the facts supporting the order. Upon good cause shown and upon the posting of a bond in favor of the state as the court may require, a person against whom a judgment is rendered requiring specific compliance actions to be undertaken may within ten days of service of the judgment seek an extension, modification, or suspension of the judgment by summary proceeding. The hearing shall be limited to the issue of whether or not compliance has taken place.

(3) Where the order of the secretary has been appealed to the court of appeal and the court of appeal has affirmed or modified the order without remanding same to the secretary, the petition shall seek execution of the decision of the court of appeal in the same manner as provided in Paragraph (2) of this Subsection.

H. Time for commencing proceedings.

Except as otherwise expressly provided within this Subsection, an action, suit, or proceeding by the state for the assessment or enforcement of any civil fine or penalty under the Louisiana Environmental Quality Act shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender is found within the United States in order that proper service may be made thereon. For the purposes of this Subsection, a claim for a civil fine or penalty first accrued when the violation is first reported to the Department of Environmental Quality, in accordance with applicable laws and regulations.

I. Service of subpoenas; judicial enforcement.

(1) Subpoenas authorized under R.S. 30:2011(D) may be served by an employee of the department, by the sheriff of the parish where the witness resides or where he may be found, or by any other officer authorized by law to make service of process.

(2) In the case of a failure or refusal of a person to obey a subpoena issued under this Subtitle or in the case of a refusal of a witness to testify or answer as to a matter regarding which he may be lawfully interrogated, the district court of the district within which the public hearing is held or within which the person

is found, resides, or transacts business, on the application of the secretary or an assistant secretary, may issue an order to the person requiring him to comply with the subpoena, to attend the hearing, to produce the desired documents or evidence, or to give his testimony with respect to the matter under consideration. Any failure to obey such orders of the court may be punished by the court as a contempt thereof.

J. Reporting.

(1) No later than January 1, 1990, the Department of Environmental Quality and the Department of Public Safety and Corrections shall jointly establish a uniform reporting procedure and facilities, and shall provide the necessary personnel to be available to receive reports containing the same information on a twenty-four hour per day, three hundred sixty-five day per year basis of all emergency releases and shall be responsible for dissemination of such reports to other state agencies or authorities.

(2) Any person who discharges, emits, or disposes of any substance in contravention of any provision of this Subtitle or the regulations or of any permit or license terms and conditions issued thereunder, upon learning of the discharge, emission, or disposal, shall immediately, or in accordance with regulations adopted under this Subtitle, provide notification in accordance with the uniform reporting procedures to be established pursuant to Paragraph (J)(1) above, to the proper authorities as to the nature and amount thereof and the circumstances surrounding same, provided that no additional notifications or reports shall be required for emergency releases except as specifically required by law or rules as provided by this Section.

(3) The secretaries of each department shall jointly adopt and promulgate a single set of rules and regulations establishing procedures for making such notification.

(4) Any failure to make this notification or any attempt to conceal or actual concealment of the actual discharge or emission or disposal shall be a violation of this Subtitle.

(5) Each day of failure to give notification required herein shall constitute a separate violation, and shall be in addition to any other violations of this Subtitle.

K. Recovery of used resources or expended funds. In any action brought pursuant to this Section, the National Guard or local governmental agency which in an emergency response situation used resources or expended funds for the protection of the health, safety, or welfare of its citizens, for prevention of damage, or for the cleanup or repair of damages caused by or as a result of a violation of this Subtitle, shall, with the concurrence or review of the department, have the right to recover such funds and the value of the resources used from the violator, where such funds or resources used are reasonably considered to be outside the scope of normal activities. Any such funds recovered from the violator shall be credited toward the amount that he is assessed or held liable for to the state under this Section. Any action to recover funds or resources expended by the National Guard or a local governmental agency shall be brought within sixty days of the completion of the emergency response situation.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Amended by Acts 1980, No. 194, §4; Acts 1980, No. 748, §3; Acts 1981, No. 521, §1; Acts 1982, No. 146, §1; Acts 1982, No. 265, §1; Acts 1982, No. 300, §1; Acts 1982, No. 322, §1; Acts 1982, No. 379, §1; Acts 1982, No. 671, §1; Acts 1982, No. 797, §1, eff. Aug. 4, 1982; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1983, No. 236, §1; Acts 1983, No. 320, §1; Acts 1984, No. 824, §1, eff. July 13, 1984; Acts 1985, No. 246, §1; Acts 1986, No. 942, §1, eff. July 11, 1986; Acts 1987, No. 318, §1, eff. July 6, 1987; Acts 1988, No. 254, §1, eff. July 6, 1988; Acts 1989, No. 200, §1, eff. June 26, 1989; Acts 1989, No. 392, §3, eff. June 30, 1989; Acts 1989, No. 484, §1; Acts 1990, No. 249, §1; Acts 1990, No. 628, §1; Acts 1990, No. 988, §1; Acts 1992, No. 943, §1, eff. July 9, 1992; Acts 1992, No. 965, §1; Acts 1992, No. 1126, §§1, 2; Acts 1993, No. 118, §1; Acts 1993, No. 124, §1, eff. Jan. 1, 1994; Acts 1995, No. 947, §§2, 3, eff. Jan. 1, 1996; Acts 1995, No. 1160, §1; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 1999, No. 351, §1, eff. June 16, 1999; Acts 1999, No. 791, §1; Acts 2003, No. 1196, §1; Acts 2004, No. 17, §1, eff. May 12, 2004; Acts 2004, No. 52, §1.

§2026. Citizen suits

A.(1) Except as provided in Subsection (B) of this Section, any person having an interest, which is or may be adversely affected, may commence a civil action on his own behalf against any person whom he alleges to be in violation of this Subtitle or of the regulations promulgated hereunder. The action must be brought either in the district court in the parish in which the violation or alleged violation occurs or in the district court of the domicile of the alleged violator, and shall be afforded preferential hearing by the court.

(2) If, at the hearing on the order, it appears to the satisfaction of the court that a violation has occurred, or is occurring, the court may, in order to enforce the provisions of this Subtitle, assess a civil penalty not to exceed ten thousand dollars for each day of the continued noncompliance and the court may, if appropriate, issue a temporary or permanent injunction.

(3) The court in issuing any final order in any action brought pursuant to this Section, may award costs of court including reasonable attorneys and expert witness fees to the prevailing party. The court may also

award actual damages to the prevailing plaintiff. The judgment of the court at the hearing, or subsequently on a petition for fixing the penalty if the violation is a continuing one, shall fix the total amount of penalty due, which shall be collectible under the same procedures as now fixed by law for the collection of money judgments and shall be awarded to and collected by the state of Louisiana and deposited into the state treasury.

B. No action under this Section shall be commenced under Subsection A:

(1) Prior to thirty days after the plaintiff has given written notice of the violation to the secretary and to any alleged violator by certified mail, return receipt requested.

(2) If the secretary or his legal counsel has commenced and is diligently prosecuting a civil or criminal action in a court of this state to require compliance with any standard, limitation, or order; however, in any such action any person having an interest which is or may be adversely affected may intervene as a matter of right.

(3) If the alleged violator is operating under a variance and is in compliance with the terms of such variance.

(4) Against any person while such person, with respect to the same violation is:

(a) Under any order issued pursuant to this Subtitle to enforce any provision of this Subtitle.

(b) A defendant in any civil suit brought under the provisions of R.S. 30:2025.

(c) The subject of an action to assess and collect a civil penalty pursuant to R.S. 30:2025(E).

C. Provided, however, that nothing herein shall be construed to limit or deny any person's right to injunctive or other extraordinary and ordinary relief under the Louisiana Code of Civil Procedure or otherwise under Louisiana law, other than this Section.

D. The enforcement, procedures, and remedies herein provided for shall be in addition to any such procedures and remedies authorized under the laws of this state.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Amended by Acts 1980, No. 194, §5; Acts 1980, No. 748, §4; Acts 1981, No. 702, §1, eff. July 23, 1981; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1993, No. 344, §1; Acts 1993, No. 452, §1.

§2027. Environmental violations reported by employees; reprisals prohibited

A. No firm, business, private or public corporation, partnership, individual employer, or federal, state, or local governmental agency shall act in a retaliatory manner against an employee, acting in good faith, who does any of the following:

(1) Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy, practice of the employer, or another employer with whom there is a business relationship, that the employee reasonably believes is in violation of an environmental law, rule, or regulation.

(2) Provides information to, or testifies before any public body conducting an investigation, hearing, or inquiry into any environmental violation by the employer, or another employer with whom there is a business relationship, of an environmental law, rule, or regulation.

B.(1) Any employee against whom any action is taken as a result of acting under Subsection A of this Section may commence a civil action in a district court of the employee's parish of domicile, and shall recover from his employer triple damages resulting from the action taken against him and all costs of preparing, filing, prosecuting, appealing, or otherwise conducting a law suit, including attorney's fees, if the court finds that Subsection A of this Section has been violated. In addition, the employee shall be entitled to all other civil and criminal remedies available under any other state, federal, or local law.

(2)(a) The term "action is taken" shall include firing, layoff, lockout, loss of promotion, loss of raise, loss of present position, loss of job duties or responsibilities, imposition of onerous duties or responsibilities, or any other action or inaction the court finds was taken as a result of a report of an environmental violation.

(b) "Damages" to be tripled pursuant to Paragraph B(1) of this Section shall be for the period of the damage, but not to exceed three years, and shall include but not be limited to lost wages, lost anticipated wages due to a wage increase, or loss of anticipated wages which would have resulted from a lost promotion, and if the period of the damage exceeds three years, the employee shall thereafter be entitled to actual damages. In addition to the above, "damages" shall also include any property lost as a result of lost wages, lost benefits, and any physical or emotional damages resulting therefrom.

C. This Section shall have no application to any employee who, acting without direction from his employer or his agent, deliberately violates any provision of this Subtitle or of the regulations, or permit or license terms and conditions in pursuance thereof.

Added by Acts 1981, No. 280, §1; Acts 1991, No. 959, §1; Acts 1999, No. 1172, §1.

§2028. Environmental training programs

The secretary may develop environmental training programs to further the provisions of this Subtitle and to cooperate with facilities to implement training programs for employees which assist in the understanding of the rules and regulations as it pertains to compliance and the reporting as required by all applicable provisions of such regulations.

Added by Acts 1983, No. 551, §1.

§2029. Complainants bond; liability

A complaint alleging a violation of this Subtitle, filed as provided in R.S. 30:2026 hereof, shall have attached the personal bond of the complainant in the sum of one hundred dollars, conditioned upon the payment of costs of the hearing held on the complaint in the event the court determines a violation of this Subtitle has not occurred nor is occurring. No liability whatsoever shall be incurred by the complainant by reason of the filing of a complaint as provided in R.S. 30:2026 hereof, other than the payment of costs of the hearing as provided in R.S. 30:2026.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Amended by Acts 1980, No. 194, §5.

§2030. Confidential information; restricted access via the Internet

A.(1) Department records and information obtained under this Subtitle, or by any rule, regulation, order, license, or permit term or condition adopted or issued hereunder, or by any investigation authorized thereby, shall be available to the public, unless nondisclosure is requested in writing, and such information is determined by the department to require confidentiality. Such information may be classified as confidential by the department if the secretary makes a written determination that confidentiality is necessary to:

(a) Prevent impairment of an ongoing investigation or prejudice to the final decision regarding a violation; or

(b) Protect trade secrets, proprietary secrets and information, and commercial or financial information.

(2) However, such nondisclosure shall not apply to necessary use by duly authorized officers or employees of state or federal government in carrying out their responsibilities under this Subtitle or applicable federal law, and air emission data or discharges to surface and ground waters and the location and identification of any buried waste materials shall be not construed as confidential information.

B. The department shall adopt such regulations as are necessary to effectively implement this Section in strict accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

C. Any employee of the department or any former employee of the department or any authorized contractor acting as a representative of the secretary or the department who is convicted of intentional disclosure or conspiracy to disclose trade secrets or other information which has been determined to be confidential pursuant to regulations applicable hereto is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars, imprisonment for up to one year, or both.

D.(1) The department shall restrict access to certain security sensitive information which shall be the same type of information as described in R.S. 44:3.1 for the purpose of preventing the distribution or dissemination of such information via the Internet by the department, its employees, or by an authorized contractor acting as a representative of the secretary or the department. Any information to which access is restricted shall not be distributed or disseminated via the Internet by the department or its employees, or an authorized contractor acting as a representative of the secretary or the department. The department shall adopt such rules and regulations in accordance with the Administrative Procedure Act as are necessary to fully describe the information to which access is restricted and to effectively implement this Subsection.

(2) Any employee of the department or any former employee of the department or any authorized contractor acting as a representative of the secretary or the department who is convicted of the intentional distribution or dissemination of any information via the Internet to which access has been restricted pursuant to the provisions of this Subsection is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars, imprisonment for up to one year, or both.

(3) Nothing in this Subsection shall be construed or interpreted in a manner to prevent or restrict the intradepartmental transfer or communication of information to be used in the performance of official duties.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Amended by Acts 1981, No. 702, §1, eff. July 23, 1981; Acts 1982, No. 323, §1; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1986, No. 347, §1, eff. June 30, 1986; Acts 1993, No. 570, §1; Acts 2004, No. 636, §1, eff. July 5, 2004.

§2031. Donations or assistance for pollution sources

A. It is declared to be the public policy of the state to expedite the investigation, testing, containment, cleanup, and abatement of pollution sources, and to that end the secretary is authorized to accept and receive

grants, donations, or other forms of assistance from private sources which are provided to the state for those purposes and dedicated to a specific designated pollution source. Such grants, donations, or monetary assistance shall be deposited in accordance with R.S. 30:2015 and R.S. 30:2205, unless their terms and conditions require otherwise, as contemplated by Article VII, Section 9(A)(1) of the Constitution of Louisiana.

B. Any private monies received by the secretary under this Section conditioned upon their being escrowed or not being deposited in the state treasury shall be deposited in an interest-bearing account within the state. Such monies shall be expended by the secretary for services and activities at the designated pollution source consistent with this Section and the terms and conditions of their grant or donation and shall not be considered public funds under R.S. 39:1482.

C. The secretary shall be exempt from the provisions of R.S. 39:1481-1526 in the expenditure of private grants for procurement of services in accordance with the terms and conditions of such grants; however, the attorney general shall approve as to legal effect any contracts for services. The secretary shall incur no liability to any person in the expenditure of grants for procurement of services, except to the donor for acts or omissions in violation of the express terms and conditions of the grant or donation as accepted.

D. The grant, donation, or provision of assistance by any private source for the purposes contemplated by this Section shall not be construed as creating any liability or responsibility or presumption thereof for the designated pollution source against the donor or grantor. In the event that any penalties or damages are assessed against a donor or grantor on a designated pollution source, the secretary may take into consideration the amount donated in assessing penalties and damages.

E. Where any grant or donation is offered to the secretary as part of a proposed settlement of a suit or claim for penalties, acceptance shall be conditioned upon approval of the secretary in accordance with the provisions of R.S. 30:2050.25.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1989, No. 392, §1, eff. June 30, 1989; Acts 1995, No. 947, §2, eff. Jan. 1, 1996.

§2032. Cooperative agreements

The secretary may enter into a cooperative agreement and may disburse monies from the funds provided by R.S. 30:2034 and R.S. 30:2205 to a person, private trust, association, committee, or other entity for the purpose of evaluation, investigation, testing, containment, cleanup, or abatement of specific abandoned hazardous waste sites without a formal declaration and with waiver of recovery from parties to the agreement if deemed in the public interest. Any party to such an agreement must be licensed according to law before negotiating or entering into such a contract. Cooperative agreements shall require reasonable contributions in cash or services in kind from private parties to the agreement and shall provide for reasonable supervision by the secretary. Cooperative agreements shall be negotiated informally by the secretary and shall not be subject to any other requirements of law for entering into contracts. Prior to the execution of such an agreement, it shall be reviewed by the commissioner of the Division of Administration.

Added by Acts 1983, 1st Ex. Sess., No. 45, §1, eff. Jan. 19, 1983. Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1986, No. 319, §1.

§2033. Declaration of emergency

A. Notwithstanding any other provisions of this Subtitle, upon receipt of evidence that there is an incident occurring which is of such magnitude as to require immediate action to prevent irreparable damage to the environment or a serious threat to life or safety based on recognized criteria or standards or both, the secretary may declare that an emergency exists.

B. Upon declaration of an emergency, the secretary shall direct the attorney general to take such legal action as the secretary deems necessary. If the secretary directs the attorney general to take such legal action upon declaration of an emergency as the secretary deems necessary, and the attorney general declines to take such action or does not respond to the secretary's request within ten days of such request and agree to take such requested action, an attorney from the department may, with the concurrence of the attorney general, take such action.

C. When an emergency situation is declared, the secretary is authorized to undertake the containment and abatement of the pollution source and pollutants and may retain personnel for these purposes who shall operate under his direction. He may order the owner, operator, or person responsible for the pollution source to conduct testing, monitoring, and analysis to ascertain the nature and extent of such hazard or undertake the containment, abatement, or cleanup of such pollution source and pollutants. Failure to comply with his order shall be a violation of this Subtitle and shall be punishable as provided in R.S. 30:2025.

D.(1) The secretary may issue such permit, variances, or other orders as necessary to respond to the emergency, which shall be effective immediately upon issuance, and any appeal or request for review shall not

suspend the implementation of the action ordered. The term of any such emergency action shall be limited to the time necessary to address the emergency conditions.

(2) An action for injunctive relief against any order issued pursuant to the declaration of an emergency shall be brought in the Nineteenth Judicial District Court for the parish of East Baton Rouge. Exhaustion of administrative remedies is not a prerequisite to such action.

(3) The party bringing an action under this Subsection has the burden of demonstrating, by clear and convincing evidence, that granting injunctive relief shall not endanger or cause damage to the public health or the environment.

E. In addition, when an emergency is declared, emergency response personnel trained in environmental emergency response as provided by R.S. 30:2035 shall be authorized to undertake necessary actions to contain and abate the pollution source and pollutants.

F. An emergency cease and desist order is governed by the provisions of R.S. 30:2050.8 and not by the provisions of this Section.

Added by Acts 1980, No. 194, §6. Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1983, No. 361, §1, eff. July 2, 1983; Acts 1983, No. 459, §1, eff. July 6, 1983; Acts 1995, No. 947, §2, eff. Jan. 1, 1996; Acts 1995, No. 1160, §1; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2034. Repealed by Acts 1989, No. 392, §3, eff. June 30, 1989.

§2035. Environmental Emergency Response Training Program

A. The Environmental Emergency Response Training Program is hereby created for the purpose of providing or securing training designed to instruct emergency response personnel to quickly, efficiently, and effectively respond to and address environmental problems and emergencies occurring within the area of their jurisdiction and to assist in addressing, when necessary, environmental emergencies occurring regionally.

B.(1) The chief of each eligible agency including any municipality or parish may apply to the department for allocation of funds from the Environmental Trust Fund to provide or secure the training authorized by this Section.

(2) In order to encourage training programs to further the purposes of the Louisiana Environmental Quality Act, as provided in R.S. 30:2011(D)(8), the department may make allocations available only for those training programs which meet certain basic guidelines for emergency response training established by the Department of Public Safety and Corrections or the Department of Natural Resources in conjunction with the Peace Officers Standard Training (POST). At a minimum, such guidelines shall require that training provide instruction in emergency response situations peculiar or applicable to Louisiana.

(3) The guidelines required by this Subsection shall be adopted and promulgated by rule and regulation by the Department of Public Safety and Corrections on or before November 15, 1983.

Acts 1983, No. 361, §1, eff. July 2, 1983; Acts 1989, No. 392, §1, eff. June 30, 1989; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2036. Easements, rights of way, eminent domain

A. When an emergency is declared, the secretary, under the police powers of the state, may, for the duration of the emergency and without compensation to the landowner except for actual damages to property or person, claim a comprehensive easement over the pollution source and all other areas sufficient to secure, contain, clean up, or abate the same. During the existence of an emergency the secretary may also impose a quarantine upon such pollution source until he has determined that the emergency creating a hazard to the public or environment has been abated, contained, or otherwise determined no longer to be a hazard.

B. During the first one hundred eighty days of a declared emergency, the secretary is authorized to claim and declare an emergency access route, which shall be held without compensation to the owner except for actual damages to property or person, under the police powers of the state, and the location of such may be over and across either public or private lands and shall be such as are deemed necessary and reasonable for the resolution and control of said emergency.

C. When the secretary determines that a period greater than one hundred eighty days will be or is needed for purposes of abating, controlling, or monitoring the pollution source, he shall first attempt to acquire the necessary rights of way by negotiating with the burdened landowner for the purchase or lease thereof, and where the property needed cannot be obtained through negotiations, he may exercise the right of eminent domain to obtain temporary or permanent passage.

D. The secretary is hereby authorized and directed to seek to acquire such rights as are necessary to maintain control over such areas by negotiations with the owner of the lands affected. When such rights cannot be acquired through reasonable negotiations, the department is hereby empowered to exercise the right

of eminent domain to the same extent and with the same limitations as is applicable to other public purposes set forth in R.S. 19:1 et seq.

E. All emergency easements and access routes are to be continued in effect during the term of the emergency until all rights sought under said eminent domain proceedings have been finally vested thereunder unto the state.

F. In all cases where the state acquires property rights either amicably or by eminent domain from any person against whom a claim has been asserted who owns or possesses rights in the declared pollution source, payment of all monies for said acquisition shall be withheld until such time as that person's liability has been finally resolved. All funds withheld shall be utilized to offset the liabilities assessed.

G. Nothing in this Section shall be construed to deny or limit access to the pollution source by the secretary or his authorized agents for the purposes of carrying out the provisions of this Subtitle and as provided in other applicable provisions of law.

Added by Acts 1980, No. 194, §6. Acts 1983, No. 97, §1, eff. Feb. 1, 1984.

§2037. Repealed by Acts 1999, No. 303, §3, eff. June 14, 1999.

§2038. Degradable or recyclable plastics; state agencies

A.(1) In order to enhance the beauty and quality of our environment; conserve and recycle our natural resources; prevent the spread of disease and the creation of nuisances; protect the public health, safety, and welfare; and provide a coordinated statewide solid waste resource recovery and management program, the legislature finds that inefficient and improper methods of managing solid waste create hazards to public health, cause pollution of air and water resources, constitute a waste of natural resources, have an adverse effect on land values, and create public nuisances. Problems of solid waste management have become a matter statewide in scope and necessitate state action to promote more efficient methods of solid waste collection and disposal. The economic and population growth of our state and the improvements in the standard of living enjoyed by our population have required increased industrial production together with related commercial and agricultural operations to meet our needs, which have resulted in a rising tide of unwanted and discarded materials. The failure or inability to economically recover material and energy resources from solid waste results in the unnecessary waste and depletion of our natural resources, and, therefore, maximum resource recovery from solid waste and maximum recycling and reuse of such resources must be considered goals of the state.

(2) It is declared to be the purpose of this Section to provide a program for state agencies to use degradable or recyclable plastics in the most economically feasible, cost-effective, and environmentally safe manner the storage, collection, transport, separation, processing, recycling, and disposal of solid waste in order to protect the public safety, health, and welfare and enhance the environment for the people of this state.

B. State agencies are hereby requested and authorized to use in their daily operations degradable or recyclable plastic materials in those instances when it is appropriate and economically feasible. Any such agency shall consult with the Department of Environmental Quality to determine the degradable or recyclable plastic materials available to be used.

C. The Department of Environmental Quality is hereby directed upon request by a state agency to assist in that agency's use of degradable or recyclable plastics where appropriate and economically feasible. The Department of Environmental Quality shall provide a plan for use of degradable or recyclable plastics to any state agency requesting assistance to convert to the use of degradable or recyclable plastics.

Acts 1989, No. 572, §1, eff. July 6, 1989.

§2039. Recordation of notice of solid or hazardous waste site by landowner

A. If a landowner has actual or constructive knowledge that his property:

(1) Has been used for the disposal of hazardous waste or as a solid waste landfill, except as provided in rules, and such wastes remain on the property, and if recording of the notice provided for herein is required by the Louisiana Solid Waste Regulations or the Louisiana Hazardous Waste Regulations; or

(2) Has been identified by the department as an inactive or abandoned solid waste landfill or hazardous waste site, he shall cause notice of the identification of the location of the waste site to be recorded in the mortgage and conveyance records of the parish in which the property is located. Such notice shall be made in a form approved by the secretary and within the time specified by the secretary. If a landowner fails or refuses to record such notice, the secretary may, if he determines that the public interest requires, and after due notice and an opportunity for a hearing has been given to a landowner, cause such notice to be recorded. The clerk of court shall forward to the Department of Environmental Quality a copy of each notice recorded by a landowner in accordance with this Subsection.

B.(1) If any person wishes to remove such notice, he shall notify the secretary prior to requesting the removal from the clerk of court in the parish where the property is located. The request shall specify the facts supporting removal of the notice, including any evidence that the waste no longer poses a potential threat to health or the environment. Upon finding that the waste no longer poses a potential threat to health or the environment, the secretary shall approve removal of the notice.

(2) If approval is granted by the secretary, the request may be made by affidavit to the clerk of court for the removal of the notice and it shall be removed. Within ten days after removal, the clerk of court shall send a notice of the removal to the secretary. If the secretary objects to the removal of such notice, or fails to make a final determination upon the request within ninety days, the person desiring to have the notice removed may petition the court in the parish where the property is located for removal of the notice and after a contradictory hearing between the landowner, the clerk of court, and the secretary or his designee, the court may grant such relief upon adequate proof by the petitioner that the property no longer contains the waste which may pose a potential threat to health or to the environment.

C. This Section shall not apply to any facility which is operating under a permit issued by the department until such time as such notice is required by an order of the secretary, by a permit, or by rule or regulation applicable to such facility.

D. The failure of a landowner to file the required notice may constitute grounds for an action in redhibition under the applicable provisions of Civil Code Articles 2520 et seq., unless the purchaser has actual or constructive knowledge that the property has been used for such purposes.

E. Any action under this Section must be commenced within one year from the date the purchaser first knows of the existence of the fact which gives rise to the action, but in any event within three years of the date upon which the purchaser acquired his ownership interest in the property. Venue shall be in any parish in which the property or any portion thereof is located.

Acts 1990, No. 505, §§1, 2; Acts 1991, No. 851, §1.

§2040. Siting disposal facilities in Rapides Parish

The secretary shall not authorize or permit within Rapides Parish any new commercial solid or hazardous waste disposal facility or new commercial solid waste or sanitary landfill within two miles of the corporate limits of any municipality or the nearest boundary line of any property on which is located a public elementary or secondary school or health care facility licensed by the state.

Acts 1990, No. 1037, §1.

{{NOTE: SEE ACTS 1990, NO. 1037, §2.}}

§2041. Repealed by Acts 1997, No. 123, §2.

§2042. Payment under protest

A. Any person protesting the payment of any amount found due by the secretary shall remit to the secretary the amount found to be due and at that time shall give the secretary notice of intention to file suit for the recovery of such fee, or the portions thereof which are protested.

B. Upon receipt of this notice, the amount remitted shall be placed in an escrow account and held by the secretary or his duly authorized representative for a period of thirty days. If suit is filed for recovery of the fee within the thirty-day period, the funds in the account shall be further held pending the outcome of the suit. If the person protesting the fee prevails, the secretary shall refund the amount to the claimant, with interest at the rate established pursuant to Civil Code Article 2924(B)(3) from the date the funds were received by the secretary to the date of such refund. Payments of interest authorized by this Subsection shall be made from funds derived from current collections of the fee to be refunded.

C. This Section shall afford a legal remedy and right of action in the Nineteenth Judicial District Court for full and complete adjudication of any and all questions arising in the enforcement of fees established under this Subtitle as to the legality of the fee or the method of enforcement thereof. In such action, service of process upon the secretary shall be sufficient service, and he shall be the sole necessary and proper party defendant in any such action.

Acts 1993, No. 118, §1.

§2043. Public records; forms and methods; electronic signatures

A. Notwithstanding any other provision of law to the contrary, any public record maintained by the department may be kept in any written, photographic, microfilm, or other similar form or method, or may be kept by any magnetic, electronic, optical, or similar form of data compilation which is approved for such use in a rule promulgated by the department. No such magnetic, electronic, optical, or similar form of data compilation shall be approved unless it provides reasonable safeguards against erasure or alteration.

B. The department may, at its discretion, cause any public record maintained by it or any part thereof to be microfilmed, or otherwise reproduced, in order to accomplish efficient storage and preservation of such records.

C. A certified copy of a public record maintained by the department shall be deemed to be an original for all purposes and shall be admissible in evidence in all courts or administrative agencies as if it were the original.

D. Subject to such guidelines and limitations as may be promulgated by the department, electronic signatures and the use of electronic documents are hereby authorized. In accordance with such regulations promulgated by the department, an electronic document shall be considered to be "in writing" for the purpose of this Subtitle and may be used to satisfy any requirement otherwise required by this Subtitle. An electronic document is any document in electronic, magnetic, optical or other format, except an audio recording, used to create, transfer, approve, or store the document for subsequent retrieval.

E. The department shall promulgate rules to regulate the use of electronic signatures and electronic documents. Such rules may include limitations upon the use of electronic documents and which documents may be signed electronically.

Acts 1999, No. 350, §1, eff. June 16, 1999; Acts 2001, No. 1032, §11.

CHAPTER 2-A. ENFORCEMENT PROCEDURE AND JUDICIAL REVIEW

§2050.1. Enforcement; policies; list; legal review

A. The secretary shall establish policies and procedures to address violations of this Subtitle in a formal and consistent manner.

B.(1) The secretary shall maintain a list of all notices of violations, compliance orders, and penalty assessments issued in the preceding three months. The list shall be updated monthly.

(2)(a) On a periodic basis, the secretary shall mail a copy of the list, either separately or as part of a department publication, to persons who request that they be placed on the mailing list.

(b) The secretary shall publish a list of proposed beneficial environmental projects that have been agreed to by the department and the respondent, including those that are currently out for public comment, on the department's website. The list of proposed beneficial environmental projects shall reflect a cumulative year's record.

C. The chief legal officer shall review each proposed compliance order, penalty assessment, suspension of a permit, emergency cease and desist order, settlement or compromise, and other proposed final enforcement action for legal sufficiency.

D. A penalty assessment and a compliance order may be consolidated.

E. The failure of the secretary to perform the duties imposed by this Section shall not affect the validity of any enforcement action.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 2001, No. 1197, §1.

§2050.2. Enforcement; compliance orders

A. When information indicates that a violation has occurred, is occurring, or is about to occur, the assistant secretary for the office of environmental compliance may issue a notice of violation or a compliance order within ten days after the completion of the investigation of the violation. Any notice of violation shall describe with reasonable specificity the nature of the violation and shall advise the respondent that further enforcement action may be taken if compliance is not promptly achieved. The assistant secretary shall notify the respondent of the issuance of the notice of violation or compliance order.

B. A compliance order shall:

(1) Describe with reasonable specificity the nature of the violation.

(2) Establish a time period for achieving compliance with the requirements of this Subtitle.

(3) Notify the respondent of the right to an adjudicatory hearing.

(4) Advise the respondent that civil penalties may be assessed for a violation.

C. The compliance order becomes a final enforcement action when the period of time for filing a request for an adjudicatory hearing lapses without a request being filed.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2050.3. Enforcement; notice of violation; penalties

A. The secretary shall establish criteria for the assessment of reasonably consistent department-wide penalties based upon the factors enumerated in this Subtitle. If criteria for a particular violation are not established, the secretary or the assistant secretary for the office of environmental compliance shall exercise discretion in applying the factors enumerated in this Subtitle on the basis of available information.

B.(1) When the assistant secretary determines that a violation has occurred for which an assessment of a penalty is under consideration, the assistant secretary shall notify the respondent.

(2) The notice shall describe with reasonable specificity the nature of the violation and shall advise the respondent that the assessment of a penalty is under consideration.

(3) Written comments may be filed with the assistant secretary regarding the alleged violation and a possible penalty.

C.(1) The assistant secretary may issue a penalty assessment ten days after notice of the violation has been given to the respondent. The assistant secretary shall notify the respondent of the assessment.

(2) A notice of penalty shall:

(a) Describe, with reasonable specificity, the violation that gives rise to the penalty.

(b) Indicate the amount of the penalty.

(c) Notify the respondent of the right to an adjudicatory hearing.

D. The penalty assessment is a final enforcement action when the period of time for filing a request for an adjudicatory hearing lapses without a request being filed.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2050.4. Enforcement; adjudicatory hearing; public comment

A. The respondent has the right to an adjudicatory hearing on a disputed issue of material fact or of law arising from a compliance order or a penalty assessment. This right may be exercised by filing a written request with the secretary.

B. An aggrieved person other than the respondent, may request in writing an adjudicatory hearing on a disputed issue of material fact or of law arising from the compliance order or penalty assessment. The secretary may grant the request when equity and justice require it.

C. When the request for an adjudicatory hearing raises an issue of law only, the secretary may limit the parties to the presentation of oral or written arguments. When the request for an adjudicatory hearing raises an issue of material fact, the scope of the hearing may be limited to the disputed issue of material fact.

D. A request for an adjudicatory hearing shall specify the provisions of the order or assessment on which the hearing is requested and shall briefly describe the basis for the request. The secretary may require the aggrieved person to supplement the specification or description.

E. A request for an adjudicatory hearing must be filed within thirty days after notice to the respondent of the compliance order or penalty assessment. Within thirty days after the filing of the request, the secretary shall notify the person requesting an adjudicatory hearing that the request has been granted or denied unless the secretary and the applicant have mutually agreed to enter into dispute resolution discussions in accordance with Subsection J of this Section.

F. The secretary may grant an untimely request for an adjudicatory hearing when the secretary determines that the untimeliness results from excusable neglect. The decision of the secretary to grant or to deny an untimely request is not subject to judicial review.

G.(1) If the secretary grants the hearing within the time provided for in Subsection E, the matter shall proceed pursuant to the applicable rules of the department and the Administrative Procedure Act.

(2) If the secretary denies the hearing within the time provided for in Subsection E, an applicant appealing the decision of the secretary shall, within thirty days from the date of notice of the denial, file an application for de novo review of the secretary's denial in the Nineteenth Judicial District Court for the parish of East Baton Rouge.

(3) If within the time provided for in Subsection E, the secretary has not granted or denied the hearing, or if the secretary and the applicant have not mutually agreed, in writing, to engage in dispute resolution discussions, then this inaction by the secretary shall be deemed to be a denial of the applicant's request for hearing and the applicant seeking de novo review of the secretary's decision shall, within thirty days after the

expiration of the time period provided in Subsection E, file an application for de novo review of the secretary's denial in the Nineteenth Judicial District Court for the parish of East Baton Rouge.

H.(1) When a request for an adjudicatory hearing relates only to a provision of the compliance order or the penalty assessment, the secretary may order compliance or may assess a penalty as to those provisions on which a hearing is not requested.

(2) An action by the secretary under this Subsection is a final enforcement action.

I. Prior to the adjudicatory hearing, written public comments regarding the proposed compliance order or penalty assessment may be filed with the assistant secretary for the office of environmental compliance. The assistant secretary shall make the public comments available to the parties to the adjudicatory hearing.

J.(1) If the secretary and the applicant mutually agree to enter into dispute resolution discussions, they shall execute a written agreement prior to the expiration of the time provided for in Subsection E. The secretary and the applicant shall mutually select, or may extend, the expiration date for conducting the dispute resolution discussions, provided however that the time period does not exceed one year from the date the parties first execute a written agreement.

(2) All disputes that are resolved shall be reduced to writing. Either party may withdraw from the resolution process by sending a written notice of withdrawal, certified mail, return receipt requested, to the other party. If the dispute is not resolved within the time period agreed upon, within the one-year maximum, or by the date of the withdrawal of either party, the secretary shall, within thirty days, notify the person requesting an adjudicatory hearing that the request has been granted or denied.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 2001, No. 1197, §1.

§2050.5. Enforcement; final action

A. The obligations imposed by an order or assessment are enforceable when the order or assessment becomes a final enforcement action.

B. The obligations imposed by a compliance order concerning a community sewer system are enforceable when notice thereof is given to the respondent in accordance with R.S. 30:2050.23. When an adjudicatory hearing on such compliance order has been requested and granted pursuant to R.S. 30:2050.4, such compliance order, or any portions thereof, may be stayed by an administrative law judge in the Division of Administrative Law, Department of Civil Service, pending the outcome of the adjudicatory hearing. When de novo review of a community sewer system compliance order has been applied for and granted by the Nineteenth Judicial District Court pursuant to R.S. 30:2050.4(G), such compliance order, or any portion thereof, may be stayed by a judge of said court, pending the outcome of the de novo review. Such a stay may be issued only upon a showing that failure to comply with the community sewer system compliance order will result in no risk of harm to human health or the environment.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996; Acts 1997, No. 16, §1; Acts 1999, No. 1007, §1.

§2050.6. Enforcement; informal procedures

A. The secretary may establish informal procedures for compliance orders and penalty assessments by rules adopted in accordance with the Administrative Procedure Act. The rules shall specify those types of compliance orders and penalty assessments for which an informal proceeding is adequate to protect the public interest. Informal procedures may be employed only with the consent of the respondent.

B. Rules issued under this Section shall, at a minimum, provide for each of the following:

(1) An affidavit or other document to establish that a violation occurred.

(2) Notice to the respondent of the evidence relied upon to establish the violation.

(3) An opportunity for the respondent to present oral, documentary, and physical evidence in opposition to the order or assessment.

(4) An opportunity for members of the public to file written comments regarding the contested order or assessment and to attend the informal hearing if one is held.

(5) Inclusion of the final enforcement action on the public list.

C. An informal proceeding is not governed by the procedures of this Chapter for adjudicatory hearings or the adjudication provisions of the Administrative Procedure Act.

D. A compliance order or penalty assessment issued upon conclusion of an informal proceeding is a final enforcement action.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.7. Enforcement; settlement or compromise

A. Except as otherwise provided herein, the secretary, with the concurrence of the attorney general, may settle or resolve as deemed advantageous to the state any suits, disputes, or claims for any penalty under any provision of this Subtitle or the regulations or permit terms and conditions applicable thereto. The concurrence of the attorney general is not required for the secretary to settle or resolve (1) a suit, dispute, or claim in regard to a compliance order or (2) any part of a suit, dispute, or claim insofar as it regards a compliance order.

B. Before signing a settlement or compromise, the secretary shall invite and receive written public comment on the proposed settlement agreement or compromise during the forty-five days following notice to the attorney general.

C. The secretary shall give notice of the proposed settlement or compromise to a person who has requested notice of the proposed settlement or compromise and shall require the respondent to publish a notice of the settlement or compromise in the official journal of the parish governing authority for the parish in which the violation that gives rise to the order or assessment occurred. The secretary may also require the respondent to publish the notice of the settlement or compromise in any other newspaper of general circulation in the area where the violation that gives rise to the order or assessment occurred.

D. The secretary may hold a public hearing regarding a proposed settlement or compromise when either of the following conditions is satisfied:

(1) A written request for a public hearing has been filed by twenty-five persons, by a governmental subdivision or agency, or by an association having not less than twenty-five members who reside in the parish in which the facility is located.

(2) The secretary finds a significant degree of public interest in the settlement or compromise.

E.(1) Notwithstanding the provisions of R.S. 30:2205, the secretary may enter into settlements of civil penalty assessments which allow the respondent to perform beneficial environmental projects or provide for the payment of a cash penalty to the state, or both. Such settlements shall be considered a civil penalty for tax purposes.

(2)(a) Settlements provided for under this Section shall be submitted to the attorney general for his approval or rejection. The settlement shall be accompanied by the underlying enforcement action, a description of any beneficial environmental project which is an element of such settlement, and a justification for the settlement. Approval or rejection by the attorney general of any settlement shall be in writing with a detailed written reason for rejection.

(b) Reasons for rejection shall be failure of the department to follow and adhere to the Louisiana Environmental Quality Act, the regulations promulgated thereunder, or any other constitutional, statutory, or regulatory provisions.

(c) The attorney general shall make any request for additional information concerning the terms and condition of the settlement within thirty days of receiving the request for approval or rejection. Within thirty days of a request for additional information by the attorney general, the department shall provide its responses to such request.

(d) The secretary may execute the proposed settlement without the approval of the attorney general if the attorney general does not give written notice to the secretary of his rejection of the settlement within ninety days after receiving the proposed settlement.

(3) The secretary shall adopt and promulgate rules and regulations in accordance with the provisions of the Administrative Procedure Act to implement a program for allowing the performance of beneficial environmental projects. Such rules and regulations shall define the parameters of beneficial environmental projects, consistent with federal law, regulations, and policies and shall include environmental mitigation as an aspect of all such authorized projects. The secretary shall prepare and submit to the Senate Committee on Environmental Quality and the House Committee on the Environment no later than March first an annual report on any beneficial environmental projects allowed by the secretary as part of any settlements of civil penalty assessments.

(4) Notwithstanding the provisions of R.S. 30:2015, 2031, and 2205, the secretary may enter into settlements of any suits, disputes, or claims for any penalties that require the payment of money by the respondent to the Central States Air Resources Agencies Association (CENSARA) or the Southern Environmental Enforcement Network (SEEN). Any such settlements shall require that CENSARA or SEEN utilize such money only for specified studies or other projects directly benefitting the state of Louisiana. Any such payment shall be considered a civil penalty for tax purposes.

F. Any settlement of civil penalty assessments which allows the respondent to perform beneficial environmental projects as provided in Subsection E of this Section and that result from enforcement actions occurring at facilities owned or operated by a port commission shall consider giving preference to those beneficial environmental projects that directly impact facilities owned or operated by the affected port commission provided that the port is not responsible for the violation.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996; Acts 1999, No. 1184, §1, eff. July 9, 1999; Acts 2001, No. 252, §1; Acts 2003, No. 165, §1.

§2050.8. Enforcement; cease and desist orders

A. When a violation that is endangering or causing significant damage to public health or the environment is occurring or is about to occur, the secretary may issue a cease and desist order to protect public health or the environment.

B. A cease and desist order shall:

(1) Describe with specificity the activity occurring at the facility or the site that is endangering or causing significant damage to public health or the environment.

(2) Identify the specific threat to public health or the environment that the activity presents.

(3) Specify the measures that the owner or operator of the facility or the site is directed to undertake immediately in order to abate or to eliminate the danger or the damage to public health or the environment.

C. A cease and desist order is effective upon the signing of the order. The respondent shall comply with the order immediately upon receiving knowledge of the order.

D. A cease and desist order expires in fifteen days, unless terminated earlier by the Nineteenth Judicial District Court.

E. The secretary may file an action in a district court for injunctive relief at the expiration of the cease and desist order. The secretary must establish that a violation is occurring or is about to occur and that the violation is endangering or causing significant damage to public health or the environment. Security is not required. All other provisions of law relative to injunctive relief apply.

F.(1) An action for injunctive relief against a cease and desist order shall be brought in the Nineteenth Judicial District Court. Exhaustion of administrative remedies is not a prerequisite to judicial review.

(2) The party bringing an action under this Subsection has the burden of demonstrating, by clear and convincing evidence, that the activity specified in the cease and desist order is not endangering or causing significant damage to public health or the environment.

G. A cease and desist order is not subject to administrative review.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996; Acts 1999, No. 1184, §1, eff. July 9, 1999.

§2050.9. Enforcement; abandonment

A compliance order or a penalty assessment is abandoned when the department fails to take any steps to obtain final enforcement action for a period of two years after the issuance of an order or an assessment.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.10. Declaratory rulings

A. The secretary shall adopt procedures for the issuance of declaratory rulings on significant matters. The rules must provide for:

(1) The form, content, and filing of a petition for a declaratory ruling.

(2) The procedural rights of the person seeking a declaratory ruling.

(3) The disposition of the petition.

(4) A fee, to be paid by the petitioner, sufficient to defray the expenses of issuing the ruling.

(5) Concurrence as to legal sufficiency by the chief legal officer.

(6) A requirement that the secretary shall maintain, in a place accessible to the public, a list of all petitions for declaratory rulings that have been filed. The list shall identify the petitioner, the matter to be decided and, when applicable, the location of the activity or facility which is the subject of the petition.

(7) The right of intervention by aggrieved persons.

B. A person having a real and actual interest in the matter for which a declaratory ruling is sought may petition the secretary for a declaratory ruling. The secretary may issue a declaratory ruling as to the applicability of a statute or rule to facts established by affidavit.

C. The secretary shall decide within sixty days after the filing of a petition whether a declaratory ruling will be issued. If the secretary determines that a declaratory ruling should not be issued, the petitioner may

then proceed under the provisions of the Administrative Procedure Act authorizing an action for a declaratory judgment to determine the validity or applicability of a rule or under the provisions of the Code of Civil Procedure authorizing an action for a declaratory judgment.

D. The secretary shall maintain, in a place accessible to the public, a list of petitions for declaratory rulings and of declaratory rulings, and an index to the list.

E. The secretary shall notify the petitioner, an intervenor, and a person who requested notice and provided an address.

F. A declaratory ruling is a final agency action.

G. The secretary may prospectively reverse or modify the declaratory ruling after notice to the petitioner in accordance with rules governing such proceedings.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2050.11. Adjudicatory hearings, in general; intervention; withdrawal; public hearing

A. An adjudicatory hearing shall be conducted in accordance with the procedures prescribed in the Administrative Procedure Act.

B. An aggrieved person has the right to intervene as a party in an adjudicatory hearing when the intervention is unlikely to unduly broaden the issues or to unduly impede the resolution of the matter under consideration.

C.(1) An applicant, a respondent, or other aggrieved person may withdraw a request for an adjudicatory hearing at any time.

(2) If all requests are withdrawn, the preliminary permit decision, compliance order, or penalty assessment becomes a final permit or enforcement action.

D. When a public hearing is held in conjunction with an adjudicatory hearing, the former shall precede the latter.

E. The record of the public hearing held in conjunction with an adjudicatory hearing shall be made available to the parties to the adjudicatory hearing.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.12. Public hearing; location; public comment; transcript

A. A public hearing may be held in conjunction with an adjudicatory hearing. It shall be conducted in an orderly and expeditious manner.

B. A hearing held under this Section shall be held in the parish in which the activity that gives rise to the hearing has occurred, is occurring, or may occur.

C. Members of the public may present their oral statements, views, recommendations, opinions, and information at a hearing under this Section. They may file written statements and other documents such as charts, data, tabulations, and recommendations with the person conducting the hearing during the public hearing or after the hearing until the record of the hearing is closed.

D. The proceedings of the hearing shall be recorded and either a copy of the recording or a verbatim transcript recording shall be filed in the record of the hearing. All written statements, and other documents such as charts, data, tabulations, and recommendations filed with the person conducting the hearing shall be entered into the record of the hearing.

E. The presiding officer shall prepare a summary or report of the hearing and file it in the record of the hearing.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.13. Hearing officers; employment

The secretary may employ one or more hearing officers to perform such duties relative to adjudications as the secretary assigns to them. A hearing officer shall be a full-time employee in the classified service of the state.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.14. Hearing officers; qualifications; ethical standards

A. A hearing officer for an adjudicatory hearing shall:

(1) Have a general knowledge of the contaminants, wastes, and other materials whose interactions with the environment are regulated by this Subtitle.

(2) Have a general knowledge of the provisions of this Subtitle and of the rules issued under this Subtitle.

(3) Be licensed and admitted to practice law by the Supreme Court of the state of Louisiana and have been actively engaged in the practice of law in this state for a minimum of five years.

(4) Hold no public office of or employment by the state or any political subdivision of the state, or any local governmental entity, except an institution of higher education.

B. A hearing officer shall comply with the Code of Governmental Ethics. The secretary may prescribe provisions of the Code of Judicial Conduct or other relevant ethical standards that apply to hearing officers.

C. The secretary shall adopt rules supplementary to the rules of the State Civil Service Commission to instill public confidence that the department's administrative direction regarding matters such as appointment, classification, promotion, pay, tenure, discipline, removal, hours of duty, travel, parking space, office space and equipment, office procedures, staff assistance, organizational structure, and performance evaluation is not used to influence the decision or recommendation of a hearing officer.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.15. Hearing officers; powers; contemptuous conduct

A. A hearing officer for an adjudicatory hearing shall have the power to:

(1) Administer oaths and affirmations.

(2) Receive acknowledgments and affidavits.

(3) Order depositions be taken.

(4) Hold conferences for the settlement or simplification of a matter.

(5) Issue subpoenas requiring the attendance and giving of testimony by witnesses and the production of documentary and other physical evidence.

(6) Dispose of interlocutory matters.

(7) Conduct and regulate the course of an adjudicatory hearing, rule on offers of proof, receive admissible evidence, make findings of fact and conclusions of law, make recommendations, issue orders, and render decisions.

(8) Conduct public hearings held in conjunction with an adjudicatory hearing.

(9) Exercise any other power conferred by the Administrative Procedure Act.

(10) Exercise any other power conferred by law.

B.(1) When a party, the representative of a party, or a witness in an adjudicatory hearing refuses to comply with an order of the hearing officer or acts contemptuously toward the hearing officer, the secretary or a party may apply by summary process to the district court for an appropriate order.

(2) The hearing officer may certify the acts that constitute refusal to obey an order or contemptuous conduct to the attorney general who shall apply on behalf of the hearing officer by summary process to the district court for an appropriate order.

(3) The court shall preferentially hear an application and enter such order as the court deems proper.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.16. Hearing officers; orders, recommendations, decisions

A. A hearing officer shall file orders issued and recommendations or decisions rendered by the hearing officer at the conclusion of the hearing in the record of adjudication and with the secretary. The hearing officer shall give notice to each party or the party's counsel of record of such order, recommendation, or decision.

B. An order or decision of a hearing officer becomes final thirty days after the last notice is given, without a request for administrative review being filed. However, the secretary may reserve the right to make the final decision.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.17. Hearing officers; administrative review by secretary

A. A party may only seek review of an order, decision, or ruling of a hearing officer by requesting an administrative review by the secretary. Judicial review of specified interlocutory orders or rulings is governed by R.S. 30:2050.18.

B. A request for administrative review shall specify the grounds upon which review is requested.

C. Upon timely filing of a request for administrative review, the secretary shall either grant or deny the request within thirty days. The secretary may deny the request or grant the request on one or more of the specified grounds. If the request for administrative review is granted, the secretary shall establish a reasonable briefing schedule considering the exigency of the circumstances.

D. When the secretary denies the request for administrative review, the order, decision, or ruling is final.

E. When the request for administrative review is granted, the secretary may take any of the following actions:

(1) Render an order, decision, or ruling as is supportable by the record.

(2) Remand the matter for a new hearing to receive additional evidence.

(3) Remand the matter with other instructions.

F. The secretary shall render an order, decision, or ruling no later than sixty days after the request for administrative review is granted, except in a matter of such complexity that the secretary determines an additional sixty days is necessary for the review.

G. Motions to reconsider a final order, decision, or ruling of the secretary shall be filed within ten days after notice of the final order, decision, or ruling. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsiderations shall be directed to, and decided by, the secretary and filed with the hearings division.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.18. Hearing officers; interlocutory order or ruling; judicial review

A.(1) Upon request of a party, the hearing officer may certify an interlocutory order or ruling for direct review by the Nineteenth Judicial District Court when both of the following conditions are satisfied:

(a) The issue involves an important procedural or evidentiary matter on which a substantial difference of opinion exists.

(b) Immediate judicial review will materially advance the conclusion of the proceeding or judicial review after the final order or decision would be inadequate.

(2) An application for judicial review of a certified interlocutory order or ruling must be filed with the court within five days of the certification.

(3) An application for judicial review of the hearing officer's refusal to certify an interlocutory order or decision must also be filed with the court within five days after notice of the refusal. The court may decide the issue sought to be reviewed if it determines that the decision of the hearing officer to refuse to certify the interlocutory order or ruling is not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

(4) The court shall preferentially consider and decide an interlocutory order or ruling certified for review or an application for review of a hearing officer's refusal to certify an interlocutory order or ruling.

B. For good cause, a hearing officer may stay the hearing when an application for judicial review of an interlocutory order or ruling has been filed with the court.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996; Acts 1996, 1st Ex. Sess., No. 41, §1, eff. May 7, 1996; Acts 1996, 1st Ex. Sess., No. 86, §1.

NOTE: SEE ACTS 1996, 1ST EX. SESS., NO. 41, §2; RE: PROCEDURAL LAW.

§2050.19. Order or decision of the secretary

A final order or decision of the secretary regarding a permit, compliance order, or penalty assessment shall designate those portions of the record of adjudication on which the secretary relied and shall include findings of fact and conclusions of law.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.20. Record of decision

For matters not handled by the division of administrative law, within the Department of State Civil Service, the secretary shall adopt rules requiring that the record of a decision be assembled in a uniform and consistent order.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996; Acts 1997, No. 17, §1.

§2050.21. Judicial review; appeal

A. An aggrieved person may appeal devolutively a final permit action, a final enforcement action, or a declaratory ruling only to the Nineteenth Judicial District Court. A petition for review must be filed in the

district court within thirty days after notice of the action or ruling being appealed has been given. The district court shall grant the petition for review.

B. The district court shall promulgate rules of procedure to be followed in taking and lodging appeals.

C. The department shall not be required to file an answer to the petition for review.

D. In matters not submitted to the division of administrative law, Department of Civil Service, the department shall transmit to the reviewing court the original or a certified copy of the entire record of the decision or action under review within sixty days after service of the petition on the department, or within further time allowed by the court. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

E. If, before the date set for hearing, application is made to the court for leave to present additional information, and it is shown to the satisfaction of the court that the additional information is material and that there was good cause for failure to present it in the proceedings before the department, the court may order that the additional information be taken before the department upon conditions determined by the court. The department may modify its findings and decision by reason of the additional information and shall file that information and any modifications, new findings, or decisions with the reviewing court.

F. The provisions of R.S. 49:964(C), (F), and (G), including the standard of review, shall apply to appeals provided in this Section.

G. Judicial review, appeals, and other proceedings for injunctive relief regarding environmental permits needed for construction or operation of new facilities or modification of existing facilities, shall be decided by the court summarily and by preference. In no case shall the date for a final decision on the merits of such review or appeals extend beyond the ninetieth day after receipt by the court of the record for adjudication. The court in its discretion may issue further orders consistent with the Louisiana Code of Civil Procedure to carry out the summary mandate of such reviews or appeals.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996; Acts 1996, 1st Ex. Sess., No. 41, §1, eff. May 7, 1996; Acts 1997, No. 857, §1, eff. July 10, 1997; Acts 1997, No. 1143, §1.

NOTE: SEE ACTS 1996, 1ST EX. SESS., NO. 41, §2; RE: PROCEDURAL LAW.

§2050.22. Judicial review; appeal; stays

A. A respondent may also appeal a penalty assessment suspensively.

B. The filing of an appeal does not stay a compliance order, a final permit action, or a declaratory ruling. However, the secretary may grant, or the court may order, a stay with appropriate terms.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996; Acts 1996, 1st Ex. Sess., No. 41, §1, eff. May 7, 1996.

NOTE: SEE ACTS 1996, 1ST EX. SESS., NO. 41, §2; RE: PROCEDURAL LAW.

§2050.23. Notice

A.(1) Notice to an applicant for a permit, a respondent, a petitioner for a declaratory ruling, or a party to an adjudicatory hearing shall be given by certified mail return receipt requested.

(2) Notice to other persons shall be given by ordinary mail.

(3) In all cases, notice may be given by delivery.

B. When a party is represented by an attorney or has appointed an agent for service of process, notice may be given to the attorney or the agent.

C.(1) Notice to an applicant for a permit, a respondent who is a party, an intervenor, a petitioner for a declaratory ruling, or a person who submits a written comment shall be given at the address in the application, the request for a hearing, the request for an intervention, the petition, or the comment.

(2) Notice to a respondent prior to becoming a party may be given at the address of the respondent's agent for service of process, or an address filed by the respondent with the secretary of state or with the department.

D. Notice given by certified mail return receipt requested is effective when delivered or tendered if delivery is refused. Notice given by ordinary mail is effective when mailed. Notice given by delivery is effective when delivered or tendered if delivery is refused.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.24. Subpoenas and witnesses; fees; expenses; notice

A. The secretary shall establish fees to be paid by the party for whom a subpoena is issued. The fees shall be sufficient to defray fees and expenses due a witness in a civil proceeding and to reimburse the department for administrative costs of issuing and serving subpoenas.

B. Notice of a subpoena may be given by certified mail return receipt requested or by other means authorized by law.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.25. Powers of the secretary

A. The secretary shall adopt rules of procedure implementing the provisions of this Chapter and the applicable provisions of the Administrative Procedure Act.

B. The secretary may act personally regarding matters on which this Subtitle authorizes an assistant secretary to act.

C. A delegation by the secretary of authority to a hearing officer, a deputy secretary, or an assistant secretary shall be in writing and maintained in a designated place in the department. A delegation is effective until revoked in writing.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.26. Duties of assistant secretary

The assistant secretaries may not delegate the duties assigned to them by this Subtitle which require the exercise of deliberative discretion.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.27. Computation of time

The computation of a time period allowed or prescribed in this Chapter is governed by Code of Civil Procedure Article 5059.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.28. Applicability of the Administrative Procedure Act

The provisions of this Chapter are supplementary to those of the Administrative Procedure Act and are applicable specifically to the subject matter of agency proceedings within the department and judicial review by appeal of those agency proceedings. In the event of conflict between the provisions of this Chapter and those of the Administrative Procedure Act or other laws, the provisions of this Chapter shall prevail. If this Chapter does not expressly or impliedly provide for a particular situation, the Administrative Procedure Act or other laws are applicable.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996.

§2050.29. Mandamus

Except for those situations in which R.S. 30:2024(C) and R.S. 30:2050.4(G) apply, whenever this Chapter specifies a deadline for the secretary or authorized assistant secretary to act on a particular matter and the secretary or authorized assistant secretary fails to act by such deadline, then any adversely affected party has the right to a writ of mandamus from the Nineteenth Judicial District Court for the parish of East Baton Rouge, directing the secretary or authorized assistant secretary to act within a period of time to be specified by the court, and if the adversely affected party prevails, the court shall award court costs and attorney fees.

Acts 1995, No. 947, §1, eff. Jan. 1, 1996; Acts 1997, No. 116, §1.

§2050.30. Bond; exception

No bond shall be required for appeals of actions to the Nineteenth Judicial District Court as provided in this Chapter.

Acts 1996, 1st Ex. Sess., No. 41, §1, eff. May 7, 1996.

NOTE: SEE ACTS 1996, 1ST EX. SESS., NO. 41, §2; RE: PROCEDURAL LAW.

§2050.31. Appeals; district court decisions

Any party aggrieved by a final judgment or interlocutory order or ruling of the Nineteenth Judicial District Court may appeal or seek review thereof, as the case may be, to the Court of Appeal, First Circuit.

Acts 1996, 1st Ex. Sess., No. 41, §1, eff. May 7, 1996.

NOTE: SEE ACTS 1996, 1ST EX. SESS., NO. 41, §2; RE: PROCEDURAL LAW.

CHAPTER 3. LOUISIANA AIR CONTROL LAW

§2051. Citation

This Chapter shall be known and may be cited as the "Louisiana Air Control Law."

Acts 1979, No. 449, §1, eff. Jan. 1, 1980.

§2052. Policy; purpose

NOTE: §2052 as amended by Acts 2006, No. 445, §1, effective June 15, 2006, until July 1, 2007.

The legislature finds and declares that the purity of the air in the environment is a matter of vital concern to the welfare of the people of the state and to promote an environment free from pollution that jeopardizes the health and welfare of the citizens of the state, consistent with sound policies for employment and industrial development, it is necessary to establish an efficient method for the regulation and control of discharge of contaminants into the air resources of the state.

NOTE: §2052 as amended by Acts 2006, No. 445, §3, effective July 1, 2007.

The legislature finds and declares that the purity of the air in the environment is a matter of vital concern to the welfare of the people of the state and to promote an environment free from pollution that jeopardizes the health and welfare of the citizens of the state, consistent with sound policies for employment and industrial development, it is necessary to establish an efficient method for the regulation and control of discharge of contaminants into the air resources of the state. The legislature further finds and declares the policy of the state of Louisiana to promote an environment free from noise that endangers the health or welfare of its people.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Acts 1984, No. 254, §1; Acts 2006, No. 445, §1, eff. June 15, 2006, and §3, eff. July 1, 2007.

§2053. Definitions

As used in this Chapter, the following terms shall have the meanings ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof produced by other than natural processes.

(2) Repealed by Acts 1999, No. 348, §2, eff. June 16, 1999.

(3)(a) "Toxic air pollutant" means an air pollutant which, based on scientifically accepted data, is known to cause or can reasonably be anticipated to cause either directly or indirectly through ambient concentrations, exposure levels, bioaccumulation levels, or deposition levels, adverse effects in humans, including but not limited to:

(i) Cancer;

(ii) Mutagenic, teratogenic, or neurotoxic effects;

(iii) Reproductive dysfunction;

(iv) Acute health effects; and

(v) Chronic health effects.

(b) This definition includes all air pollutants which are identified and listed pursuant to these criteria under R.S. 30:2060. This definition shall also include but not be limited to all substances listed as hazardous air pollutants under rules and regulations of the department in effect on June 1, 1989, and those designated as such under Section 112 of the Federal Clean Air Act. This definition does not include those pollutants for which National Ambient Air Quality Standards have been established under Section 108 of the Federal Clean Air Act, with the exception of lead compounds. This definition does not include elemental lead or those pollutants chosen solely for their contribution to the formation of pollutants regulated under the National Ambient Air Quality Standards.

(4) "Emergency emission" is the discharge into the atmosphere of Louisiana of a toxic air pollutant the rate of which is in excess of that allowed by permit or license and which could not have been avoided by taking measures to prevent the discharge.

(5) Repealed by Acts 2006, No. 445, §2, effective June 15, 2006.

NOTE: Paragraph (5) as enacted by Acts 2006, No. 445, §3, effective July 1, 2007.

(5) "Noise" means the intensity, duration, and the character of sounds from all sources.

(6) "Local governmental entity" means any parish, municipal, or local political subdivision.

(7) "Person" means an individual, proprietorship, corporation, club, or other legal entity.

(8) "Sport shooting range" or "range" means an area designed and operated primarily for: persons using or discharging rifles, shotguns, pistols, revolvers, or black powder weapons; archery; air rifles; silhouettes; skeet ranges; trap ranges; or any other similar sport shooting, if such area is designed and constructed in

accordance with the then current publication of the National Rifle Association of America, or its successor, entitled "The Range Manual".

(9) "Substantial change in use" means the current primary use of the facility no longer represents the activity previously engaged in at the site.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Amended by Acts 1982, No. 468, §1; Acts 1984, No. 254, §1; Acts 1989, No. 184, §1, eff. June 23, 1989; Acts 1993, No. 171, §1; Acts 1997, No. 891, §1; Acts 1999, No. 348, §2, eff. June 16, 1999; Acts 2006, No. 445, §2, eff. June 15, 2006; Acts 2006, No. 445, §3, eff. July 1, 2007.

§2054. Air quality control; secretary of environmental quality; powers and duties

A. The secretary shall have the following powers and duties with respect to air quality control:

(1) To prepare and develop a general plan for the proper control of the air resources in the state of Louisiana including the compilation and maintenance of an ongoing comprehensive air emissions inventory.

(2) To make investigations upon receipt of information concerning an alleged violation of this Chapter or any rule or regulation promulgated hereunder and to issue any appropriate orders in accordance with R.S. 30:2025. This Paragraph shall in no way detract from the power of the office to make investigations and inquiries upon its own motion.

(3) To prepare and develop a general plan for the proper control of noise in the state of Louisiana.

B. The secretary shall have the following powers and duties:

(1) To adopt and promulgate rules and regulations consistent with applicable state and federal law and the general intent and purposes of this Chapter for the maintenance of air quality within the state of Louisiana.

(2)(a) To develop permitting procedures and regulations conforming to applicable state and federal laws, and to require and issue permits, licenses, variances, or compliance schedules for all sources of air contaminants within the state of Louisiana and when the secretary deems it advisable to delegate the power to issue or deny such permits, licenses, variances, or compliance schedules to the appropriate assistant secretary subject to his continuing oversight. The authority to execute minor permit actions, to issue registrations, certifications, notices of deficiency, and notification of inclusion under a general permit may be delegated by the secretary or the appropriate assistant secretary to an authorized representative, notwithstanding the provisions of R.S. 30:2050.26.

(b) Nothing in this law shall be deemed to grant to the secretary any jurisdiction or authority to make any rule, regulation, recommendations, or determination with respect to any of the following:

(i) Air conditions existing solely within the property boundaries of commercial and industrial plants, works, or shops.

(ii) Relations between employers and employees with respect to or arising out of any air condition.

(iii) Burning of agricultural by-products in the field in connection with the planting, harvesting, or processing of agricultural products.

(iv) Controlled burning of cotton gin agricultural wastes in connection with cotton gin operations.

(v) Controlled burning in connection with timber stand management.

(vi) Controlled burning of pastureland or marshland in connection with trapping or livestock production.

(vii) Imposition of a motor vehicle fuels program respecting any characteristic, other than Reid vapor pressure, or component of a fuel or fuel additive not specifically required by federal law and specifically authorized by this Subtitle.

(viii) Confiscation of emission reduction credits or imposition of additional emission reductions from industrial sources to compensate for restrictions in vehicle inspection and maintenance or motor vehicle fuels programs, unless no other reasonable or practical alternatives exist to bring about timely attainment of the ozone ambient air standard.

(ix) Permitting regulations, with respect to air quality, requiring authorization to construct or operate any source for which facility-wide potential emissions are less than five tons per year for each of any regulated air pollutant as defined by the Federal Clean Air Act, 42 U.S.C. 7401 et seq., less than fifteen tons per year emitted of all such defined pollutants combined, and less than the minimum emission rate for each toxic air pollutant established pursuant to R.S. 30:2060, unless such source is required to obtain a permit pursuant to the Federal Clean Air Act, Subchapter V, 42 U.S.C. 7661 et seq.

(3) To adopt and promulgate regulations necessary in establishing and administering an air pollution emission reduction credit banking system for the state as an inducement for Louisiana industries to reduce emissions of air pollutants. Such regulations shall at a minimum provide:

(a) For the administration of the banking system.

(b) Criteria under which emission reduction credits may be earned.

(c) Geographical limitations or emission offset areas for which emission offsets may be earned.

(d) Criteria for the use, banking, or sale of banked emissions.

(e) For the approval of the department for the earning, use, banking, or sale of banked emissions.

(f) Requirements for the maintenance and submission of records concerning emission levels, amounts of emission offsets, and banked emissions.

(g) The implementation of the banking system to allow credit for all emission offsets meeting the criteria established pursuant to Subparagraph (b) which have been accomplished subsequent to December 21, 1976.

(h) Appropriate recognition of the efficacy of permits issued prior to the promulgation of final regulations and reductions of emissions made in compliance with said permits.

(i) For the establishment of a schedule requiring banked air emissions of permitted facilities and credits to be discounted or decreased over time in nonattainment areas so as to comply with state and federal regulations which require improvement in air quality within nonattainment areas. Banked air emissions of permitted facilities and credits shall be discounted from a base year at a rate so as to effect decreases in banked air emissions consistent with state and federal law relative to nonattainment areas.

(j) In the absence of regulations, the secretary shall have the authority to create emissions credits by permit and shall authorize the transfer of credits by permit actions.

(4) The present air law and air regulations shall remain in effect until the final promulgation of new regulations is completed in accordance with the provision of this Section and the Administrative Procedure Act; R.S. 49:950 et seq.

(5) To adopt and promulgate regulations establishing a noxious odor control and abatement program for the state of Louisiana. The odor control and abatement program authorized by this Paragraph shall not apply to odors caused by agricultural, fiber, timber, poultry, seafood, or fisheries production or by byproducts created by agricultural, fiber, timber, poultry, seafood, or fisheries production unless such odors are detected in concentrations or intensities above that normally detected from these processes or byproducts when using applicable air pollution control devices. Nothing in this provision shall be construed as precluding a private litigant's right to sue for abatement of odors.

(6) To adopt and promulgate rules and regulations implementing a comprehensive toxic air pollutant emission control program in accordance with R.S. 30:2060.

(7) Repealed by Acts 2006, No. 445, §2, effective June 15, 2006.

NOTE: Paragraph (7) as enacted by Acts 2006, No. 445, §3, effective July 1, 2007.

(7) To adopt and promulgate rules and regulations establishing and implementing a comprehensive program for the control and abatement of environmental noise pollution. The regulations shall be consistent with applicable federal laws, rules, and regulations and, at a minimum, shall provide for the following:

(a) Criteria and standards for noise control and abatement.

(b) Levels of noise appropriate to defined areas under various conditions.

(8) To establish and implement a program for the control and abatement of motor vehicle emissions in accordance with R.S. 30:2060 and other applicable state and federal laws, particularly the Clean Air Act as amended, but not to exceed the requirements provided in such Act unless specifically authorized. Such program shall be applicable only in parishes and municipalities that have been placed on the nonattainment list for ozone standards and classified as "serious" or worse by the United States Environmental Protection Agency as of June 30, 1999. If such program includes the periodic inspection of motor vehicles, the frequency of performing such inspections shall be as allowed by federal law or regulations or by agreements with federal agencies. During each calendar year, the secretary may exempt vehicles of that model year and vehicles from prior model years from on-board diagnostic (OBD II) testing. The fees due the department for this program pursuant to R.S. 32:1306(C)(3) shall be deposited into the Environmental Trust Fund. The inspection and maintenance of motor vehicles as required by this Paragraph shall begin on January 1, 2000.

(9)(a) To develop regulatory permits for certain air emissions provided the conditions in Subparagraph (b) are satisfied.

(b)(i) A regulatory permit cannot be used for any facility which is a new major stationary source or for any major modification of an existing source as defined in applicable rules and regulations and which is subject to the New Source Review (NSR) requirements of the Federal Clean Air Act.

(ii) Use of a regulatory permit may be precluded by specific permit conditions contained within a Federal Clean Air Act Part 70 Operating Permit.

(iii) A regulatory permit may not authorize the maintenance of a nuisance or a danger to public health or safety. All emissions control equipment shall be maintained in good condition and operated properly.

(iv) A regulatory permit shall not preclude the secretary from exercising all powers and duties as set forth in R. S. 30:2011(D), including but not limited to, the authority to conduct inspections and investigations and enter facilities as provided in R.S. 30:2012, and to sample or monitor, for the purpose of assuring compliance with a regulatory permit or as otherwise authorized by the Louisiana Environmental Quality Act, Federal Clean Air Act, or regulations adopted thereunder, any substances or parameters at any location.

(v) A regulatory permit shall require compliance with all applicable provisions of the Louisiana Air Quality Regulations and the Federal Clean Air Act. Violation of the terms or conditions of a regulatory permit constitutes a violation of such regulation or Act.

(vi) A regulatory permit shall, as appropriate, prescribe emission limitations, any necessary control requirements, other enforceable conditions, and associated monitoring, recordkeeping, and reporting provisions necessary for the protection of public health and the environment.

(vii) A regulatory permit shall require any person seeking such permit to submit a written notification and any fee authorized by this Subtitle and applicable regulations to the secretary. Submission of a written notification and any fee authorized by this Subtitle and applicable regulations shall be in lieu of submission of a permit application. The written notification shall be signed and certified in accordance with LAC 33:III governing permit application submittal. Any person who submits a written notification and any fee authorized by this Subtitle and applicable regulations shall be authorized to operate under the regulatory permit for which the notification was submitted when notified by the department that the notification was complete.

(viii) All regulatory permits promulgated by the secretary shall establish notification procedures, permit terms, and confirmation of notification by the department and shall be promulgated in accordance with the procedures provided in R.S. 30:2019.

(ix) No later than January 1, 2007, the secretary shall consider which activities are appropriate for coverage under a regulatory permit and publish an initial list of such activities.

(10) To develop rules and regulations providing for an expedited review process for permit applications with minor air emissions.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1980, No. 194, §7; Acts 1981, No. 626, §1; Acts 1981, No. 915, §1; Acts 1982, No. 468, §1; Acts 1982, No. 783, §1; Acts 1983, No. 34, §1; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1983, No. 538, §1; Acts 1984, No. 117, §1, eff. June 22, 1984; Acts 1984, No. 254, §1; Acts 1984, No. 316, §1, eff. July 2, 1984; Acts 1989, No. 184, §1, eff. June 23, 1989; Acts 1990, No. 245, §1; Acts 1991, No. 872, §1; Acts 1991, No. 873, §1; Acts 1993, No. 570, §3; Acts 1995, No. 393, §1, eff. June 16, 1995; Acts 1995, No. 457, §1; Acts 1995, No. 1216, §1; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 1999, No. 348, §1, eff. June 16, 1999; Acts 1999, No. 468, §1, eff. June 18, 1999; Acts 1999, No. 576, §1, eff. June 30, 1999; Acts 2003, No. 918, §1; Acts 2004, No. 584, §1, eff. July 1, 2004; Acts 2006, No. 115, §1; Acts 2006, No. 445, §2, eff. June 15, 2006; Acts 2006, No. 445, §3, eff. July 1, 2007.

§2055. Permits; licenses

No person shall conduct any activity which results in the discharge of air contaminants without the appropriate permit or license as required under the regulations of the secretary adopted pursuant to this Chapter.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1999, No. 348, §1, eff. June 16, 1999.

§2055.1. Sport shooting range; regulation; noise pollution; nuisance

A.(1) Notwithstanding any other provision of law to the contrary, a person who operates or uses a sport shooting range in this state shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range was established, constructed, or operated prior to the implementation of any noise control laws, ordinances, rules, or regulations, or if the range is in compliance with any noise control laws, ordinances, rules, or regulations that

applied to the range and its operation at the time of establishment, construction, or initial operation of the range.

(2) Rules or regulations adopted by a state or local department or agency for limiting levels of noise in terms of decibel level which may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this Section.

(3) A municipal noise control ordinance may not require or be applied so as to require a sport shooting range to limit or eliminate shooting activities that have occurred on a regular basis at the range prior to the enactment date of the ordinance.

B.(1) Except as provided in this Section, a person may not maintain a nuisance action for noise against a shooting range located in the vicinity of that person's property if the shooting range was established, constructed, or operated as of the date the person acquired the property. If there is a substantial change in use of the range after the person acquires the property, the person may maintain a nuisance action if the action is brought within three years of the date of a substantial change in use.

(2) A person who owns property in the vicinity of a shooting range that was established, constructed, or operated after the person acquired the property may maintain a nuisance action for noise against that shooting range only if the action is brought within five years after establishment of the range or three years after a substantial change in use of the range.

(3) If there has been no shooting activity at a range for a period of two years, resumption of shooting is considered establishment of a new shooting range for purposes of this Section.

C.(1) Except as otherwise provided in this Section, this Section does not prohibit a unit of local government from regulating the location and construction of a sport shooting range after the effective date of this Section.

(2) Nothing in this Section limits the ability of a local unit of government to regulate noise produced as a result of a substantial change in the use of the range.

D. The provisions of R.S. 30:2053(6), (7), (8), and (9) and 2055.1 contained herein shall not alter or otherwise affect lawsuits filed prior to August 15, 1997.

Acts 1997, No. 891, §1.

§2056. Variances

A. The secretary may grant individual variances beyond the limitations prescribed under this Chapter. Such variances may be granted upon presentation of adequate proof that compliance with any provision of this Chapter, with any rule or regulation thereunder, or with any final order or determination of the secretary will result in the practical closing and elimination of any lawful business, occupation, or activity without sufficient corresponding benefit or advantage to the people of the state.

B. In determining under what conditions and to what extent a variance from this Chapter or rule or regulation hereunder may be granted, the secretary shall give due recognition to the progress which the person requesting such variance shall have made in controlling or preventing any condition which may have existed as defined by R.S. 30:2053(2). In such case the secretary shall grant such variance conditioned upon such person effecting a partial abatement over a period of time which it shall consider reasonable under the circumstances, or the secretary in conformity with the intent and purpose of this Chapter to protect health and property may prescribe other and different requirements with which the person who receives such variance shall comply.

C. Any variance granted pursuant to the provisions of this Section shall be granted for such period of time, not to exceed one year, as shall be specified by the secretary at the time of the granting of such variance. Any variance may be granted by the secretary under the condition that the person who receives it shall make such periodic reports as to the progress which such person shall have made toward compliance with any rule or regulation as to which a variance has been granted.

D. Upon the failure of the secretary to take action within sixty days after receipt of a petition for variance pursuant to this Section, or upon the failure of the secretary to enter a final order or determination within sixty days after the final argument regarding such a variance petition in any hearing under this Subtitle, then for all purposes the person affected has a right to a writ of mandamus pursuant to the provisions of Code of Civil Procedure Article 3861 et seq., in the Nineteenth Judicial District Court directing the secretary to make a decision on the variance request within a specified time period.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1991, No. 260, §1; Acts 1993, No. 570, §2.

§2057. Prohibitions; exceptions

A. No person shall:

(1) Discharge air contaminants or noise pollution into the air of this state in violation of regulations of the secretary or the terms of any permit, license, or variance issued hereunder.

(2) Violate any rule or regulation adopted by the secretary under this Chapter.

B. The provisions of this Chapter shall not apply in the following instances:

(1) To persons who burn agricultural by-products in the field in connection with the planting, harvesting, or processing of agricultural products.

(2) To controlled burning of cotton gin agricultural wastes in connection with cotton gin operations.

(3) To controlled burning in connection with timber stand management.

(4) To controlled burning of pastureland or marshland in connection with trapping or livestock production.

(5)(a) To the burning of trees, brush, grass, or other vegetable matter in any parish having a population of ninety thousand or less provided the location of the burning is not within the territorial limits of a city or town or is not adjacent to a city or town in such proximity that the ambient air of the city or town will be affected by smoke from the burning.

(b) The provisions of Subparagraph (a) of this Paragraph notwithstanding, the governing authority of any municipality having a population of five thousand or less may burn trees, brush, grass, or other vegetable matter on property that it owns or leases within the corporate limits of such municipality, provided that all of the following occur:

(i) The burning does not occur within five hundred feet of an occupied house or residence.

(ii) The municipality enacts an ordinance to prohibit burning of trees, brush, grass, or other vegetable matter within its corporate limits.

(iii) The municipality enacts an ordinance to provide for the collection and burning of trees, brush, grass, or other vegetable matter at a controlled site.

(c) Notwithstanding any provision of this Section or any other law to the contrary, in a parish having a population of ninety thousand persons or fewer according to the most recent federal decennial census, an ordinance may prohibit any person from burning trees, brush, grass, or other vegetable matter and otherwise regulate burning of flammable material when the fire danger rating for the area is high, as defined by rules adopted by the Department of Agriculture and Forestry as required by R.S. 33:1236(31)(b)(iii), or is predicted to be at such level, and for a reasonable time period thereafter. An ordinance adopted pursuant to this Subparagraph shall not apply to prescribed burns by the Department of Agriculture and Forestry, by those trained and certified by the Department of Agriculture and Forestry, or by those who conduct prescribed burning as a "generally accepted agriculture practice" as defined by the Louisiana Right to Farm Law (R.S. 3:3601 et seq.).

(6) To the burning of trees, branches, limbs, or other wood as a bonfire that is specifically authorized by ordinance in the parishes of St. James, St. John the Baptist, or St. Charles.

C.(1) Nothing in this Subtitle or in the rules or regulations adopted pursuant thereto shall prohibit a private property owner from burning yard waste on his own property, for noncommercial purposes, in parishes with a population of three hundred thousand or less, provided that the property owner attends the burning of yard waste at all times. The provisions of this Subsection shall not apply in the parish of East Baton Rouge.

(2) "Yard waste" as used in this Subsection means leaves, grass, twigs, branches, and vines.

(3) The provisions of this Subsection shall not prohibit a political subdivision from enacting ordinances or rules prohibiting or otherwise regulating the burning of yard waste.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1983, No. 34, §1; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1984, No. 254, §1; Acts 1984, No. 316, §1, eff. July 2, 1984; Acts 1997, No. 276, §1; Acts 1997, No. 1275, §2; Acts 2001, No. 525, §1; Acts 2006, No. 376, §2, eff. June 15, 2006.

§2058. Air quality regions; redesignation

No state or local department, agency, or member of the executive branch of the state shall enter into any agreement or compact purporting to bind the state or any region thereof to federal enactments or regulatory devices under the Clean Air Act of 1972, (42 USCA §7401 et seq.) as amended, or any other related enactment, which does or may allow or provide for the federal government unilaterally to redesignate or reclassify any area of the state for the purpose of altering existing ambient air standards without having first satisfied the following minimum procedures:

(1) Submitted the proposed agreement or compact to the House Committee on the Environment and the Senate Committee on Environmental Quality for review and comment for a period not to exceed thirty days;

(2) Held at least one public hearing, after announcement in accordance with the Administrative Procedures Act, R.S. 49:950 et seq., in each affected parish;

(3) Made available for public inspection and comment at least thirty days prior to holding such public meeting, the reasons for the proposed redesignation:

(4) Informed all local government agencies in the parishes affected of the details of such proposal by providing a copy of the proposal and a map locating the area or areas under consideration for redesignation, at least thirty days prior to the public hearing scheduled to be held in their respective parishes.

Added by Acts 1980, No. 367, §1; Acts 1996, 1st Ex. Sess., No. 36, §1, eff. May 7, 1996.

§2059. Hazardous air pollutant emission control program

As a part of the implementation of comprehensive ambient air monitoring, the secretary may designate Southern University Agricultural and Mechanical College in Baton Rouge, McNeese State University at Lake Charles, and Southeastern Louisiana University at Hammond as ambient air monitoring facilities certified by the Department of Environmental Quality for monitoring, identifying, and quantifying concentrations of hazardous air pollutants, including air toxics and ozone, or organic compounds under evaluation for designation as hazardous air pollutants. The universities may monitor, identify, and quantify concentrations of hazardous air pollutants on a twenty-four-hour-per-day, seven-day-per-week basis. The department may provide to the universities technical expertise, monitoring equipment, and financial assistance as necessary to ensure compliance with the provisions of this Section.

Acts 1989, No. 184, §2; Acts 1989, No. 786, §1; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2060. Toxic air pollutant emission control program

A.(1) Not later than December 31, 1989, the secretary shall develop and publish a list of not more than one hundred toxic air pollutants pursuant to the criteria contained in R.S. 30:2053(3). Pollutants on this list shall be ranked or classified according to level of concern based on such criteria as emission levels, human health effects, population exposure, and persistence or accumulation in the environment.

(2) The secretary shall, from time to time, but not less than every three years review and revise the list established by Paragraph (1) of this Subsection, adding pollutants which present, or may present, a threat of adverse human health effects and deleting substances if the secretary has determined that the substances no longer meet the definition of "toxic air pollutant" as defined in R.S. 30:2053(3).

(3) Any person may petition the secretary to modify the list established by Paragraph (1) of this Subsection by adding or deleting a substance. Within six months after receipt of a petition, the secretary shall either grant the petition or publish a statement of the reasons for not granting the petition.

(4) A proposed list shall be published and public hearings held in accordance with the Administrative Procedure Act prior to final publication and promulgation.

B. Not later than July 1, 1990, the secretary shall propose initial rules and regulations identifying toxic air pollutants as defined in R.S. 30:2053(3), designating those toxic air pollutants which shall be subject to the provisions of this Section and establishing a schedule for the development of ambient air concentration standards, emission standards, and/or technical control standards for those toxic pollutants. The secretary may grant credits to facilities undertaking voluntary reductions that exceed the regulatory requirements pursuant to R.S. 30:2054(B)(3) and rules and regulations to be promulgated thereunder.

C. It shall be a goal of the toxic air pollutant control program established by this Section and consequent promulgation of rules and regulations that the total amount of statewide emissions of toxic air pollutants be reduced by fifty percent from 1987 levels by December 31, 1996. In its efforts to achieve this goal, the department shall place emphasis on those sources of emissions representing the greatest risk to human health.

D. Facilities or sources which are found to be in noncompliance at the time of adoption and promulgation of the applicable rules and regulations developed pursuant to the provisions of this Section shall submit a plan for achieving compliance. Compliance shall be required as expeditiously as practicable within a time frame determined necessary by the secretary.

E. In order to facilitate the identification and quantification of toxic air pollutants and the compilation and maintenance of the comprehensive air emissions inventory required in R.S. 30:2054(A)(1), the department shall require facilities which emit or discharge toxic air pollutants, or substances under evaluation for such designation, to provide to the office the identity and quantities of such air contaminants emitted. Such information shall be made readily available to the public by the department in an easily accessible form.

F. To further develop information concerning sources of and levels of exposure to toxic air pollutants, the department shall conduct continuous or periodic monitoring of toxic air pollutants at locations and times

deemed necessary by the office. Information developed as a result of the monitoring efforts shall be made readily available to the public by the department in an easily accessible form.

G. Not later than April 30, 1990, the department shall publish a report summarizing baseline 1987 toxic air pollutant emission levels. The department shall conduct studies for the purpose of estimating emissions of toxic air pollutants from industrial, area, and mobile sources. This report shall be published and submitted for public comment and review for a period of not less than thirty days. In April of each year thereafter, the department shall publish a report summarizing changes in emission levels from the previously reported year and from the 1987 baseline levels, and documenting measures taken and progress made toward reducing toxic air pollutant emission levels.

H.(1) For any discharge of a toxic air pollutant into the atmosphere of Louisiana, the rate or quantity of which is in excess of that allowed by permit, license, compliance schedule, or variance or, for upset events, that exceed the reportable quantity established by regulation, the owner or operator of the source from which such discharge occurs shall immediately notify the department by telephone, and shall submit a written report within seven days containing:

(a) Information on the source, nature, and cause of the discharge.

(b) The date and time of the discharge.

(c) The approximate total loss during the discharge.

(d) The method used for determining the loss.

(e) The action taken to prevent the discharge.

(f) The measures adopted to prevent future discharges.

(g) Any other information deemed necessary by the secretary.

(2) Upon notification required by Paragraph (1) of this Subsection, the department shall conduct an investigation of the incident to determine the nature, cause, and preventability of the emission. It shall be the burden of the emitting facility at the time of the investigation to prove that the discharge was indeed an emergency emission.

(3) For an emission which the department determines to have been preventable, the secretary shall initiate appropriate enforcement proceedings under this Subtitle.

I. The secretary shall establish and maintain records of all emissions which he determines to have been preventable and to have been emergency emission releases, and shall further maintain such records as necessary to reflect the accumulation of emergency emissions by any individual facility. The secretary shall utilize such records in enforcement proceedings under this Subtitle.

J. Repealed by Acts 1995, No. 947, §3, eff. Jan. 1, 1996.

K. The secretary shall have the authority to levy and collect fees sufficient to fund the toxic air pollutant emission control program as established under this Section and supporting ambient air monitoring efforts.

L. There shall be no discharge of a toxic air pollutant into the atmosphere of Louisiana except that allowed by permit, license, variance, or compliance schedule or in accordance with the rules and regulations adopted pursuant to this Section.

M. All regulations promulgated under R.S. 30:2059 as in effect prior to June 23, 1989 shall remain in force, as promulgated, unless modified in accordance with this Chapter.

N.(1)(a) The regulations adopted pursuant to this Section shall provide for and delineate "major" and "minor" sources of air toxic emissions.

(b) A "major source" shall be defined as any stationary source of air pollutants, including all emission points and units of such source located within a contiguous area and under common control, which emits or has the potential to emit, in the aggregate, ten tons per year or more of any toxic air pollutant or twenty-five tons per year or more of any combination of toxic air pollutants. For purposes of this Section, the secretary may establish by rule or regulation, if required to administer any programs required or delegated to the state under the federal Clean Air Act, a lesser quantity, or in the case of radionuclides, different criteria, for a major source, other than that specified in this Paragraph, on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(c) A "minor source" shall be defined as any stationary source which is not a major source.

(2) The department shall provide technical assistance to affected sources and serve to coordinate among similar sources the determination of maximum achievable control technology as shall be defined and required in regulations adopted pursuant to this Section. By regulation, the secretary may define and require generally available control technology for minor sources instead of requiring maximum achievable control technology

where such is consistent with a reasonable level of protection of human health. In locations where there is no reasonable expectation of a threat posed to human health, appropriate volatile organic compound controls specified in regulations adopted pursuant to R.S. 30:2051 et seq., may be considered maximum achievable control technology for certain sources of emissions of toxic air pollutants which are also volatile organic compounds. If for any major source a department approved compliance plan establishes a maximum achievable control technology determination or compliance schedule which conflicts with or is significantly different from an applicable maximum achievable control technology (MACT) standard or schedule proposed, promulgated, or under development by the Environmental Protection Agency, such sources shall be allowed to voluntarily submit compliance plan revisions to reflect the federal MACT standard or schedule. The department shall review any such plan revisions in accordance with procedures established for compliance plan review and approval pursuant to regulations adopted under this Section. Notwithstanding any provision of this Subsection to the contrary, major sources who elect to submit revisions shall attain compliance in accordance with the department approved revised compliance plan and revised schedule. When the provisions and requirements contained in the department approved compliance plans are incorporated into permits issued by the department, those provisions and requirements shall be enforced through the permit and no longer enforced through the compliance plan.

(3) Submittal of any compliance plan and schedule pursuant to this Section and rules adopted hereunder pertaining to a major source shall be no later than one year from promulgation of such rules. Major sources shall attain compliance as expeditiously as practicable but no later than three years from the date of department approval of the compliance plans. In appropriate circumstances up to an additional year may be allowed for compliance. However, under no circumstance shall the compliance period extend beyond six years from the promulgation of such rules.

(4) Not later than July 1, 1992, the secretary shall develop and publish a list of minor source categories which the secretary determines may reasonably be expected to pose a threat to human health. At least every three years, the secretary shall review and revise the list as deemed appropriate. The list shall include those categories and subcategories listed pursuant to Title III, Section 112(c)(3) of the federal Clean Air Act Amendments for sources which operate in Louisiana. Except under circumstances which may reasonably be expected to pose a threat to human health, for purposes of listing source categories under this Paragraph, minor sources shall not be aggregated.

(5) Not later than December 31, 1993, the secretary shall propose minor source category rules and regulations governing the initial list published pursuant to Paragraph (4). Upon promulgation of minor source category rules and regulations, affected sources shall have up to twenty-four months to attain compliance. Under appropriate circumstances up to an additional year may be allowed for compliance.

(6) For purposes of this Section a small business stationary source means a minor source having one hundred or fewer employees. To assist small businesses affected by regulations adopted pursuant to this Section, the department shall establish a small business stationary source technical and environmental compliance assistance program. This program shall at a minimum include the following:

(a) Adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with this Section.

(b) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation which help reduce air pollution.

(c) A compliance assistance program which assists small business stationary sources in determining applicable requirements and in receiving any permits required under this Section in a timely and efficient manner.

(d) Adequate mechanisms for informing small business stationary sources of their obligations under this Section, including mechanisms for providing a list of qualified contractors, or, at the option of the secretary, for providing audits of the operations of such sources to determine compliance with this Section.

(7) Except under circumstances which may reasonably be expected to pose a threat to human health, whether or not such units are in a contiguous area or under common control, in determining the applicability of emission standards or technical control standards the secretary shall not aggregate:

(a) Emissions from any oil or gas exploration or production well and its associated equipment.

(b) Emissions from any pipeline compressor or pump station.

(c) Emissions from other similar units.

(8) For the storage of ammonia fertilizer on farms for subsequent application to agricultural crops, the requirements of this Section shall be no more stringent than existing requirements under the federal Superfund Amendments and Reauthorization Act of 1986 and subsequent amendments.

(9) The department shall conduct public meetings in at least seven major metropolitan areas of this state to present the regulations developed pursuant to this Section for public comment.

(10) The department shall present the proposed regulations at a joint meeting of the Senate Committee on Environmental Quality and House Committee on Natural Resources for review and comment prior to the formal oversight hearing. Following this joint informational meeting the department shall present the regulations to the Senate Committee on Environmental Quality and the House Committee on Natural Resources pursuant to R.S. 49:950 et seq. if meetings are scheduled. Thereafter, the department may adopt the regulations in accordance with the Administrative Procedure Act notwithstanding the twelve-month limitation in R.S. 49:968(H)(1).

Acts 1989, No. 184, §1, eff. June 23, 1989; Acts 1990, No. 245, §1; Acts 1991, No. 635, §1; Acts 1992, No. 967, §1; Acts 1992, No. 1127, §1; Acts 1995, No. 845, §1, eff. June 27, 1995; Acts 1995, No. 947, §3, eff. Jan. 1, 1996; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 1999, No. 780, §1.

§2061. Small Business Stationary Source Technical and Environmental Compliance Assistance Program

In accordance with the provisions of 42 U.S.C. §7661f (Section 507 of the Federal Clean Air Act), the state shall establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program, for the purpose of helping small business owners who may not have the financial or technical ability to comply with the requirements of the Federal Clean Air Act. The state shall name an office that shall serve as an ombudsman for small business, create the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, and create a Louisiana Small Business Compliance Advisory Panel, to oversee the program and ensure that the program complies with the provisions of the Federal Clean Air Act.

Acts 1992, No. 1037, §1.

§2062. Louisiana Small Business Compliance Advisory Panel

A. There is hereby established and created a statewide advisory panel to be known as the Louisiana Small Business Compliance Advisory Panel. The panel shall be a body politic and corporate constituting a public instrumentality of the state established and created for the performance of an essential public and governmental function. The panel shall be a function and responsibility of the Department of Environmental Quality.

B. The panel shall have the power to:

(1) Render advisory opinions to the Department of Environmental Quality on the effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, with regard to any difficulties encountered, and the degree and severity of enforcement, including the effectiveness of the small business ombudsman, and any rules and regulations adopted by the department that may affect small business.

(2) Prepare periodic reports to the Environmental Protection Agency on the compliance status of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program following the intent of the provisions of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act.

(3) Review information for small business stationary sources to assure such information is understandable to the layperson.

(4) Have the Small Business Stationary Source Technical and Environmental Compliance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

C. The panel shall be comprised of eight members, seven of whom shall be selected as follows:

(1) Two members who are not owners or representatives of owners of small business stationary sources to represent the general public, to be designated by the governor.

(2) One member representing the Department of Environmental Quality, to be designated by the secretary thereof.

(3) Two members who are owners or representatives of owners of small business stationary sources, to be designated by the speaker of the House of Representatives.

(4) Two members who are owners or representatives of owners of small business stationary sources, to be designated by the president of the Senate.

(5) The secretary of the Department of Economic Development, ex officio, shall serve in a nonvoting capacity.

D. Each appointment shall be submitted to the Senate for confirmation and shall serve for a term of no more than four years, to run concurrently with that of the governor.

E. For purposes of conducting business of the panel, four members shall be a quorum.

F. All meetings of the panel shall be held in accordance with R.S. 42:4.1 et seq.

G. The panel shall continue until its existence shall be ended by law. Upon the termination of the existence of the panel, all of its rights and properties shall pass to and vest in the state.

Acts 1992, No. 1037, §1.

§2063. Prevention of accidental releases

A. As used in this Section:

(1) The term "accidental release" means an unanticipated emission of a regulated substance into the ambient air from a stationary source.

(2) The term "regulated substance" means a substance listed under Subsection E of this Section.

(3) The term "stationary source" means any buildings, structures, equipment, installations, or substance emitting stationary activities:

(a) Which belong to the same industrial group.

(b) Which are located on one or more of contiguous properties.

(c) Which are under the control of the same person, or persons under common control.

(d) From which an accidental release may occur.

B.(1) In addition to such other regulations, authorized or required by this Chapter, it shall be the objective of the regulations and programs authorized under this Section to prevent the accidental release to the air and to minimize the consequences of any such release of any regulated substance listed pursuant to Subsection E of this Section which in the case of an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or to the environment.

(2) It is the intent of the legislature that the regulations adopted pursuant to this Section shall be as consistent as possible with the requirements of the U.S. Environmental Protection Agency accident prevention regulations which are proposed or adopted pursuant to the federal Clean Air Act.

C. The owners and operators of stationary sources producing, processing, handling, or storing such substances have a general duty in the same manner and to the same extent as Section 654 of Title 29 of the United States Code to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility and to minimize the consequences of accidental releases which do occur. For the purposes of this Subsection, the provisions of R.S. 30:2026 shall not be available to any person or otherwise be construed to be applicable to this Subsection. Nothing in this Section shall be interpreted, construed, implied, or applied to create any liability or basis for suit for compensation for bodily injury or any other injury or property damages to any person which may result from accidental releases of such substances.

D. In exercising any authority under this Section, the secretary shall not be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health. Nothing in this Section shall be deemed to grant to the secretary any jurisdiction or authority to make any rule, regulation, recommendations, or determination, to enter any order with respect to air conditions existing solely within the property boundaries of commercial and industrial plants, works, or shops, or to affect relations between employers and employees with respect to or arising out of any air condition.

E. The secretary shall establish by rule, and may periodically revise, a list of regulated substances. The list may contain but is not limited to any substance listed by the United States Environmental Protection Agency pursuant to Section 112(r) of the Clean Air Act [42 U.S.C.A. §7412(r)], provided that the secretary shall not include any air pollutant for which a national primary ambient air quality standard has been established pursuant to Section 109 of the Clean Air Act [42 U.S.C. §7409], on such list. No substance, practice, process, or activity regulated under Subchapter VI of 42 U.S.C. Chapter 85, or that is subject to Section 112(q)(2) of the Clean Air Act [42 U.S.C. §7412(q)(2)], shall be subject to regulations under this Section. In listing substances, the secretary shall consider each of the following criteria:

(1) The toxicity, reactivity, volatility, dispersibility, combustibility, explosivity, or flammability of the substance.

(2) The severity of any acute adverse health effects associated with accidental releases of the substance.

(3) The likelihood of accidental releases of the substance.

(4) The potential magnitude of human exposure to accidental releases of the substance.

F.(1) At the time any substance is listed pursuant to Subsection E of this Section, the secretary shall establish a threshold quantity for the substance, considering the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or to the environment. If a threshold quantity is established or proposed by the U.S. EPA pursuant to Section 112(r) of the Clean Air Act [42 U.S.C. §7412(r)], the threshold quantity adopted by the secretary shall be not less than the U.S. EPA threshold quantity. The secretary is authorized to establish a greater threshold quantity for, or to exempt entirely, any substance or any facility including but is not limited to any substance that is a nutrient used in agriculture when held by a farmer.

(2) Regulations establishing the list and the threshold quantities shall include an explanation of the basis for establishing the list and the threshold quantities. The regulations shall also identify and explain any additional requirements imposed that are not specifically required by the U.S. Environmental Protection Agency accident prevention regulations which are proposed or adopted pursuant to the federal Clean Air Act. The term "threshold quantity" as used in this Section shall be applicable solely for the purposes of the accident prevention regulations provided for in this Section.

G. In order to prevent accidental releases of regulated substances, the secretary is authorized to adopt and promulgate regulations governing release prevention, detection, and correction requirements.

H.(1) No later than November 20, 1993, the secretary shall propose reasonable regulations to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases. Where appropriate in the development of such regulations the secretary shall review and consider any regulations under development and/or promulgated by the U.S. Environmental Protection Agency under Section 112(r) of the 1990 amendments to the Clean Air Act.

(2) In order to protect human health and the environment, the regulations under this Subsection shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent an accidental release of such substances from the stationary source, to minimize any release, and to provide a prompt emergency response to any such release which does occur.

(3) The owner or operator of each stationary source covered by Paragraph (2) of this Subsection shall register the risk management plan prepared pursuant to this Subsection with the secretary in accordance with rules promulgated by the secretary. The risk management plans prepared pursuant to this Subsection shall be available to the public, subject to the confidentiality provisions of R.S. 30:2030. The emergency response portion of the risk management plan shall also be submitted to the local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source and to any governmental agency which requests the emergency response portion.

(4) The secretary shall establish by rule an auditing system to review regularly and, if necessary, require revision in risk management plans to assure that the plans comply with this Subsection. Each such plan shall be updated periodically as required by the secretary by rule.

(5) Any regulations promulgated pursuant to this Subsection shall be, to the maximum extent practicable, consistent with the recommendations and standards established by commonly accepted and applicable engineering and professional codes, including but not limited to the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI), or the American Society of Testing Materials (ASTM).

(6) The secretary shall take into consideration the concerns of small business in proposing regulations under this Subsection.

(7) Notwithstanding any of the provisions of this Chapter or of this Subsection to the contrary, no stationary source shall be required to apply for, or operate pursuant to, a permit issued under such Chapter solely because such source is subject to regulations or requirements under this Subsection.

I. After the effective date of any regulation or requirement imposed, authorized, or required by this Section, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement. Each regulation or requirement under this Section shall be treated as a standard in effect for purposes of R.S. 30:2025 and other enforcement provisions of Subtitle II of Title 30.

J. The regulations authorized pursuant to this Section may provide for the registration of each process covered by the regulations. In accordance with the provisions of Article VII, Section 2.1 of the Constitution of

Louisiana and R.S. 30:2014, the department is authorized to increase fees to cover the operating expenses of the department for the continued implementation of the accidental release prevention program. The fee increase shall be implemented by increasing, on an average of four and one-half percent, existing fees assessed by the department pursuant to its fee schedules under the air quality control program. The fee schedule shall be based on industrial groups that reflect the degree that these are to be regulated under the accidental release prevention program.

K.(1) Storers of liquefied petroleum gas whose facilities are permitted through or inspected by the Louisiana Liquefied Petroleum Gas Commission of the Department of Public Safety and Corrections shall not be required to pay any additional fees on liquefied petroleum gas, pursuant to this Section.

(2) Storers of liquefied petroleum gas who use such gas as a fuel in an agricultural process shall not be required to pay any additional fees on liquefied petroleum gas pursuant to this Section.

(3) The Department of Environmental Quality shall not regulate the storers of liquefied petroleum gas provided for in this Subsection, for purposes of the chemical accident prevention program, at those facilities in which the presence of liquefied petroleum gas is the sole reason for the inclusion of the facility in the chemical accident prevention program.

Acts 1992, No. 1127, §1; Acts 1997, No. 885, §1; Acts 1999, No. 839, §1.

§2064. Louisiana Automobile Retirement Act

A.(1) The provisions of this Section shall be known as, and may be cited as, the "Louisiana Automobile Retirement Act".

(2) As used in this Section, the following words shall have the following meanings ascribed to them:

(a) "Motor vehicle" means any car, truck, or van manufactured prior to 1972. Motor vehicle does not include motorcycles, off-road vehicles, antique cars, collector vintage cars, classic cars, or any other collector vehicle.

(b) "Department" means the Louisiana Department of Environmental Quality acting through the appropriate office as designated by the secretary.

(c) "Program" means the program for purchasing and disposing of certain motor vehicles which is established in this Section.

B. The purpose of this Section is to promote clean air in Louisiana by encouraging the voluntary retirement of motor vehicles which were manufactured prior to 1972 and which therefore are not subject to federal emissions standards.

C. The provisions of this Section shall be administered by the department.

D. The department may adopt administrative rules to implement the provisions of this Section. The rules shall be adopted in accordance with the Administrative Procedure Act.

E. In accordance with rules adopted pursuant to Subsection D, the department shall:

(1) Use the funds which are available under the provisions of Subsection G to purchase motor vehicles which were manufactured prior to 1972 provided such motor vehicles are operable and are registered with the Louisiana Department of Public Safety and Corrections.

(2) Establish a schedule of prices which the department will pay for the motor vehicles which the department purchases through the program. The maximum price which the department may pay for a motor vehicle shall be seven hundred dollars.

F. In accordance with rules adopted pursuant to Subsection D, the department shall dispose of motor vehicles purchased through the program. The rules shall provide:

(1) The department may sell the motor vehicles for the purpose of being crushed or shredded and the materials recycled. Sales shall be at public auction to the highest responsible bidder. Antique and collector car clubs who submit the name and address of their club on a self-addressed, stamped envelope to the department shall be notified in writing at least ninety days prior to any public auction of the date, place, and time of the auction.

(2) The department may dispose of the motor vehicles in accordance with rules adopted under the provisions of Subsection D.

G.(1) The department may seek and accept donations from any source, public or private, to provide funds for the program.

(2) State funds shall not be expended or appropriated for the program. The program shall be operated entirely from self-generated revenues and from donations made to the program as provided in this Subsection.

Acts 1992, No. 670, §1; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2065. Fees

In accordance with the provisions of Article VII, Section 2.1 of the Constitution of Louisiana and R.S. 30:2014, for Fiscal Year 1997-1998, the Department of Environmental Quality is authorized to increase any fee listed in the current fee schedules provided for under the department's air quality control program rules and regulations. The fees may be increased by a maximum of eight percent.

Acts 1997, No. 884, §1.

§2066. Fees; severe and extreme ozone nonattainment areas

A. The following terms shall have the following meanings for the purposes of this Section:

(1) "Annual adjustment" shall mean an annual increase by the percentage by which the Consumer Price Index, as published by the United States Department of Labor for all urban consumers or its successor publication, for the year immediately prior to the year in which the fee is being imposed exceeds the Consumer Price Index for the calendar year 1989.

(2) "Baseline amount" shall mean the amount computed, in accordance with such guidance as the administrator of the United States Environmental Protection Agency may provide, as the lower amount within the year of either the actual volatile organic compound (VOC) or Nitrogen Oxides (NOx) emissions or the VOC or NOx emissions allowed under the permit applicable to the source, or if no permit has been issued for that year, the amount of VOC or NOx emissions allowed under the implementation plan. Such guidance by the administrator may include the calculation of the baseline amount based upon average actuals or average allowables.

B. In accordance with the provisions of Article VII, Section 2.1 of the Louisiana Constitution, the Department of Environmental Quality is authorized to adopt, promulgate, implement, and collect a fee, in addition to any other fee, to be paid by major stationary sources of VOC and NOx emissions located in severe or extreme ozone nonattainment areas that have failed to attain the national primary ambient air quality standard for ozone by the year 2005. The fee shall equal five thousand dollars, plus annual adjustment, per ton of VOC and NOx emitted in excess of eighty percent of the baseline amount by the source during the calender year. The fee shall be paid for each calender year beginning after 2005, unless the area is classified as an attainment area for ozone or until such fee is no longer required by Section 185 of the Clean Air Act Amendments of 1990 (42 U.S.C. 7511(d)).

C. The fee authorized in this Section shall not apply to the following:

(1) Emissions emitted during any year that is treated as an "Extension Year" under Section 181(a)(5) of the Clean Air Act Amendments of 1990 (42 U.S.C. 7511(a)(5)).

(2) Areas with a total population under two hundred thousand that failed to attain the standard by the year 2005, if the area can demonstrate, consistent with guidance by the Administrator of the United States Environmental Protection Agency, that attainment in the area is prevented because of ozone or ozone precursors transported from other areas and if the area has met all requirements and implemented all applicable measures under the Clean Air Act Amendments of 1990.

Acts 2003, No. 441, §1.

CHAPTER 4. LOUISIANA WATER CONTROL LAW

§2071. Citation

This Chapter shall be known and may be cited as the "Louisiana Water Control Law."

Acts 1979, No. 449, §1, eff. Jan. 1, 1980.

§2072. Policy; purpose

The legislature finds and declares that the waters of the state of Louisiana are among the state's most important natural resources and their continued protection and safeguard is of vital concern to the citizens of this state. To insure the proper protection and maintenance of the state's waters, it is necessary to adopt a system to control and regulate the discharge of waste materials, pollutants, and other substances into the waters of the state.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980.

§2073. Definitions

As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) "Louisiana Pollutant Discharge Elimination System (LPDES)" means those portions of the Louisiana Environmental Quality Act and the Louisiana Water Control Law and all regulations promulgated

under their authority which are deemed equivalent to the National Pollutant Discharge Elimination System (NPDES) under the Federal Water Pollution Control Act, otherwise known as the Clean Water Act, and for which Louisiana is the delegated authority. The LPDES specifically includes but is not limited to authority to issue all permits provided for under Sections 402 and 405 of the Federal Water Pollution Control Act, as well as the general permits program, the storm water discharge program, the pretreatment program, and the sewage sludge program.

(2) "LPDES variance" means any mechanism or provision which allows modification to or waiver of permit conditions of state regulatory requirements applicable to discharges of substances to waters of the state or to treatment works but does not include those variances which under federal law may only be granted by the Environmental Protection Agency.

(3) "Treatment works" means any plant or other works which accomplishes the treating, stabilizing, or holding of wastes.

(4) "Untreated wastes" means wastes which have not been treated in treatment works.

(5) "Wastes" means any material for which no use or reuse is intended and which is to be discarded.

(6) "Water pollution", except for the purposes of the Louisiana Pollution Discharge Elimination System, means the introduction into waters of the state by any means, including but not limited to dredge and fill operations, of any substance in concentrations which tend to degrade the chemical, physical, biological, or radiological integrity of such waters, including but not limited to the discharge of brine from salt domes which are located on the coastline of Louisiana and the Gulf of Mexico into any waters off said coastline and extending therefrom three miles into the Gulf of Mexico. For the purposes of the Louisiana Pollutant Discharge Elimination System, as defined herein, "water pollution" includes but is not limited to any addition of any pollutant or combination of pollutants to waters of the state from any source, or any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the Gulf of Mexico from any source other than a vessel or other floating craft which is being used as a means of transportation. For the purposes of the Louisiana Pollutant Discharge Elimination System, as defined in this Paragraph, the definition of "water pollution" further includes but is not limited to additions of pollutants into waters of the state from surface runoff, which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by the state, a municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by an indirect discharger to a publicly owned treatment works.

(7) "Waters of the state" means both the surface and underground waters within the state of Louisiana including all rivers, streams, lakes, groundwaters, and all other water courses and waters within the confines of the state, and all bordering waters and the Gulf of Mexico. However, for purposes of the Louisiana Pollutant Discharge Elimination System, "waters of the state" means all surface waters within the state of Louisiana and, on the coastline of Louisiana and the Gulf of Mexico, all surface waters extending therefrom three miles into the Gulf of Mexico. For purposes of the Louisiana Pollutant Discharge Elimination System, this includes all surface waters which are subject to the ebb and flow of the tide, lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, impoundments of waters within the state of Louisiana otherwise defined as "waters of the United States" in 40 CFR 122.2, and tributaries of all such waters. "Waters of the state" does not include waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act, 33 U.S.C. 1251 et seq.

(8) "Bordering waters", as used in Paragraph (7) of this Section, means any waters of the state as otherwise defined, any part of which is located within the confines of the state, and any waters which touch the coastline of Louisiana as it borders on the Gulf of Mexico, and includes the waters of the Gulf of Mexico.

(9) "Public sanitary sewerage system" means a privately or publicly owned system intended to provide for the collection, conveyance, or treatment of waste water and other sewage for the public or such facilities owned by the public, if the system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year. The term includes:

(a) Any collection, conveyance, treatment, storage, or discharge facilities under the control of the operator of the system and used primarily in connection with the system.

(b) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1984, No. 317, §1, eff. July 2, 1984; Acts 1993, No. 172, §1; Acts 1993, No. 174, §1; Acts 1995, No. 708, §1; Acts 1997, No. 480, §1, eff. June 30, 1997; Acts 1997, No. 1119, §1; Acts 1997, No. 1461, §1.

§2074. Water quality control; secretary of environmental quality; powers and duties

A. The department shall have the following powers and duties with respect to water quality control:

(1) To prepare and develop a general plan for the proper protection and control of the waters of the state.

(2) To make investigations on its own motion or upon the complaint of any person and by appropriate order to control, regulate, or restrain the discharge of any waste material or polluting substance discharged or sought to be discharged into any waters of the state in accordance with the provisions of R.S. 30:2025.

(3) To process all applications for certifications which applicants for federal or state licenses or permits are required to provide to the appropriate agency. In connection with the issuance of such certificates, one notice of each application for a certification under this Paragraph must either be published in the official journal of the state or issued as a joint notice by the agency requiring the certification. In the event the secretary determines that there is significant public interest in the proposed activity, he shall cause notice to be published in a newspaper of general circulation in the affected area. The cost of publication of public notice shall be borne by the applicant. The notice shall provide that comments concerning the application may be filed with the department in accordance with regulations developed to implement this Chapter. After the time provided for public comment, the department shall act upon the application and take such action as it deems appropriate. If, as a condition to certification, the secretary proposes any alterations to the federal or state license or permit, as drafted, or proposes to deny the certification, the secretary shall promptly notify the applicant of the proposed alterations or denial, and shall provide the applicant an opportunity for a hearing in connection with such proposed alterations or proposed denial in accordance with R.S. 30:2024(A). Conditional certifications and certification denials shall be considered permit actions for all purposes.

(4) To administer the Municipal Facilities Revolving Loan Fund as established in R.S. 30:2078. The department is also authorized to enter into contracts and other agreements in connection with the operation of the Municipal Facilities Revolving Loan Fund to the extent necessary or convenient for the implementation of the Municipal Facilities Revolving Loan Fund Program.

B. The secretary shall have the following powers and duties:

(1) To establish such standards, guidelines, or criteria as he deems necessary or appropriate to prohibit, control, or abate any of the following:

(a) Water pollution.

(b) Discharges into publicly owned treatment works in accordance with Sections 307 and 402 of the Federal Water Pollution Control Act.

(c) Use and disposal of sewage sludge in accordance with Section 405 of the Federal Water Pollution Control Act.

(2) To ascertain and determine, for record and for use in making regulations, what volume of water actually flows in any stream, as well as the high and low water marks of waters of the state affected by the waste disposal or pollution of any person.

(3) To adopt and promulgate rules and regulations consistent with the general intent and purposes of this Chapter to prevent water pollution, including but not limited to the following:

(a) Regulations requiring compliance by users of publicly owned treatment works in accordance with Sections 307 and 402 of the Federal Water Pollution Control Act.

(b) Regulations requiring compliance with pretreatment standards and requirements in accordance with Sections 307 and 402 of the Federal Water Pollution Control Act.

(c) Regulations requiring the treatment of wastes in treatment works.

(d) Regulations prohibiting the unpermitted discharge of untreated or improperly treated wastes.

(e) Regulations prohibiting improper sewage sludge use or disposal, including but not limited to general requirements, pollutant limits, management practices, operational standards, and monitoring, recordkeeping, and reporting requirements for the final use or disposal of sewage sludge, when such use or disposal is by land application, surface disposal, or incineration, in accordance with Section 405 of the Federal Water Pollution Control Act or state water quality standards.

(4) To develop permitting procedures and to require and issue permits, variances, LPDES variances, licenses, or compliance schedules for all waste water discharges, discharges of waste, or sources of water pollution to the surface waters of the state, and to require of and issue LPDES permits to any person who prepares sewage sludge, applies sewage sludge to the land, or fires sewage sludge in a sewage sludge incinerator, or to the owner or operator of a sewage sludge surface disposal site and, when the secretary deems it advisable, to delegate the power to issue or deny such permits, variances, LPDES variances, licenses, or

compliance schedules to the appropriate assistant secretary subject to his continuing oversight. The authority to execute minor permit actions and to issue registrations, certifications, notices of deficiency, and notification of inclusion under a general permit may be delegated by the secretary or the appropriate assistant secretary to an authorized representative, notwithstanding the provisions of R.S. 30:2050.26. Nothing in this Subsection shall preclude the secretary from issuing compliance schedules or taking enforcement action to address unauthorized pollution of ground waters of the state.

(5) To adopt and promulgate rules and regulations to provide for the cleanup and remediation of any pollution of waters of the state.

(6) To apply for and accept grants of money from the United States Environmental Protection Agency or other federal agencies for the purpose of making funds available to political subdivisions in the state for the planning, design, construction and rehabilitation of wastewater treatment facilities and other related activities.

(7) To establish such standards, guidelines, or criteria by rule as he deems necessary to prevent the discharge from water crafts, other than vessels engaged in commercial fishing and licensed pursuant to R.S. 56:304 et seq., of trash, garbage, and untreated or improperly treated sewage or sewage sludge in an amount, manner, or area which would further degrade the quality of anchorage waters or certain immediately adjacent waters within Louisiana. The standards herein authorized and required shall provide at a minimum for:

(a) Water crafts to which such standards shall apply.

(b) Reporting requirements of water craft owners or operators necessary to effectuate the intent of this Paragraph, including technical information related to onboard waste containment or treatment equipment.

(c) Requirements of evidence of any service contracts or other arrangements necessary to properly remove and dispose of such wastes.

(d) Specific standards for garbage lighterage and pump out services which remove these wastes.

(e) Requirements of evidence that a water craft has emptied its holding tanks outside Louisiana waters.

(8) To adopt and promulgate rules and regulations for the administration of the Municipal Facilities Revolving Loan Fund, provided such rules and regulations shall not take effect unless approved by the House of Representatives Ways and Means Committee and the Senate Revenue and Fiscal Affairs Committee.

(9) To adopt and promulgate regulations necessary to establish and administer a point source to point source effluent reduction credit banking system for the state's watersheds where Total Maximum Daily Load limitations are in place. Such regulations shall include, at a minimum, the following:

(a) Provision for the administration of the banking system.

(b) Limit trading of credits to trading within the same watershed in which the credits are earned.

(c) Credits shall be pollutant specific, and credits may only be traded for that pollutant on days when constituent testing is conducted, unless other creditable pollutants are approved by the department.

(d) Require participants in the system to monitor water quality by means including but not limited to electronic determination of constituents based upon laboratory data for constituents contained in a participant's permit or by flow proportion composite sample taken no fewer than five times per week.

(e) Participants in the system shall not use credits earned by another participant for more than twenty months in any twenty-four month period.

(10) To develop regulatory permits for certain water discharges provided the following conditions are satisfied:

(a) A regulatory permit cannot be used for any facility which is a new major facility or for any major modification of an existing facility as defined in applicable rules and regulations.

(b) Use of a regulatory permit may be precluded by specific permit conditions contained within a Louisiana pollutant discharge elimination system permit.

(c) A regulatory permit shall not preclude the secretary from exercising all powers and duties as set forth in R.S. 30:2011(D), including but not limited to the authority to conduct inspections and investigations and enter facilities as provided in R.S. 30:2012, and to sample or monitor, for the purposes of assuring compliance with a regulatory permit or as otherwise authorized by this Subtitle, federal Water Pollution Control Act, or regulations adopted thereunder, any substances or pollutants at any location.

(d) A regulatory permit shall require compliance with all applicable provisions of the department's rules and regulations and the federal Water Pollution Control Act. Violation of the terms and conditions of a regulatory permit constitutes a violation of such regulation or Act.

(e) A regulatory permit shall prescribe, as appropriate, discharge limitations, any necessary control requirements, other enforceable conditions, and associated monitoring, record keeping, and reporting provisions necessary for the protection of public health and the environment.

(f) A regulatory permit shall require any person seeking such permit to submit a written notification and any fee authorized by this Subtitle and applicable regulations to the secretary. Submission of a written notification and any fee authorized by this Subtitle and applicable regulations shall be in lieu of submission of a permit application. The written notification shall be signed and certified in accordance with LAC 33:IX governing permit application submittal. Any person who submits a written notification and any fee authorized by this Subtitle and applicable regulations shall be authorized to operate under the regulatory permit for which the notification was submitted when notified by the department that the notification was complete.

(g) All regulatory permits promulgated by the secretary shall establish notification procedures, permit terms, and confirmation of notification by the department and shall be promulgated in accordance with the procedures provided in R.S. 30:2019.

(h) No later than January 1, 2007, the secretary shall consider which activities are appropriate for coverage under a regulatory permit and publish an initial list of such activities.

C. The office of the secretary shall, in conjunction and coordination with the Department of Natural Resources, conduct a risk analysis of the discharge of produced waters, excluding cavern leach waters, from oil and gas activities onto the ground and into the surface waters in the coastal wetlands of this state. The analysis shall examine the environmental risks and economic impact of allowing such discharges in the coastal wetlands and the economic impact on the oil and gas industry if such discharges are prohibited. The analysis shall be completed and delivered to the committees on natural resources of the House of Representatives and Senate no later than April 1, 1988.

D.(1) Any information submitted to the Department of Environmental Quality, pursuant to the Louisiana Water Control Law or regulations promulgated under its authority, may be claimed as confidential in accordance with R.S. 30:2030 by the person submitting the information, except information which falls within any category listed in Paragraph (7) of this Subsection.

(2) Any such claim must be asserted at the time of submission in the manner prescribed by the application form or instructions or, in the case of other submissions, in accordance with the following:

(a) By stamping the word "CONFIDENTIAL" on each page containing such information.

(b) By submitting a written request for nondisclosure which shall specify the basis for requesting nondisclosure as provided in R.S. 30:2030.

(3) All materials clearly labeled "CONFIDENTIAL" which are submitted to the department with a written request for nondisclosure shall be afforded confidentiality pending a determination whether to grant the request. The determination shall be made within twenty-one working days from the date the request is received by the department.

(4) Confidentiality will not be afforded to any materials submitted which fall within any category of information listed in Paragraph (7) of this Subsection.

(5) If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures specified above.

(6) If the secretary determines that any material received should not be afforded confidentiality, he shall issue a written denial of the request for nondisclosure to the requestor. No written denial of the request is necessary when the material submitted as confidential falls within any category of information listed in Paragraph (7) of this Subsection.

(7) No claim of confidentiality will be accepted and all claims of confidentiality will be denied for the following categories of information for all NPDES, LPDES, or other water discharge permit applicants or permittees:

(a) Name.

(b) Address.

(c) Effluent or discharge data.

(d) Contents of permit applications.

(e) All information required by the permit application whether accompanying it, attached to it, or submitted separately.

(f) Permits.

(8) All information obtained under the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., or by regulations issued under its authority, or by any order, license, or permit term or condition adopted or issued by the Act, shall be available to the public, unless nondisclosure is requested and granted in accordance with R.S. 30:2030. No information listed in said Paragraph (7) may be claimed or determined to be confidential.

(9) Any employee of the department or any former employee of the department or any authorized contractor acting as a representative of the secretary of the department who is convicted of intentional disclosure or conspiracy to disclose trade secrets or other information which has been determined to be confidential pursuant to this Subsection is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars, imprisonment for up to one year, or both.

E. No later than October 1, 1995, the secretary shall adopt rules and regulations to govern the discharge from commercial facilities of liquid wastes that contain methanol alcohol. The rules and regulations shall require pre-treatment of such waste before entering any sewer system, septic tank, or any surface waters of the state. The provisions of this Subsection shall not apply to veterinarians and hospitals. The rules adopted pursuant to this Subsection shall not be applicable to industrial facilities required to obtain permits for discharge of liquid wastes from Louisiana Department of Environmental Quality, the United States Environmental Protection Agency, or the Louisiana Department of Natural Resources.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1984, No. 317, §1, eff. July 2, 1984; Acts 1984, No. 319, §1, eff. July 2, 1984; Acts 1986, No. 349, §1, eff. June 30, 1986; Acts 1987, No. 833, §1; Acts 1987, No. 940, §1, eff. July 20, 1987; Acts 1988, No. 964, §1, eff. July 27, 1988; Acts 1990, No. 244, §1; Acts 1991, No. 226, §1, eff. July 2, 1991; Acts 1991, No. 236, §1; Acts 1993, No. 117, §1; Acts 1993, No. 767, §1; Acts 1995, No. 699, §1; Acts 1995, No. 1189, §1; Acts 1997, No. 480, §1, eff. June 30, 1997; Acts 1997, No. 1119, §1; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 2003, No. 67, §1, eff. May 28, 2003; Acts 2003, No. 382, §1; Acts 2006, No. 115, §1.

§2075. Permits, variances, and licenses

No person shall conduct any activity which results in the discharge of any substance into the waters of the state without the appropriate permit, variance, or license required under the regulations of the department adopted pursuant to this Chapter.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1991, No. 236, §1; Acts 1999, No. 348, §1, eff. June 16, 1999.

§2075.1. Permits and licenses; surcharge

A. The legislature finds and declares that discharges of substances into the waters of the state have damaged and endangered the Louisiana molluscan shellfish industry and have increased the costs of molluscan regulation and sanitation in the state, and that it is in the best interests of the state to impose a surcharge on discharges permitted or licensed pursuant to R.S. 30:2075.

B. A surcharge at a flat rate of twenty percent of the department imposed permit fee, with a maximum of one hundred fifty dollars, shall be added to the fee for each water discharge permit issued pursuant to R.S. 30:2075 for discharges in the Atchafalaya, Terrebonne, Barataria, Lake Pontchartrain, and Mississippi River water quality management basins as defined by the department Water Quality Management Basin Plans.

C. The proceeds of the surcharge authorized in Subsection B of this Section shall be deposited into the Oyster Sanitation Fund, established in R.S. 40:5.10.

D. Nothing in this Section shall be construed to modify the rules adopted pursuant to this Subtitle.

Acts 1993, No. 911, §1, eff. June 23, 1993.

§2075.2. Sewage treatment facility; privately owned; surety required; nonfunctional system

A.(1) Any applicant for, or prospective transferee of, a permit for the discharge of effluent from any privately owned sewage treatment facility regulated by the Public Service Commission shall be required to provide and maintain a bond or other acceptable financial security instrument. Any applicant, prospective transferee, or permittee may apply to the secretary of the Department of Environmental Quality for approval of a single financial security instrument, having a maximum amount of two hundred fifty thousand dollars, to satisfy the requirements of this Section for all such permits held or to be held. In determining whether to approve the application for a single financial security instrument, the secretary may consider the assets, debts, and compliance history of the applicant, the condition and capacity of the facilities to be covered by such security, and any other factor that may impact the applicant's ability to operate and maintain the facilities. Any such bond or other instrument shall be payable to the Department of Environmental Quality and shall be conditioned upon substantial compliance with the requirements of the Louisiana Water Control Law and any permit issued or enforced under that law. Any bond shall be executed by the permittee and a corporate surety licensed to do business in the state. The purpose of the bond or other financial security shall be the protection

of public health, welfare, and the environment. The department shall promulgate rules and regulations to implement this Section.

(2) The secretary or his designee may enter an order requiring forfeiture of all or part of the bond or other financial security, if he determines that:

(a) The continued operation or lack of operation and maintenance of the facility covered by this Section represents a threat to public health, welfare, or the environment because the permittee is unable or unwilling to adequately operate and maintain the facility or the facility has been actually or effectively abandoned by the permittee. Evidence justifying such a determination includes but is not limited to:

(i) The discharge of pollutants exceeding limitations imposed by applicable permits.

(ii) Failure to utilize or maintain adequate disinfection facilities.

(iii) Failure to correct overflows or backups from the collection system.

(iv) A declaration of a public health emergency by the state health officer.

(v) A determination by the Public Service Commission that the permittee is financially unable to properly operate or maintain the system.

(b) Reasonable and practical efforts under the circumstances have been made to obtain corrective actions from the permittee.

(c) It does not appear that corrective actions can or will be taken within an appropriate time as determined by the secretary.

(3) The proceeds of any forfeiture shall be used by the secretary, or by any receiver appointed by a court under R.S. 30:2075.3, to address or correct the deficiencies at the facility or to maintain and operate the system. The proceeds shall be in addition to any other funds appropriated to the department and may be expended under the authority of this Section without additional action by the legislature. Use of such proceeds under this Section shall not be subject to R.S. 38:2181 et seq.

(4) Review of any decision of the secretary under this Section shall be exclusively by appeal to the Nineteenth Judicial District Court, under R.S. 30:2050.21. The decision of the secretary shall not be stayed pending the appeal.

(5) This Subsection shall be applicable to the following actions, when taken after July 1, 1999, or upon the effective date of the rules promulgated under Paragraph (1), whichever occurs earlier:

(a) Issuance of a new discharge permit.

(b) Renewal of an existing discharge permit.

(c) Modification of an existing discharge permit.

(d) Transfer of an existing discharge permit to a different permittee.

(6)(a) After a permittee has provided a bond or other acceptable financial security instrument under this Section and has maintained the financial security for not less than seven years, the permittee may petition the secretary for a waiver or reduction of the financial security. The secretary may, in his discretion, grant the petition, if:

(i) The facility has been in substantial compliance with the required permits under the Louisiana Water Control Law for not less than seven years.

(ii) The permittee provides the secretary with a letter from the Louisiana Public Service Commission stating that the permittee is in good standing and that the commission has no objection to the waiver or reduction of the financial security.

(b) The secretary may, in his discretion, issue, renew, modify, or transfer a permit without the required financial security being provided by the permittee, if:

(i) The permittee has made a reasonable, good faith effort to obtain the required financial security, but has been unable to do so.

(ii) The issuance, renewal, modification, or transfer of the permit is necessary to ensure uninterrupted sewage treatment or is otherwise necessary to protect human health or the environment.

(iii) The permittee provides the secretary with a letter from the Louisiana Public Service Commission stating that the permittee is in good standing and that the commission has no objection to the issuance, renewal, modification, or transfer.

(c) In no case shall a discharge be allowed by permit to continue for more than six months without the required bond or other financial security being provided by the permittee as required by this Section, unless the permittee has petitioned for and has been granted a release from the requirement to provide and maintain such financial security as provided in Subsection A.

B. If the treatment facility is to be acquired by a homeowners' association, by act of sale or donation, for operation and maintenance, the original permittee must submit the legal name of the association, with one person as "environmental contact" for any matter relating to the treatment plant. The permittee shall also include the current mailing address and telephone number for the environmental contact, which shall be submitted to the department at least sixty days prior to legal transfer of the facility.

C. No person shall be evicted from his residence and no business entity shall be evicted from its place of business for disconnecting such premises from a nonfunctional community sewage treatment system to prevent loss of life, personal injury, or severe property damage; however, any action undertaken by a person shall be taken in such a manner so as to insure that sewage from his residence or business is properly treated in a waste water treatment system approved by the appropriate state agencies.

D. Repealed by Acts 1999, No. 399, §2.

Acts 1993, No. 1029, §1; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 1999, No. 399, §§1, 2; Acts 2000, 1st Ex. Sess., No. 93, §1; Acts 2004, No. 667, §1, eff. July 5, 2004.

§2075.3. Receivership for sewerage systems

A.(1) In any civil action brought against the owner or operator of a public sanitary sewerage system to enforce the requirements of this Subtitle or rules promulgated pursuant thereto, the court may, on its own motion or upon application of the secretary, appoint a receiver to collect the assets of the public sanitary sewerage system, collect any records relating to the current operation and users of the public sanitary sewerage system, operate and maintain the public sanitary sewerage system, and to otherwise assist the court in adjudicating the issues before the court. Application by the secretary shall not be subject to any bond requirement.

(2) The court shall place the public sanitary sewerage system in receivership upon finding any of the following:

(a) The system has been abandoned by the operator and no provisions have been made for the continued operation of the system by a qualified operator, or for providing the sewerage system's users with another system to collect, convey, or treat sewerage emanating from the users' facilities.

(b) Service by the system to its users has ceased, or cessation of such service is imminent.

(c) The operator of the system has failed or refused to comply with an emergency order issued pursuant to R.S. 30:2025(C)(1) or R.S. 30:2050.8 within twenty-four hours of notice of such order.

(d) Such other circumstances that indicate that receivership is necessary to ensure uninterrupted sewage treatment or protection of public health or the environment.

(e) The operator of the system has failed to provide or maintain a bond or other financial security, when required by R.S. 30:2075.2.

(3)(a) The court may, on ex parte application of the secretary, pending trial, do the following:

(i) Appoint a temporary receiver with the same bond requirements as for a receiver.

(ii) Enjoin the owner and the operator of the system, and their agents, officers, or assigns, from interfering with the takeover of the system and its operation by the temporary receiver.

(iii) Order the owner and the operator of the system to provide to the temporary receiver the names and addresses of the system's customer, and the rates approved by the Public Service Commission.

(iv) Order and direct customers of the system to make payments for using the system directly to the temporary receiver.

(b) The court may continue the above orders upon the appointment of a receiver.

(4) The temporary receiver and the receiver shall have the powers set forth in R.S. 12:152(B) applied *mutatis mutandis* to the operation and business of the public sanitary sewerage system that is the subject of the receivership.

(5) The receiver, if a private person, shall execute a bond to assure the proper performance of the receiver's duties in an amount to be set by the court.

(6) The receiver, if a political subdivision that currently owns or operates a sanitary sewerage system, or if a local governmental subdivision, may be appointed by the court without any bond requirement.

(7) The receiver shall maintain separate financial records showing the income and expenses of the system and provide the court and the system's owner or operator with same and an accurate statement of the condition of the system periodically as required by the court. The court may require an independent audit of such financial statements.

(8) The receiver shall carry out the orders specified and directed by the court until discharged.

(9) The court may dissolve the receivership upon a showing of good cause by the defendant, the receiver, or the secretary.

Acts 1997, No. 1461, §1; Acts 1999, No. 348, §1, eff. June 16, 1999; Acts 1999, No. 399, §1.

§2076. Prohibitions

A.(1) No person shall discharge or allow to be discharged into any waters of the state:

(a) Any waste or any other substance of any kind that will tend to cause water pollution in violation of any rule, order, or regulation; or

(b) Any substance, the discharge of which violates any term, condition, or limit imposed by a permit.

(2) The provisions of this Chapter shall not apply to any unintentional nonpoint-source discharge resulting from or in connection with the production of raw agricultural, horticultural, or aquacultural products.

(3) No person shall violate any rule or regulation adopted under this Chapter or the terms of any permit or order issued under authority of this Subtitle.

(4) No person shall cause or allow to be discharged within Louisiana any trash, garbage, sewage, or sewage sludge in contravention of any rules or regulations adopted pursuant thereto and authorized by R.S. 30:2074(B)(7).

B. No person engaged in a logging operation shall discharge or leave, or allow to be discharged and left, in any of the navigable waters of the state any trees or treetop. For the purpose of this Subsection, the term "treetop" shall be defined as that topmost portion of a tree trunk, with limbs attached, measuring in excess of three inches at the base of the treetop stem.

C. No person shall discharge brine from salt domes which are located on the coastline of Louisiana and the Gulf of Mexico into any waters off said coastline and extending therefrom three miles or more into the Gulf of Mexico when it becomes evident to the department that said discharge is damaging or threatens to damage the aquatic life in the waters of the state. The department may require that any brine disposal be monitored in accordance with rules and regulations.

D. Any person who discharges, emits, or disposes of any substance into the waters of the state in contravention of any provision of this Chapter or of the regulations or of the terms and conditions of a permit or license issued thereunder, upon learning of the discharge, emission, or disposal, shall immediately, or in accordance with regulations adopted under this Subtitle, notify the department as to the nature and amount of the discharge and the circumstances surrounding the discharge. The secretary shall adopt and promulgate rules and regulations establishing procedures for making such notification. Any failure to make this notification or any attempt to conceal or actual concealment of the discharge, emission, or disposal shall be a violation of this Chapter. Each day of failure to give the notification required herein shall constitute a separate violation and shall be in addition to any other violations of this Subtitle.

E. Repealed by Acts 1990, No. 988, §2.

F. No person shall discharge into any underground waters of the state any hazardous waste as defined in R.S. 30:2173(2). The provisions of this Subsection are not intended to impair the implementation or administration of those programs authorized by R.S. 30:4(C)(16), R.S. 30:4.1, R.S. 30:2071, and R.S. 30:2180(A)(6), as long as permitted injections are conducted in strict adherence to the terms and conditions of a valid permit issued thereunder or under the rules and regulations adopted thereunder.

G.(1) The legislature of Louisiana hereby finds that a significant portion of the phosphate fertilizer and wet-process phosphoric acid manufacturing industry is located in the state of Louisiana, that the manufacture of wet-process phosphoric acid results in the generation of byproduct waste gypsum, and heretofore such gypsum has been disposed of by impoundment on land or by discharge into the Mississippi River. The Mississippi River is a valuable natural resource that must be protected against unnecessary degradation in order to protect and preserve the public health and welfare, drinking water quality, and major sectors of the economy including tourism and seafood industries, and the environment.

(2) No person shall discharge byproduct waste gypsum from the production of phosphate fertilizer or wet-process phosphoric acid into the Mississippi River. This prohibition shall not apply to authorized discharges of wastewaters or rainfall runoff containing dissolved gypsum or suspended gypsum when such discharge is in compliance with state and federal permits and the discharge is not for the primary purpose of disposing of byproduct waste gypsum.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1984, No. 190, §1; Acts 1984, No. 317, §1, eff. July 2, 1984; Acts 1984, No. 824, §1, eff. July 13, 1984; Acts 1987, No. 833, §1; Acts 1987, No. 913, §1, eff. July 20, 1987; Acts 1990, No. 988, §2; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2076.1. Civil enforcement

A. Whenever, on the basis of any information available to him, the secretary finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of the Louisiana Pollutant Discharge Elimination System, the secretary may notify the owner or operator of such treatment works of such violation. If the owner or operator of the treatment works does not commence appropriate enforcement action within thirty days of the date of such notification, the secretary may commence a civil action for appropriate relief, including but not limited to a permanent or temporary injunction against the owner or operator of such treatment works.

B. In any such civil action the secretary shall join the owner or operator of such source as a party to the action. Such action shall be brought in the Nineteenth Judicial District Court for the parish of East Baton Rouge. The court shall have jurisdiction to restrain such violation and to require the owner or operator of the treatment works and the owner or operator of the source to take such action as may be necessary to come into compliance with the Louisiana Pollutant Discharge Elimination System.

C. Nothing in this Section shall be construed to limit or prohibit any other authority the department may have under the Louisiana Environmental Quality Act.

Acts 1993, No. 175, §1.

§2076.2. Criminal penalties for violation of the Louisiana Pollutant Discharge Elimination System

A. Negligent violations.

(1) Any person who negligently violates any provision of the Louisiana Pollutant Discharge Elimination System, or any order issued by the secretary under the Louisiana Pollutant Discharge Elimination System, or any permit condition or limitation implementing any of such provisions in a permit issued under the Louisiana Pollutant Discharge Elimination System by the secretary, or any requirement imposed in a pretreatment program approved under the Louisiana Pollutant Discharge Elimination System; or

(2) Any person who negligently introduces into public sewer systems or into publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under the Louisiana Pollutant Discharge Elimination System by the department;

(3) Shall, upon conviction, be subject to a fine of not less than two thousand five hundred dollars nor more than twenty-five thousand dollars per day of violation or imprisonment for not more than one year, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this Subsection, he shall be subject to a fine of not more than fifty thousand dollars per day of violation, or imprisonment for not more than two years, with or without hard labor, or both.

B. Knowing violations.

(1) Any person who knowingly violates any provision of the Louisiana Pollutant Discharge Elimination System or any permit condition or limitation implementing any of such provisions in a permit issued under the Louisiana Pollutant Discharge Elimination System or any requirement imposed in a pretreatment program approved under the Louisiana Pollutant Discharge Elimination System; or

(2) Any person who knowingly introduces into public sewer systems or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage, or other than in compliance with all applicable federal, state, or local requirements or permits, which causes such treatment work to violate any effluent limitation or condition in a permit issued to the treatment works under the Louisiana Pollutant Discharge Elimination System;

(3) Shall, upon conviction, be subject to a fine of not less than five thousand dollars nor more than fifty thousand dollars per day of violation, or imprisonment for not more than three years, with or without hard labor, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this Subsection, he shall be subject to a fine of not more than one hundred thousand dollars per day of violation, or imprisonment for not more than six years, with or without hard labor, or both.

C. Knowing endangerment.

(1) Any person who knowingly violates any provision of the Louisiana Pollutant Discharge Elimination System or any order issued by the secretary under the Louisiana Pollutant Discharge Elimination System or any permit condition or limitation implementing any of such provisions in a permit issued under the Louisiana Pollutant Discharge Elimination System by the secretary, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than two hundred fifty thousand dollars or imprisonment for not more than fifteen years, with or

without hard labor, or both. A juridical person shall, upon conviction of violating this Paragraph, be subject to a fine of not more than one million dollars. If a conviction of a person is for a violation committed after a first conviction of such person under this Paragraph, he shall be subject to a fine of up to five hundred thousand dollars or imprisonment for up to thirty years at hard labor, or both.

(2) For the purpose of Paragraph (1) of this Subsection:

(a) In determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury, the following shall apply:

(i) The person is responsible only for actual awareness or actual belief that he possessed; and

(ii) Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

(iii) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. The knowledge necessary for culpability of a natural person is actual knowledge which may be established by direct or circumstantial evidence, but not constructive or vicarious knowledge. Knowledge that the defendant should have had, could have had, or would have had under various circumstances does not suffice if he did not actually have the requisite knowledge about the danger at the time he acted.

(b) It is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonable foreseeable hazards of:

(i) An occupation, a business, or a profession; or

(ii) Medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent; and

(iii) Such defense may be established under this Subparagraph by a preponderance of the evidence.

(c) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(d) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

D. False Statements. Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Louisiana Pollutant Discharge Elimination System or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Louisiana Pollutant Discharge Elimination System shall, upon conviction, be subject to a fine of not more than ten thousand dollars or imprisonment for not more than two years, with or without hard labor, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this Subsection, he shall be subject to a fine of not more than twenty thousand dollars per day of violation, or imprisonment for not more than four years, with or without hard labor, or both.

E. Treatment of single operational upset. For purposes of this Section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

F. Responsible corporate officer as "person". For the purposes of this Section, the term "person" means an individual, corporation, partnership, association, state, municipality, commission, political subdivision of a state, any interstate body, or any responsible corporate officer.

G. Hazardous substance defined. For the purpose of this Section, the term "hazardous substance" means any of the following:

(1) Any substance designated pursuant to Section 311(b)(2)(A) of the Clean Water Act (33 U.S.C. §1321(b)(2)(A)).

(2) Any element, compound, mixture, solution, or substance designated pursuant to Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9602).

(3) Any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act (42 U.S.C. §6921), but not including any waste the regulation of which under the Solid Waste Disposal Act (42 U.S.C. §6901 et seq.) has been suspended by Act of Congress.

(4) Any toxic pollutant listed under Section 307(a) of the Clean Water Act (33 U.S.C. §1317(a)).

(5) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to Section 7 of the Toxic Substances Control Act (15 U.S.C. §2606).

H. Notice to district attorney. Upon a determination that a criminal violation may have occurred under this Section, notification shall be given to the district attorney in whose jurisdiction such possible violation has occurred. The secretary shall provide the district attorney with any and all information necessary to evaluate the alleged violation for criminal prosecution. The criminal prosecution of such violations shall be at the direction of the district attorney. The secretary shall cooperate fully with the district attorney.

I. Negligently defined. For purposes of this Section, the term "negligently" has the meaning specified under R.S. 14:12 with respect to the definition of criminal negligence.

Acts 1993, No. 268, §1; Acts 2005, No. 299, §1.

§2077. Remediation of pollution

Any person who allows, suffers, permits, or causes the unpermitted pollution of the waters of the state in contravention of any provision of this Subtitle, any regulations adopted hereunder, or the terms and conditions of any permit, license, or order issued hereunder upon obtaining knowledge of such shall notify the secretary and if necessary take prompt remedial action pursuant to appropriate regulations adopted under this Subtitle or as ordered by the secretary or by an authorized assistant secretary. The goal of such regulations or orders, to the extent economically and technologically reasonable, is to eliminate those releases that may reasonably pose a threat to human health or the environment and to remediate contaminated media, taking into consideration current and expected uses.

Acts 1984, No. 319, §1, eff. July 2, 1984; Acts 1991, No. 666, §1, eff. July 17, 1991.

§2078. Municipal Facilities Revolving Loan Fund Program; purposes; establishment; capitalization of fund; disposition of monies; administration; exemption from certain public bond trust restrictions

A. It is the determination of the legislature that the federal funds for the administration and implementation of the Federal Wastewater Construction Grants Program will decline within the years to come, thereby decreasing the amount of funds that the state will have to operate and carry out the functions that it has been assigned to accomplish. In order to continue to provide funds to municipalities and other political subdivisions for the planning, design, construction, and rehabilitation of wastewater treatment facilities, and other lawful activities connected with this program, it is the purpose of this Section to provide for the establishment of a clean water revolving loan fund to be capitalized by federal grants, state funds when required or available, and by any other funds generated by the operation of the clean water revolving loan fund, to authorize the Department of Environmental Quality, the "department", to engage in activities regarding the sums on deposit in, credited to, or to be received by the clean water revolving loan fund, to authorize the department to guarantee debt issued and incurred by other entities, and to authorize the department to pledge such sums, including sums to be received pursuant to letter of credit payments, to secure the debt of other entities.

B.(1) There is hereby established a clean water revolving loan fund to be known as the Municipal Facilities Revolving Loan Fund which shall be maintained and operated by the department. Grants from the federal government or its agencies allotted to the state for the capitalization of the Municipal Facilities Revolving Loan Fund, and state funds when required, or otherwise made available shall be deposited directly in or credited to the account of the Municipal Facilities Revolving Loan Fund in compliance with the terms of the federal or state grant.

(2) Money in, credited to the account of or to be received by the Municipal Facilities Revolving Loan Fund including sums to be received pursuant to letters of credit, shall be expended, committed or pledged in a manner consistent with terms and conditions of the grants and other sources of said deposits, credits and letters of credit, and of all applicable federal and state legislation and may be used:

(a) To make loans from federal funds or funds on deposit in, credited to, or to be received by the Municipal Facilities Revolving Loan Fund, including from the proceeds of letters of credit, at or below market interest rates for a period not to exceed twenty years from the completion of the construction of a project approved by the department.

(b) To offer and to make or enter into loan guarantees.

(c) To provide payments to reduce interest on loans and loan guarantees.

(d) To make bond interest subsidies.

(e) To provide bond guarantees to municipalities, other political subdivisions, public trusts, and intermunicipal or interstate agencies.

(f) To provide assistance to a municipality, other local political subdivisions, public trusts, or intermunicipal or interstate agencies with respect to the non-federal share of the costs of a project.

(g) To finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned projects approved by the department.

(h) To provide financial assistance for the construction and rehabilitation of a project on the state priority list.

(i) To secure principal, interest, and premium if any, on bonds or other evidence of indebtedness issued by the department, or any agency, commission, authority, or public corporation of the state, by any public trust or by any other entity having the authority to issue debt for or on behalf of the state, or any municipality or other political subdivision of the state if the proceeds of such bonds are deposited in the Municipal Facilities Revolving Loan Fund, the proceeds of such bonds are used to pay for a project approved by the department, or the proceeds of such bonds are used to refund any obligation the proceeds of which are used to pay for an approved project to the extent provided and allowed by the terms of the federal grant.

(j) To make, enter into, or provide for loan guarantees for similar revolving funds established by instrumentalities, public trusts or agencies of the state, municipalities, other political subdivisions, or intermunicipal or interstate agencies.

(k) To purchase or refinance, at or below market rates, debt incurred by municipalities or other local political subdivisions for wastewater treatment projects, where such debt obligations were incurred after March 7, 1985.

(l) To improve credit market access by guaranteeing, arranging or purchasing bond insurance or other credit enhancement devices for debt obligations issued by the department, any municipality or other political subdivision, public trust, or agency, commission or authority of the state issued for a purpose authorized by this Paragraph (B)(2).

(m) To fund other programs which the federal government authorizes by the terms of the grants.

(n) To fund the administrative expenses of the office of the secretary of the Department of Environmental Quality.

(o) To provide for any other expenditure consistent with the federal grant program and state law.

(3) Money not currently needed for the operation of the Municipal Facilities Revolving Loan Fund or otherwise dedicated may be invested in an interest bearing account. All such interest earned on investments shall be credited to the Municipal Facilities Revolving Loan Fund.

C. The Municipal Facilities Revolving Loan Fund shall be administered by the department, which is authorized to enter into contracts and other agreements in connection with the operation of the Municipal Facilities Revolving Loan Fund, including but not limited to credit enhancement devices, guarantees, pledges, interest rate swap agreements, contracts and agreements with federal agencies, political subdivisions, public trusts, agencies or commissions of the state, and other parties to the extent necessary or convenient for the implementation of the Municipal Facilities Revolving Loan Fund Program. The department shall maintain full authority for the operation of the Municipal Facilities Revolving Loan Fund in accordance with applicable federal and state law.

Acts 1986, No. 349, §1, eff. June 30, 1986; Acts 1987, No. 257, §1, eff. July 3, 1987; Acts 1987, No. 841, §1, eff. July 20, 1987; Acts 1989, No. 565, §1, eff. July 5, 1989; Acts 1990, No. 244, §1; Acts 1990, No. 595, §1, eff. July 18, 1990; Acts 1997, No. 480, §1, eff. June 30, 1997.

§2079. Municipal Facilities Revolving Loan Fund Program; loans for facilities; authorizing and issuing debt; security; interest rates; tax exemption

A. Notwithstanding any provisions of law to the contrary, and in addition to the authority to borrow money or incur indebtedness provided by any other provisions of law, sums on deposit in, credited to, or to be received by the department in the Municipal Facilities Revolving Loan Fund may be loaned by the department to municipalities, any other political subdivision of the state or public trusts, or may be used by the department to purchase debt obligations of such entities. Any municipality, other political subdivision, or public trust is hereby authorized to make loans from and incur debt payable to the department in accordance with the provisions hereof. The making of a loan from the Municipal Facilities Revolving Loan Fund and the issuance of debt evidencing such loan by any municipality, other political subdivision, or public trust shall be approved by the State Bond Commission. This Section shall not be deemed to be the exclusive authority under which municipalities, other political subdivisions, or public trusts may borrow money from or incur indebtedness to the department.

B. All bonds, notes, or other evidence of indebtedness of any municipality, other political subdivision or public trust issued to represent a loan from the department or Municipal Facilities Revolving Loan Fund shall be authorized and issued pursuant to a resolution of the governing authority of such entity, which resolution shall prescribe the form and details thereof, including the terms, security for, manner of execution,

repayment schedule, and redemption features thereof and such resolution may provide that an officer of such entity may execute in connection with such obligation any related contract, including but not limited to a credit enhancement device, indenture of trust, loan agreement, pledge agreement, or other agreement or contract needed to accomplish the purposes for which said evidence of indebtedness is given, in substantially the form attached to said resolution, but which final executed credit enhancement device, indenture of trust, loan agreement, pledge, or other contract or agreement may contain such changes, additions and deletions as shall in the sole opinion of the executing officer be appropriate under the circumstances. Any such resolution shall include a statement as to the maximum principal amount of any such obligation, the maximum interest rate to be incurred or borne by said obligation or guaranteed by said obligation, the maximum redemption premium, if any, and the maximum term in years for such obligation, guarantee, or pledge.

C. Notwithstanding any other provision of law to the contrary, a municipality, other local political subdivision, or public trust upon entering into a loan in accordance with the Municipal Facilities Revolving Loan Fund Program as provided in R.S. 30:2078 may dedicate and pledge a portion of any revenues it has available to it including but not limited to revenues from the general revenue fund, sales taxes, sewer user fees, assessments, parcel fees, or property taxes of the municipality or other local political subdivision for a term not exceeding twenty years from the date of project completion for repayment of the principal of, interest on, and any premium, administrative fee or other fee or cost imposed by the department in connection with such loan; provided that any loan made solely for the purpose of financing the cost of facility planning and the preparation of plans, specifications, and estimates for construction of projects approved by the department shall have a term not to exceed two years from the date thereof.

D. Any evidence of indebtedness authorized pursuant to the provisions thereof shall bear a rate or rates of interest that shall not exceed the rate or rates set forth in the resolution authorizing and providing for the issuance thereof. Any such rate or rates of interest may be at fixed, variable or adjustable rates.

E. Bonds, notes or other evidence of indebtedness of any municipality or other political subdivision shall be sold at a private, negotiated sale to the department at such price or prices, including premiums and discounts as shall be authorized in the resolution of the municipality, other political subdivision or public trust authorizing the issuance of any such obligation and agreed to by the department. The general laws of the state governing fully registered securities of public entities shall be applicable to the bonds, notes, or other evidence of indebtedness issued pursuant to this Section.

F. All resolutions authorizing the issuance of bonds, notes, or other evidence of indebtedness hereunder shall be published once in the official journal of the municipality, other political subdivision, or public trust incurring said debt. It shall not be necessary to publish exhibits to any such resolution but such exhibits shall be made available for public inspection at the offices of the governing authority of the municipality, other political subdivision, or public trust at reasonable times and such fact must be stated in the publication within the official journal. For a period of thirty days after the date of such publication any persons in interest may contest the legality of the resolution authorizing such evidence of indebtedness and any provisions thereof made for the security and payment thereof. After such thirty day period no one shall have any cause or right of action to contest the regularity, formality, legality, or effectiveness of said resolution and the provisions thereof or of the bonds, notes or other evidence of indebtedness authorized thereby for any cause whatsoever. If no suit, action, or proceeding is begun contesting the validity of the bonds, notes, or other evidence of indebtedness authorized pursuant to such resolution within the thirty days herein prescribed, the authority to issue the bonds, notes, or other evidence of indebtedness, or to provide for the payment thereof, and the legality thereof, and all of the provisions of the resolution and such evidence of indebtedness shall be conclusively presumed, and no court shall have authority or jurisdiction to inquire into any such matter.

G. Bonds, notes or other evidence of indebtedness issued under the authority of this Section shall be exempt from all taxation for state, parish, municipal, or other purposes. Such bonds, notes, or other evidence of indebtedness shall be legal and authorized investments for banks, savings banks, insurance companies, any other financial institution, tutors of minors, curators of interdicts, trustees, and other fiduciaries. Such bonds, notes, or other evidence of indebtedness may be used for deposit with any officer, board, municipality, or other political subdivision of the state, in any case where, by present or future laws, deposit of security is required for state funds.

Acts 1990, No. 595, §1, eff. July 18, 1990; Acts 1997, No. 480, §1, eff. June 30, 1997.

§2080. General power to issue and incur debt; issue and undertake guarantees of the debt of other entities

A. The Department of Environmental Quality, hereafter the "department", is hereby authorized to issue, incur, and deliver debt evidenced by bonds, notes, or other evidences of indebtedness, payable from or secured by sums deposited in, credited to, or to be received in, including sums received pursuant to letters of credit, by the department in the Municipal Facilities Revolving Loan Fund as created and established in R.S. 30:2078.

B. The department is further authorized to undertake and to issue and deliver evidences of its guarantee of the debt of other entities and is authorized to enter and execute pledges of the sums deposited in, credited to, or to be received in the Municipal Facilities Revolving Loan Fund, including payments pursuant to letters of credit, to secure the debt of other entities. Such bonds, notes, or other evidences of indebtedness, such guarantees, and such pledges issued and delivered pursuant to the authority hereof shall constitute special and limited obligations of the department, and shall not be secured by the full faith and credit of the state of Louisiana, any source of revenue of the state of Louisiana other than those sums on deposit in, credited to, or to be received in the Municipal Facilities Revolving Loan Fund, including payments to be made pursuant to letters of credit. It is hereby found and determined that such bonds, notes, or other evidences of indebtedness, guarantees, and pledges shall constitute revenue bonds, debts, or obligations within the meaning of Article VII, Section 6(C) of the Constitution of Louisiana and shall not constitute the incurring of state debt thereunder.

C. Withdrawals from the Municipal Facilities Revolving Loan Fund to pay debt service on any bond, note, or other evidence of indebtedness, obligation of guarantee of any debt, or pledge to secure any debt does not constitute and shall not be subject to annual appropriation by the legislature as provided by Article III, Section 16 of the Constitution of Louisiana.

Acts 1990, No. 594, §1, eff. July 18, 1990; Acts 1997, No. 480, §1, eff. June 30, 1997; Acts 2003, No. 67, §1, eff. May 28, 2003.

§2081. Refunding bonds and revenue anticipation notes

The department is hereby authorized to issue, execute, and deliver refunding bonds, notes, or other evidences of indebtedness for the purpose of refunding, readjusting, restructuring, refinancing, extending, or unifying in whole or any part of its outstanding obligations, and further the department is hereby authorized to issue short-term revenue notes for the purposes of anticipating any revenues to be received by the department in connection with the Municipal Facilities Revolving Loan Fund.

Acts 1990, No. 594, §1, eff. July 18, 1990; Acts 1997, No. 480, §1, eff. June 30, 1997; Acts 2003, No. 67, §1, eff. May 28, 2003.

§2082. Manner of authorizing, issuing, executing, and delivering debt or guarantees of debt of other entities

All bonds, notes, or other evidences of indebtedness, guarantees of the debt of other entities or pledges of assets to the payment of debts of other entities shall be authorized and issued pursuant to an executive order issued by the secretary of the department, and such executive order shall include a statement as to the maximum principal amount of any such obligation, guarantee, or pledge, the maximum interest rate to be incurred or borne by said obligation or guaranteed by said obligation, the maximum redemption premium, if any, and the maximum term in years for such evidence of indebtedness, obligation, guarantee, or pledge, and such executive order shall prescribe the form, anticipated terms, security, manner of execution, redemption features, and method of fixing the final details thereof. Such executive order may provide that the secretary or his designee shall execute in connection with any such obligation any other related contract including but not limited to credit enhancement devices, indentures of trust, pledge agreements, loan agreements, or any other ancillary agreements or contracts needed to accomplish the purposes for which said evidence of indebtedness, guarantee, or pledge is given in substantially the form attached to said executive order but which final indenture, guarantee, pledge, or other contract or agreement may contain such changes, additions, and deletions as shall in the sole opinion of the designated officer of the department executing any such contract be determined to be appropriate under the circumstances. The bonds, notes, other evidences of indebtedness, and obligations issued under the provisions of this Section shall be subject to the general laws of the state regarding defeasance and fully registered securities of public entities.

Acts 1990, No. 594, §1, eff. July 18, 1990.

§2083. Interest rates

Bonds, notes, or other evidences of indebtedness of the department may bear, and the department may guarantee or pledge the assets of the Municipal Facilities Revolving Loan Fund to the payment of debt of other entities that bear, a rate or rates of interest at fixed, variable, or adjustable rates. Any such obligation may be non-interest bearing in the form of capital appreciation obligations.

Acts 1990, No. 594, §1, eff. July 18, 1990; Acts 1997, No. 480, §1, eff. June 30, 1997; Acts 2003, No. 67, §1, eff. May 28, 2003.

§2084. Sale of obligation

Bonds, notes, or other evidences of indebtedness of the department shall be sold by the State Bond Commission at either public or private sale and may be sold at such price or prices, including premiums and discounts, as may be determined to be in the best interest of the department by the secretary, with the approval of the State Bond Commission. If any such evidences of indebtedness are to be sold at a public sale, a notice

of the sale shall be published in accordance with the provisions of R.S. 39:1426 and shall be awarded to the best bidder therefor by the State Bond Commission, but the State Bond Commission may reject any and all bids received.

Acts 1990, No. 594, §1, eff. July 18, 1990.

§2085. Credit enhancement devices

The department may, in connection with the sale of any bonds, notes, or other evidences of indebtedness, use municipal bond insurance, bank guarantees, surety bonds, letters of credit, interest rate swap agreements, and other devices to enhance the credit quality of any such obligations, the cost of which may be paid from the proceeds of the bonds, notes, or other evidences of indebtedness or other lawfully available funds. Such credit enhancement devices may be entered into prior to, at the time of, or subsequent to, the issuance of any such obligations.

Acts 1990, No. 594, §1, eff. July 18, 1990.

§2086. Publication of executive order

All executive orders of the secretary authorizing the issuance of bonds, notes, or other evidences of indebtedness of the department shall be published once in the official journal of the state. It shall not be necessary to publish exhibits to any such executive order, but such exhibits shall be made available for public inspection at the offices of the secretary of the department at reasonable times and such fact must be stated in the publication. For a period of thirty days after the date of such publication any persons in interest may contest the legality of the executive order and any provisions thereof made for the security and payment of any such bonds, notes, or other obligations, guarantees, or pledges. After such thirty-day period no one shall have any cause or right of action to contest the regularity, formality, legality, or effectiveness of said executive order and the provisions thereof or of the bonds, notes, or other evidence of indebtedness authorized thereby or any guarantee or pledge authorized thereby for any cause whatsoever. If no suit, action, or proceeding is begun contesting the validity of the bonds, notes, or other obligations authorized pursuant to such executive order within the thirty days herein prescribed, the authority to issue the bonds, notes, or other obligations, to enter into the guarantee, or to make the pledge to provide for the payment thereof, and the legality thereof, and of all the provisions of the executive order shall be conclusively presumed and no court shall have authority or jurisdiction to inquire into any such matter.

Acts 1990, No. 594, §1, eff. July 18, 1990.

§2087. Exemption from taxation; eligibility for investment

Bonds, notes, or other evidences of indebtedness issued under the authority of Chapter 2 of this Subtitle or Chapter 32 of Title 40 shall be exempt from all taxation for state, parish, municipal, or other purposes. Such bonds, notes, or other evidences of indebtedness may be used for deposit with any officer, board, municipality, or other political subdivision of the state, in any case where, by present or future laws, deposit of security is required for state funds.

Acts 1990, No. 594, §1, eff. July 18, 1990; Acts 1997, No. 480, §1, eff. June 30, 1997.

§2088. Bond authority; limitation

Notwithstanding the provisions of Chapter 2 of this Subtitle, the department shall not directly issue any bonds, notes, or other evidences of indebtedness except to any commission, authority, or public corporation of the state, any public trust, any municipality or other political subdivision of the state, or any other entity having the authority to issue debt for or on behalf of the state, or any municipality or other political subdivision of the state.

Acts 1990, No. 594, §1, eff. July 18, 1990; Acts 1997, No. 480, §1, eff. June 30, 1997.

§2089. Fees

A. The legislature finds that in order to provide for the development of Total Maximum Daily Load (TMDL) determinations and as otherwise may be necessary to protect the waters of the state of Louisiana, it is necessary for the Department of Environmental Quality to increase the fees assessed by the department for the purpose of this Chapter as set forth below.

B. In accordance with the provisions of Article VII, Section 2.1 of the Constitution of Louisiana, the department may increase by seven and one-half percent any fee associated with this Chapter and authorized by this Subtitle. The effective date of such increase shall not be before July 1, 1998. The department may further increase by seven and one-half percent any fee associated with this Chapter and authorized by this Subtitle, and such additional increase shall not be effective before July 1, 1999.

Acts 1997, No. 1254, §1, eff. July 15, 1997; Acts 1999, No. 303, §1, eff. June 14, 1999.

CHAPTER 5. MISSISSIPPI RIVER INTERSTATE POLLUTION PHASE-OUT COMPACT

§2091. Mississippi River Interstate Pollution Phase-Out Compact

The legislature having found that the control and abatement of pollution on the Mississippi River is an interstate problem, the governor of the state is hereby authorized and directed to execute a compact on behalf of the State of Louisiana with the United States, and the states mentioned in Article I of the Mississippi River Interstate Pollution Phase-Out Compact, who may by their legislative bodies authorize a compact in a form substantially as follows:

A COMPACT

ARTICLE I. FINDINGS AND POLICY

Whereas, the growth of population, development, and land and water use of the Mississippi River Basin has resulted in serious pollution of interstate waters flowing past the boundaries of two or more states; and

Whereas, such pollution constitutes a menace to the health, welfare, and economic prosperity of the people living in such areas; and

Whereas, the abatement of existing pollution and control of future pollution in interstate waters of the Mississippi River Basin area are of prime importance to the people and can best be accomplished through the cooperation of the states bordering on the river and the federal government, in the establishment of a cooperative federal-interstate agency to work with the states in the field of pollution abatement along the river.

Now, therefore, the states of Louisiana, Mississippi, Arkansas, Tennessee, Missouri, Kentucky, Illinois, Iowa, Wisconsin, and Minnesota, and the United States, do agree and are bound as follows:

ARTICLE II. DEFINITIONS

(1) "Waste" includes any chemical, industrial, municipal, or agricultural material for which no use or reuse is intended and which is to be discarded.

(2) "Pollution" means any man-made alteration of water, resulting from the discharge of substances including but not limited to dredge or fill material, spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, and cellar dirt.

(3) "Signator" shall mean any state which enters into this compact and is a party thereto.

(4) "Waste reduction" shall mean in-plant practices that reduce, avoid, or eliminate the generation of hazardous or nonhazardous waste so as to reduce the risks to health and the environment.

(a) When recycling is environmentally acceptable and is an integral part of the waste generating industrial process or operation, such as a closed-loop application which returns potential waste as it is generated for reuse within the process, it shall be considered waste reduction. Recycling is not considered waste reduction if waste exits a process, exits as a separate identity, undergoes significant handling, or is transported from the waste-generating location.

(b) Actions that reduce waste volume by concentrating the hazardous content of a waste or that reduce hazard level by diluting the hazardous content are not considered waste reduction.

(c) Actions that change the chemical composition and the concentrations of the components of the waste, but do not change the degree of hazard of the waste are not considered waste reduction.

(5) "Waste management" shall mean any of the various methods or means of reducing waste which are applied after the waste is generated or outside of the location where waste is generated.

ARTICLE III. APPLICABILITY

It is agreed among the signatories that the provisions of this compact shall apply to the Mississippi River System, from its headwaters to its mouth at the Head of Passes, and laterally between its ordinary high water marks and its major tributaries consisting of the Missouri, Ohio, Obion, Hatchie, Tennessee, St. Francis, White, Arkansas, Yazoo, Big Black, and Homochitto Rivers. This compact shall not apply to the river's other tributaries or adjacent waters unless it is specifically found by the commission that pollution of those waters hinders accomplishment of the primary purposes hereof and that existing laws, as written or implemented, are inadequate to fulfill those purposes.

ARTICLE IV. PURPOSES

The primary purposes of this compact are:

(1) To reduce and then eliminate river pollution by January 1, 1998.

(2) To encourage alternatives to discharging wastes and pollutants into the river.

(3) To maintain the biological and chemical integrity of the water in the Mississippi River System in a manner as to insure that such water is healthful for drinking purposes and is suitable for agricultural, aquacultural, and recreational use.

(4) To collect and share information with other signatories relative to technologies, methods, incentives, or regulatory concessions which can further improve the water quality in the Mississippi River.

(5) To establish a waste registry for the collection and dissemination of waste information for the purpose of waste exchanges with other signatories for productive reuse.

ARTICLE V. THE COMMISSION

There is hereby created the Mississippi River Interstate Pollution Control Commission or "commission", which shall be a body corporate and politic, having powers, duties, and jurisdiction enumerated herein and such other additional powers as may be conferred upon it by the act or acts of signatories concurred in by the others.

ARTICLE VI. COMMISSIONERS

The commission shall consist of one commissioner from each signatory state, and one commissioner appointed on behalf of the United States. The commissioners shall be chosen in the manner and for the terms provided by the jurisdiction from which they are appointed. The appointing authority of each party state shall notify the commission in writing of the identity of its member and any alternate. An alternate may act on behalf of the member only in the absence of such member. Each state is responsible for the expenses of its member of the commission.

ARTICLE VII. COMMISSION BUSINESS

The commission shall annually elect from its members a chairperson, a vice chairperson and a secretary-treasurer, and shall appoint and at its pleasure remove or discharge officers. It may appoint and employ such clerical and professional personnel as may be necessary, and at its pleasure it may remove or discharge such employees. It shall adopt a seal and suitable bylaws and shall promulgate rules and regulations for its management and control. It may maintain and lease an office for the transaction of its business and may meet at any time or place within the signatory states or in Washington, D.C. Meetings with due notice to all commissioners shall constitute a quorum for the transaction of its business. The commission shall keep accurate records of accounts, which are subject to state audits, and make annual reports on receipts and disbursements to the respective governors. The commission shall not pledge the credit of any signatory.

ARTICLE VIII. COMMISSION AUTHORITY AND RESPONSIBILITY

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority:

(1) To establish chemical and bacteriological guidelines for classifications of water use, and to review signatories laws pursuant to such guidelines for the purpose of making recommendations relative to integrating the signatories water use.

(2) To review and make recommendations relative to uniform collection and dissemination of data from the signatories' discharge reductions credit programs.

(3) To establish a waste registry and exchange to act as an interstate clearinghouse of information on waste availability.

(4) To develop, prepare, and implement a comprehensive, cohesive water quality management plan for the purpose of reducing and subsequently eliminating the discharge of waste into the Mississippi River by January 1, 1998. Such plan shall be submitted to the signatories and shall be ratified by each state through its respective legislature. The plan shall become effective and binding for each state at the time its legislature ratifies and governor signs agreement with the plan.

ARTICLE IX. WATER QUALITY STANDARDS

It is recognized, owing to such variable factors as location, size, character, and flow, and the many uses of the waters subject to the terms of this compact, that no single standard of pollutant or waste treatment and no single standard of quality of receiving waters is practical. The commission shall establish reasonable chemical and bacteriological guidelines for water quality satisfactory for various river classifications of use, considering the interstate impacts of downstream pollution. It is agreed that each signatory state shall classify, submit the existing classification of, or reclassify, the portions of the river that flow through its borders, to the commission for its review and recommendation. It is agreed that the signatory states through their appropriate health and water pollution control or other appropriate agencies shall establish or reestablish standards for the treatment of wastes, and other pollutants discharged into the river, subject to commission review and recommendation, and provide an inventory of pollution sources. The commission may from time to time

recommend such changes in classifications and standards as may be required by changed conditions, uniformity, or to meet the primary purposes of this compact.

ARTICLE X. DISCHARGE REDUCTION CREDITS

It is agreed by the signatory states through their state water pollution control or other appropriate agencies, that a number of pollution sources may be treated as a single source, to provide industries, agricultural interests and municipalities with incentives to reduce discharges into the river. In this way, a single source may obtain a net discharge reduction by improving treatment technology over new facilities to offset discharges from existing, older facilities to which new technology is not adaptable. The respective states shall, therefore, promulgate regulations for review and recommendations by the commission which shall, at a minimum, provide: criteria and a system under which discharge credits for net discharge reductions may be earned; geographic limitations or pollution source areas along the river in which discharge credits may be earned; criteria for the use, banking, or sale of banked net discharge reductions by the dischargers; and requirements for retaining records for, and reporting on, discharge levels and banked net discharge reductions.

ARTICLE XI. RESEARCH AND SHARED FINDINGS

A. It is agreed that the signatory states through their health, air pollution control, water pollution control, solid waste management and recovery, and hazardous waste control, or other appropriate agencies, shall study alternatives to the discharge of wastes and pollutants into the river, and within one year of their signing of this compact, submit their findings and proposed state rulemaking to the commission for review. The commission shall review and integrate signatories' rules for the purpose of making recommendations relative to modifying such rules as necessary to develop a comprehensive, cohesive water quality management plan for the Mississippi River.

B. It is agreed that signatory states allow the commission to act as a liaison to institutions of higher education in each member state for the purpose of establishing a consortium of academic institutions to work jointly and to share independent findings relative to generic research on waste reduction, waste management and alternative regulatory strategies appropriate for improving the water quality of the Mississippi River. The commission shall petition the United States Government for funding of any projects or research which the commission deems to be of value to the compact's purpose of reducing and eventually eliminating water pollution of the Mississippi River.

ARTICLE XII. INTERSTATE WASTE REGISTRY AND EXCHANGE

A. In addition to authority conferred upon the commission by other provisions of the compact, the commission shall have authority to establish and maintain a waste registry and exchange for the purpose of acting as an interstate clearinghouse of information on waste availability, to manage or arrange the transfer of materials between industries to divert waste material from disposal to alternative productive use, and to provide for material conservation, productive efficiency, and environmental protection.

B. Each of the signatory states agree that it will provide information as necessary for the commission to effectuate its authority to establish and maintain such a waste registry and exchange.

C. In addition to other authority conferred upon the commission by the compact, the commission shall have the authority to establish such standards as necessary to effectuate the purposes of this Article. Any standards established by the commission pursuant to this Article shall reflect a policy of state self-sufficiency in managing and disposing of waste generated within each state, and to that end the commission shall endeavor to maintain a reasonable interstate balance of trade in the transfer of waste between signatories.

ARTICLE XIII. JURISDICTION, SUPPLEMENTARY AGREEMENTS, AND ENFORCEMENT

A. Nothing in this compact shall be construed to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory party imposing any additional conditions and restrictions to further lessen or prevent the pollution of waters within its jurisdiction or to take action with respect to interstate water pollution nuisance.

B. Jurisdiction of Signatories Reserved. Nothing in this compact or in any supplementary agreement thereunder shall be construed to restrict, relinquish or be in derogation of, any power or authority constitutionally possessed by any signatory within its jurisdiction, except as specifically limited by this compact or a supplementary agreement.

C. Complementary Legislation by Signatories. Signatories may enact such additional legislation as may be deemed appropriate to enable its officers and governmental agencies to accomplish effectively the purposes of this compact and supplementary agreements recognized or entered into under the terms of this Article.

D. Legal Rights of Signatories. Nothing in this compact shall impair the exercise by any signatory of its legal rights or remedies established by the United States Constitution or any other laws of this nation.

E. Supplementary Agreements. Any two or more signatories may enter into supplementary agreements for joint, coordinated or mutual environmental management activities relating to the reduction and subsequent phase-out of interstate pollution of the Mississippi River and for establishment of common or joint regulation, management, services, agencies, or facilities for such purposes or may designate an appropriate agency to act as their joint agency in regard thereto. No supplementary agreement shall be valid to the extent that it conflicts with the purposes of this compact and the creation of a joint agency by supplementary agreement shall not affect the privileges, powers, responsibilities, or duties under this compact of signatories participating therein as embodied in this compact.

F. Execution of Supplementary Agreements and Effective Date. The governor is authorized to enter into supplementary agreements for the state and his official signature shall render the agreement immediately binding upon the state;

Provided that:

(1) The legislature of any signatory entering into such a supplementary agreement shall at its next legislative session by concurrent resolution bring the supplementary agreement before it and by appropriate legislative action approve, reverse, modify, or condition the agreement of that state.

(2) Nothing in this agreement shall be construed to limit the right of Congress by act of law expressly enacted for that purpose to disapprove or condition such a supplementary agreement.

ARTICLE XIV. COMPACT COMPLIANCE

Each of the signatory states agree that it will prohibit the pollution of the river waters within its jurisdiction in accordance with this compact and that it has or will enact suitable legislation to accomplish the obligations and duties set forth herein.

ARTICLE XV. ADMINISTRATIVE EXPENSES

The signatory states agree to appropriate annually for the salaries, office, and other administrative expenses such sum or sums as shall be recommended by the commission in an annual budget and approved by the governors of the signatory states subject to their budget processes. Each signatory state shall bear its pro rata share of the commission's total expenditures. This obligation is judicially enforceable, and sovereign immunity is waived with respect to it. The United States' actual costs of participation will be reimbursed by the commission, based upon a quarterly expense report submitted to and approved by the commission.

ARTICLE XVI. CONSTRUCTION, AMENDMENT,

EFFECTIVE DATE, WITHDRAWAL

A. Construction. It is the intent of the signatories that no provision of this compact or supplementary agreement entered into hereunder shall be construed as invalidating any provision of law of any signatory and that nothing in this compact shall be construed to modify or qualify the authority of any signatory to enact or enforce environmental protection legislation within its jurisdiction and not inconsistent with any provision of this compact or a supplementary agreement entered into pursuant hereto.

B. Amendments. Amendments to this compact may be initiated by legislative action of any signatory and become effective when concurred in by all signatories and approved by Congress.

C. Effective Date. This compact shall become binding on a state when enacted by it into law and such state shall thereafter become a signatory and party hereto with any and all states legally joining herein.

D. Withdrawal from the Compact. A state may withdraw from this compact by authority of an act of its legislature one year after it notifies all signatories in writing of an intention to withdraw from the compact. Provided, withdrawal from the compact affects obligations of a signatory imposed on it by supplementary agreements to which it may be a party only to the extent and in accordance with the terms of such supplementary agreements.

Acts 1987, No. 866, §1.

{{NOTE: SEE ACTS 1987, NO. 866, §2, REGARDING THE EFFECT OF THE COMPACT ON LOUISIANA.}}

§2092. Compact funding

The legislature shall appropriate funds as required by Article XV of the Mississippi River Interstate Pollution Phase-Out Compact, R.S. 30:2091.

Acts 1987, No. 866, §1.

§2093. Member of compact for Louisiana; secretary of the Department of Environmental Quality

A. The secretary of the Department of Environmental Quality shall serve ex officio as Louisiana's voting member on the Mississippi River Interstate Pollution Control Commission. The secretary may designate another official of the Department of Environmental Quality to serve as an alternate member of the Mississippi River Interstate Pollution Control Commission if, as, and when the secretary deems necessary.

B. The secretary shall consult with and seek advice from the secretary of the Department of Health and Hospitals and the secretary of the Department of Wildlife and Fisheries and the Department of Agriculture and Forestry relative to agreements in the compact to be concurred in or recommended by Louisiana.

Acts 1987, No. 866, §1.

CHAPTER 6. LOUISIANA NUCLEAR ENERGY AND RADIATION CONTROL LAW

§2101. Citation

This Chapter shall be known and may be cited as the "Louisiana Nuclear Energy and Radiation Control Law."

Acts 1979, No. 449, §1, eff. Jan. 1, 1980.

§2102. Policy; purpose

The legislature finds and declares that the supervision and control of the development and operation of nuclear energy and radiation emitting processes and facilities are of vital concern to the welfare of the citizens of the state of Louisiana, as well as to the protection of the environmental resources within the state. To insure the safety and welfare of the people and environmental resources of Louisiana in this regard, it is necessary to provide for an efficient system to regulate and control the development and utilization of all sources of radiation within the state of Louisiana.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980.

§2103. Definitions

As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) "Byproduct material" means:

(a) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(2) "Emergency" means any condition existing outside of the bounds of nuclear operating sites owned or licensed by a federal agency, and any condition existing within or outside of the jurisdictional confines of a facility licensed or registered by the department and arising from the presence of byproduct material, source material, special nuclear material, or any other radioactive material, or source of radiation, which is endangering or could reasonably be expected to endanger the health and safety of the public or to contaminate the environment.

(3) "High-level waste" means that waste resulting from the reprocessing of spent fuel rods or unreprocessed spent fuel rods.

(4) "Licensee" means any person who is licensed by the department in accordance with this Chapter and regulations promulgated by the secretary.

(5) "Licenses" means general licenses and specific licenses.

(a) "General license" means a license effective pursuant to regulations promulgated by the secretary without the filing of an application to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, byproduct, source, or special nuclear materials, technologically enhanced natural radioactive material, or other radioactive material occurring naturally or produced artificially.

(b) "Specific license" means a license issued after application to the department to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing, byproduct, source, or special nuclear materials, technologically enhanced natural radioactive material, or other radioactive material occurring naturally or produced artificially.

(6) "Low-level radioactive waste" means, as provided in the Low-Level Radioactive Waste Policy Act (P.L. 96-573), radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear

fuel, or byproduct material as defined in Section 11(e)(2) of the Atomic Energy Act of 1954, as amended through 1978, 42 U.S.C. 2014(e)(2).

(7) "Naturally occurring radioactive waste material" or "NORM waste" means solid, liquid, or gaseous material or a combination of materials, excluding source material, special nuclear material, and byproduct material that has the following characteristics or qualities:

(a) Spontaneously emits radiation in its natural physical state.

(b) Is discarded or unwanted.

(c) Is not exempt by any department rule adopted pursuant to R.S. 30:2105(C).

(8) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Nuclear Regulatory Commission or federal government agencies licensed by the United States Nuclear Regulatory Commission.

(9) "Radiation" means any electromagnetic or ionizing radiation including gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but does not include sound waves.

(10) "Radioactive material" means any material, whether solid, liquid, or gas, which emits radiation spontaneously.

(11) "Radioactive waste" means radioactive material, other than exploration and production waste as defined in LAC 43:XIX.129.M.1 that is contaminated with NORM waste or special wastes as described in R.S. 30:2193(C)(6) that has either of the following characteristics or qualities:

(a) Is discarded or unwanted and is not exempt by any department rule adopted pursuant to R.S. 30:2105(C).

(b) Would require processing before it could have a beneficial reuse.

(12) "Registration" means the identification of any material or device capable of emitting radiation, together with such other information as the owner of such material or device is required to furnish by rules and regulations adopted pursuant to the provisions of this Chapter.

(13) "Source material" means uranium or thorium, or any combination thereof, in any physical or chemical form, or ores which contain by weight one-twentieth of one percent or more of uranium, thorium, or any combination thereof, but source material does not include special nuclear material.

(14) "Source of radiation" means any radioactive material or any device or equipment emitting or capable of producing radiation.

(15) "Special nuclear material" means either of the following:

(a) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the United States Nuclear Regulatory Commission, pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material.

(b) Any material artificially enriched by any of the foregoing, but does not include source material.

(16) "Technologically enhanced natural radioactive material" or "TENR" means natural sources of radiation which would not normally appear without some technological activity not expressly designed to produce radiation.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Amended by Acts 1980, No. 194, §9; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1984, No. 497, §1, eff. July 6, 1984; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 1999, No. 1374, §1, eff. July 12, 1999.

§2104. Radiation protection; secretary of environmental quality; powers and duties

A. The department shall have the following powers and duties:

(1) To prepare and develop a general plan for the proper control of nuclear energy and all sources of radiation within the state of Louisiana, including by-product, source, and special nuclear material; technologically enhanced natural radioactive material; and other naturally occurring and artificially produced radionuclides.

(2) To make investigations upon its own motion or upon the complaint of any person and by appropriate order to control or regulate any source of radiation within the state.

(3) To establish programs to promote an orderly regulatory pattern within this state, to establish a system of reciprocity between this state and other states and between the federal government and this state, and

to facilitate intergovernmental cooperation with respect to the use and regulation of sources of radiation, to the end that duplication of regulation may be minimized.

(4) Unless otherwise specifically prohibited, to enter into agreements with the federal government or any agency thereof to assume regulatory authority over any area not exclusively reserved to the federal government under federal law.

(5) To formulate, establish, and implement comprehensive policies for the control of radiation and to develop and conduct programs for the evaluation, determination, and amelioration of hazards associated with the use of sources of radiation.

(6) To issue, modify, or revoke orders prohibiting or abating the discharge of radioactive material or waste into the ground, air, or waters of the state in accordance with the provisions of this Chapter and rules and regulations adopted hereunder by the secretary.

(7) To require the submission of plans, specifications, and reports for new construction and material alterations on the design and protective shielding of installations for radioactive material and other sources of radiation and systems for the disposal of radioactive waste materials, and for the determination of any hazard from radiation and to approve or disapprove such plans and specifications.

(8) To render opinions to interested persons concerning such plans and specifications on the design and shielding for radiation sources as may be submitted, either before or after construction, for the purpose of determining the possible radiation hazard.

(9) To make inspections of radiation sources, shielding, and immediate surroundings for the determination of any possible radiation hazard, and to provide the owner, user, or operator thereof with a report of any known or suspected deficiencies.

(10) To review developments in the nuclear energy and radiation fields, including research and applications in such general areas as commerce and industry, medicine and public health, agriculture, civil defense, engineering, insurance, education, and other areas.

(11) To formulate, establish, and implement policies and programs which are advantageous to the general population, commerce, industry, medicine, occupational and public welfare and safety and agriculture of the state.

(12) To assist in promoting general public education concerning nuclear energy and other forms of radiation.

(13) To conduct environmental radiation surveillance and monitoring programs throughout the state and in the vicinity of nuclear production and utilization facilities, including those facilities employing technologically enhanced natural radioactive material.

(14) To develop and implement a statewide radiological emergency preparedness plan and coordinate the development of specific emergency plans for nuclear power facilities, including planned protective actions for the population and the establishment of appropriate boundaries for which planning for nuclear emergencies will be undertaken; to respond to any emergency which involves possible or actual release of radioactive material; to coordinate decontamination efforts; to issue relocation and evacuation recommendations; and to otherwise protect the public welfare and safety in any manner deemed necessary and appropriate.

(15) To exercise all incidental powers necessary or proper to carry out the purposes of this Chapter.

B. The secretary shall have the following powers and duties:

(1) To adopt and promulgate rules and regulations consistent with the general intent and purposes of this Chapter for the control and regulation of nuclear energy and all radiation sources within the state of Louisiana.

(2) To develop permitting procedures and to require registration and to issue permits, licenses, and registrations for all sources of radiation within the state and to delegate the authority to issue or deny permits and licenses to the appropriate assistant secretary. The authority to execute minor permit actions and to issue registrations, certifications, notices of deficiency, and notification of inclusion under a general permit may be delegated by the secretary or the appropriate assistant secretary to an authorized representative, notwithstanding the provisions of R.S. 30:2050.26.

(3) To adopt and promulgate rules and regulations for the handling, use, storage, shielding, transportation, and disposal of all sources of radiation within the state.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1980, No. 194, §10; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1984, No. 117, §1, eff. June 22, 1984; Acts 1990, No. 245, §1; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2105. Permits, licenses, and registrations

A. The secretary shall provide by rules or regulations for general or specific licensing of each person to receive, transfer, transport, produce, manufacture, acquire, own, possess, or use byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass; technologically enhanced natural radioactive material; other naturally occurring and artificially produced radionuclides; or devices or equipment utilizing such materials. Such rules or regulations shall provide for amendment, suspension, or revocation of licenses and shall also provide that:

(1) Each application for a specific license shall be in writing and shall state such information as the secretary may, by rule or regulation, determine to be necessary to decide the technical, insurance, and financial qualifications or any other qualifications of the applicant as the secretary may deem reasonable and necessary to protect occupational and public welfare and safety. The secretary may, at any time after the filing of the application and before the expiration of the license, require further written statements and shall make such inspections as the secretary may deem necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The secretary may require any applications or statements to be made under oath or affirmation.

(2) Each license shall be in such form and contain such terms and conditions as the secretary may, by rule or regulations, prescribe.

(3) No license issued under the authority of this Subtitle and no right to possess or utilize sources of radiation granted by any license shall be assigned or in any manner disposed of.

(4) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations, or orders issued by the secretary in accordance with provisions of this Subtitle.

B. The secretary shall require registration or licensing of other sources of radiation which he deems to constitute a risk to occupational and public welfare and safety.

C. The secretary is authorized to exempt certain sources of radiation or kinds of users from the licensing or registration requirements set forth in this Section when the secretary makes a finding that the exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to occupational and public welfare and safety.

D. Rules and regulations promulgated pursuant to this Subtitle may provide for recognition of any other state or federal license as the secretary shall deem desirable, subject to such registration requirements as the secretary may prescribe.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984.

§2106. Nuclear power facilities; emergency planning; findings; and fees

A. The legislature finds and declares that:

(1) The operation of nuclear power facilities in or adjacent to the state raises the possibility of adverse health or environmental effects which could result from radiological incidents or accidents at such facilities.

(2) To ensure the safety and welfare of the people and environmental resources of Louisiana, it is necessary to conduct environmental radiation surveillance and monitoring programs in the vicinity of nuclear power facilities and to develop, implement and maintain radiological emergency preparedness plans involving such facilities.

(3) It is appropriate that the nuclear power facilities bear the costs associated with such surveillance and monitoring programs and radiological emergency preparedness plans.

B.(1) Every person who is licensed by the United States Nuclear Regulatory Commission to construct or operate a nuclear power facility for the production of electricity shall pay an annual fee for each nuclear power facility which is located within this state or has a Plume Exposure Pathway Emergency Planning Zone, of which any part is located within this state.

(2) These fees shall be used to cover the costs of developing, maintaining, and implementing state radiological emergency preparedness plans and radiation surveillance and monitoring programs involving such facilities determined by the secretary to be necessary to ensure the safety and welfare of the people and environmental resources of the state.

(3) These fees shall be determined by the secretary using a formula developed by rules to be based upon a cost not to exceed the annual costs of radiological emergency preparedness and surveillance and monitoring activities required therewith. Such formula shall be submitted to and approved by the House Committee on the Environment and the Environmental Quality Committee of the Senate prior to the implementation thereof.

C. The secretary is authorized to adopt and promulgate rules and regulations consistent with the general intent and purposes of this Section and R.S. 30:2104(A)(13) and (14).

Acts 1984, No. 497, §1, eff. July 6, 1984; Acts 1991, No. 21, §1, eff. June 14, 1991; Acts 1996, 1st Ex. Sess., No. 36, §1, eff. May 7, 1996.

§2107. Records; authority of department

A. The department shall require each person who possesses or uses one or more sources of radiation to maintain records relating to the receipt, storage, transfer, or disposal thereof and such other records as the department may require, subject to such exemption as may be provided by rules and regulations adopted pursuant to this Chapter.

B. The department shall require each person who possesses or uses one or more sources of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules and regulations promulgated by the secretary. All cases of exposure in excess of that permitted by regulations shall be immediately reported to the department as required by regulations. Any person possessing or using one or more sources of radiation shall furnish to each employee for whom personnel monitoring is required a copy of such employee's personal exposure record annually upon request, at any time such employee has received an exposure in excess of permissible limits, and upon termination of employment.

C. The possessor or user of one or more sources of radiation shall likewise be required to display conspicuously, or to otherwise make available to employees in the licensed or registered establishment, the conditions of his license or registration certificate, and a "Notice to Employees" which fully sets forth his responsibilities to the employees as a possessor or user of sources of radiation. This "notice" shall include, as a minimum, the employer's responsibility as a possessor or user of sources of radiation, the responsibility of workers at the facility, and any posting requirements prescribed by law or regulation. In addition, this notice shall inform employees that each individual employee's radiation history is available upon request, and the possessor or user shall keep such documents on file and available for employee examination upon request.

D. Copies of all records required by this Section to be either posted or kept on file by a possessor or user of one or more sources of radiation shall be made available to the department upon request.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2108. Impounding of materials by the department

In the event of emergency, the department may impound or order the impounding of any sources of radiation in the possession of any person who is not equipped to comply with or fails to comply with the provisions of this Chapter or any rules or regulations issued hereunder.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2109. Nuclear power facilities; emergency planning; findings

A. The legislature finds and declares that it is necessary that the secretary of environmental quality be empowered upon a declaration of a state of disaster emergency, as provided for in Subsection C of this Section, and which is related to a source of radiation, to enter into contracts and agreements necessary to perform duties assigned under any radiological response plan and to expend funds from the Environmental Trust Fund for such purposes, according to the provisions of R.S. 30:2015.

B. The governor may call upon the attorney general as necessary to obtain an injunction to enforce an evacuation order issued pursuant to any declaration of a disaster emergency pursuant to and in accordance with R.S. 29:724 or 727 and which is related to a source of radiation. Should the attorney general decline to obtain an injunction to enforce an evacuation order as provided in this Section, or if the attorney general does not respond to the governor's request within twenty-four hours of such request and agree to seek such an injunction, an attorney from the department may, with the concurrence of the attorney general, seek an injunction to enforce an evacuation order issued in accordance with this Section.

C. Upon a declaration of a state of disaster emergency pursuant to and in accordance with R.S. 29:705 or R.S. 29:706 related to a source of radiation, the secretary of the Department of Environmental Quality is authorized to enter into any contracts or agreements necessary to perform any duty or function required of the secretary in any radiological response plan. The secretary is authorized to expend funds from the Environmental Trust Fund in the performance of such duties in accordance with the provisions of R.S. 30:2015.

D. Nothing contained in this Section shall be construed to affect any area preempted by federal law or regulations.

Acts 1984, No. 825, §1, eff. July 13, 1984; Acts 1989, No. 392, §1, eff. June 30, 1989; Acts 1995, No. 1160, §1; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 1999, No. 348, §1, eff. June 16, 1999.

§2110. Inspection agreements and training programs by the department; approval of governor

A. Subject to the approval of the governor, the department may enter into an agreement or agreements with the federal government, other states, or interstate agencies whereby this state will perform, on a cooperative basis, with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of radiation.

B. The department may institute training programs for the purpose of qualifying personnel to carry out the provisions of this Chapter and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this Chapter.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2111. Federal-state agreements by governor; effect on licenses or permits

A. The governor, on behalf of this state, may enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass, and all other responsibilities not reserved to the federal government under the Atomic Energy Act of 1954, as amended (42 U.S.C. §2011 et seq.), and the assumption thereof by this state.

B. The governor, on behalf of this state, may enter into agreements with other states in order to establish a system of reciprocity between this state and other states which will facilitate interstate cooperation in accomplishing the purposes of this Chapter.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980.

§2112. Tort claims

In any and all tort claims against any person which arise while that person is rendering assistance during an emergency at the request of any authorized representative of the department or pursuant to an agreement for mutual state radiological assistance as provided for in this Chapter, such person shall be treated as if he were an employee of this state.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2113. Transportation; regulations

A. The secretary may adopt, promulgate, amend, and repeal rules and regulations governing the transportation of radioactive materials in Louisiana which, in the judgment of the secretary, shall promote the public safety or welfare and protect the environment, as may be necessary to carry out the provisions of this Chapter.

B. In adopting rules and regulations for transportation of radioactive materials in Louisiana, such may include, but shall not be limited to, provisions for the use of signs designating radioactive material cargo, for the packaging, marking, loading, and handling of radioactive materials and the precautions necessary to determine whether the material, when offered, is in proper condition for transport, and may include designation of routes in this state which are to be used for the transportation of radioactive material.

C. Such rules and regulations shall not include the carrier vehicle or its equipment or the licensing of packages, nor shall they apply to the handling of transportation of radioactive material within the confines of a facility licensed or owned by a federal agency.

D. Notwithstanding any law, order, or regulation to the contrary, no high level radioactive wastes, including spent fuel rods from nuclear reactors, shall be transported into the state for disposal or storage in this state or elsewhere.

E. Whoever violates the provisions of this Subsection D shall be punished by a fine of no more than ten thousand dollars, or imprisonment for no more than two years, or both, and vehicles or equipment used in connection with the violation shall be seized and disposed of in accordance with law.

F. The secretary may adopt rules and regulations governing the transportation of radioactive material which are compatible with those established by the United States Nuclear Regulatory Commission, the United States Federal Aviation Agency, the United States Department of Transportation, the United States Coast Guard, the United States Post Office, or any federal agency which is a successor to any of the foregoing agencies, as such federal rules may be amended from time to time.

G. The secretary may enter into agreements with the respective federal agencies designed to avoid duplication of effort or conflict in enforcement and inspection activities so that rules and regulations adopted by the secretary pursuant to this Section may be enforced within their respective jurisdiction by any authorized

representatives of the department, other state agencies, and federal agencies according to mutual understandings between such agencies of their respective responsibilities and authorities.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2114. Posting of bond

A. The department shall require the posting of a bond by licensees to provide funds in the event of abandonment, default, or other inability of the licensee to meet the requirements of the department.

B. A bond deemed acceptable in Louisiana shall be a bond issued by a fidelity or surety company authorized to do business in Louisiana, a personal bond secured by such collateral as the department deems satisfactory, a cash bond, or a letter of credit.

C. The department is authorized to exempt classes of licensees from the requirements of this Section when a finding is made that such exemption will not result in a significant risk to the public welfare and safety.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2115. Perpetual care payments

A. The department may require a licensee to pay funds to the state on a quarterly basis, when it is deemed there is a reasonable probability that the licensed facility may eventually cease to operate although still containing, or have associated with the facility property, licensable radioactive material which will require maintenance, surveillance, or other care on a continuing and perpetual basis.

B. In order to provide for the proper care and surveillance of facilities subject to Subsection A of this Section, the department may acquire by gift or transfer from another government agency or private person, any and all lands, buildings, and grounds necessary to fulfill the purposes of this Section.

C. The department may, by lease or license with any person, provide for the operation of a site or facility subject to this Section for the purpose of carrying out the provisions of this Chapter. Any lessee or licensee operating under the provisions of this Subsection shall be subject to R.S. 30:2114.

D. The payments required by Subsection A of this Section shall be established at such rate that interest on the sum of all funds reasonably anticipated as payable shall provide an annual amount equal to the anticipated reasonable costs necessary to maintain, monitor, and otherwise supervise and care for the lands and facilities as required in the interest of public safety and welfare. In arriving at the rate of funds to be deposited, the department shall consider the nature of the licensed material, size and type of facility, the potential for contamination or injury, cost of disposal or reclamation of the facility, estimated future receipts, and estimated future expenses of maintenance, monitoring, and supervision.

E. Recognizing the uncertainty of the existence of a person in perpetuity, and the necessity of reposing ultimate responsibility to protect health and safety in a solvent government without regard to the existence of any particular agency or department thereof, all lands, buildings, and grounds acquired by the state under Subsection B of this Section shall be owned by the state and dedicated in perpetuity to the purposes stated in Subsection B. All radioactive material received at such facility and located therein at time of acquisition of ownership by the state shall become the property of the state and may be disposed of in a manner which is in the best interest of the state.

F. In the event a person, licensed by any governmental agency other than the state of Louisiana, desires to transfer a facility to the state for the purpose of administering or providing perpetual care, that person shall make a lump sum perpetual care payment. The amount of such payment shall be determined by the department taking into consideration the factors stated in Subsection D of this Section.

G. All bonds forfeited to the state under this Chapter and all perpetual care payments under this Section shall be paid into the state treasury and shall be credited to the Bond Security and Redemption Fund.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1992, No. 984, §9; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2116. Naturally occurring radioactive material

On and after July 1, 1995, the secretary, upon receipt of an application for any commercial facility seeking a specific license for the treatment, storage, or disposal of naturally occurring radioactive material shall promptly notify the governing authority of any parish affected by the application and any public interest group or individual within the affected parish who has requested notice in writing and provided a mailing address. The parish governing authority shall promptly notify each municipality within said parish affected by the application. The secretary shall promptly consider such application and take such action thereon as he deems appropriate in accordance with law; however, the failure by the secretary or the parish governing authority to give the notice required by this Section shall not affect the validity of the action taken on the

application. For the purposes of this Subsection, "any public interest group within the affected parish" shall mean any association having not less than twenty-five members who reside in the parish in which the relevant facility is or will be located.

Acts 1995, No. 1055, §1.

§2117. Radioactive waste disposal; prohibition of disposal of radioactive wastes in salt domes; salt dome usage

A. The secretary shall promulgate and adopt rules and regulations governing the disposal of radioactive wastes and NORM waste in Louisiana except for radioactive waste resulting from military weapons or high-level waste resulting from nuclear-generated electricity. All commercial disposal operations of high-level or low-level radioactive wastes as defined in R.S. 30:2103 on land not owned by the state or the federal government, and all disposals of radioactive waste or NORM waste as defined in R.S. 30:2103 not in compliance with the rules and regulations adopted by the secretary pursuant to the provisions of this Chapter are prohibited.

B. Notwithstanding any law, order, or regulation to the contrary, no salt dome within the jurisdiction of the state of Louisiana shall be utilized as a temporary or permanent disposal site for radioactive waste or other radioactive material of any nature by any person.

C. Whoever violates any provision of this Section, upon conviction thereof, shall be punished by a fine of one thousand dollars for each day upon which the violation occurred or by imprisonment not to exceed six months, or both, and shall be ordered by the court to immediately remove the radioactive waste or other radioactive material from the salt dome.

D. Except as provided in Subsection F of this Section, on and after January 1, 1980, no tests designed to determine the suitability of salt domes or other geologic structures in Louisiana for disposal of radioactive wastes shall be authorized, approved, undertaken, or continued by any person, firm, corporation, or public body unless the local government of the parish or parishes in which such tests would occur, the House Committee on the Environment and the Environmental Quality Committee of the Senate of the Louisiana Legislature, and the secretary have first all given their written approval for such tests.

E. Results of all prior studies conducted to determine the feasibility of using Louisiana salt domes or other geologic structures within the state for disposal of radioactive wastes shall be made available to the House and Senate environment committees.

F. The United States Department of Energy, without complying with Subsection D, hereof, may conduct testing of the Vacherie and Rayburn salt domes pursuant to the February 27, 1978 agreement between the state of Louisiana and the Department of Energy, subject to the stipulation that the federal government will not construct any nuclear waste repository in Louisiana, if the state objects. In the event the United States government nullifies or abrogates the February 27, 1978 agreement through executive or congressional action, however, the provisions of Subsection D of this Section shall apply to all tests by the United States, or its agents, designed to determine the suitability of salt domes or other geologic structures for disposal of radioactive wastes.

G. The department, the House Committee on the Environment, and the Senate Committee on Environmental Quality shall be notified, in writing of any negotiations, agreements, or contracts for the use or purchase of Louisiana salt domes or other geologic structures for any purpose, other than the Strategic Petroleum Reserve Program, by the United States government, and the governor of the state of Louisiana or his designee is hereby authorized to exercise on behalf of the state of Louisiana the right of veto of storage of nuclear waste in this state, by taking appropriate executive action including initiation of judicial action against the United States to enforce such veto right of the state of Louisiana, and to take any other action he may deem appropriate and necessary to preserve and protect the rights of the state of Louisiana under the February 27, 1978 agreement with the United States Department of Energy.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Amended by Acts 1982, No. 794, §1; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1991, No. 21, §1, eff. June 14, 1991; Acts 1996, 1st Ex. Sess., No. 36, §1, eff. May 7, 1996; Acts 1999, No. 1374, §1, eff. July 12, 1999.

§2118. Preemption

With the exception of Section 2117 and Section 2111(A) of this Chapter, none of the provisions of this Chapter shall be applicable to any activity which is regulated by the United States government or which is otherwise subject to federal law.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980.

§2119. Prohibitions

No person shall use, store, transport, or dispose of any source of radiation in violation of this Subtitle, the regulations of the secretary, or a permit, license, or order issued by the secretary.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984.

CHAPTER 7. CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT

§2131. Central Interstate Low-Level Radioactive Waste Compact; adoption

The Central Interstate Low-Level Radioactive Waste Compact is hereby enacted into law as follows:

CENTRAL INTERSTATE LOW-LEVEL
RADIOACTIVE WASTE COMPACT

ARTICLE I. POLICY AND PURPOSE

The party states recognize that each state is responsible for the management of its nonfederal low-level radioactive wastes. They also recognize that the Congress, by enacting the Low-Level Radioactive Waste Policy Act (P.L. 96-573), has authorized and encouraged states to enter into compacts for the efficient management of wastes. It is the policy of the party states to cooperate in the protection of the health, safety, and welfare of their citizens and the environment, and to provide for and encourage the economical management of low-level radioactive wastes. It is the purpose of this compact to provide the framework for such a cooperative effort; to promote the health, safety, and welfare of the citizens and the environment of the region; to limit the number of facilities needed to effectively and efficiently manage low-level radioactive wastes and to encourage the reduction of the generation thereof; and to distribute the costs, benefits, and obligations among the party states. It is the policy of the party states that activities conducted by the Commission are the formation of public policies and are therefore public business.

ARTICLE II. DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

a. "Commission" means the Central Interstate Low-Level Radioactive Waste Compact Commission;

b. "Disposal" means the isolation and final disposition of waste;

c. "Decommissioning" means the measures taken at the end of a facility's operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at the facility;

d. "Extended care" means the continued observation of a facility after closure for the purpose of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensure and regulatory requirements and includes undertaking any action or cleanup necessary to protect public health and the environment;

e. "Facility" means any site, location, structure, or property used or to be used for the management of waste;

f. "Generator" means any person who, in the course of or as an incident to manufacturing, power generation, processing, medical diagnosis and treatment, biomedical research, other industrial or commercial activity, other research or mining in a party state, produces or processes waste. "Generator" does not include any person who receives waste generated outside the region for subsequent shipment to a regional facility;

g. "Host state" means any party state in which a regional facility is situated or is being developed;

h. "Institutional control" means those activities carried out by the host state to physically control access to the disposal site following transfer of the license to the owner of the disposal site. These activities include, but are not limited to, environmental monitoring, periodic surveillance, minor custodial care, and other necessary activities at the site as determined by the host state and administration of funds to cover the costs for these activities. The period of institutional control will be determined by the host state but may not be less than one hundred years following transfer of the license to the owner of the disposal site;

i. "Low-level radioactive waste" or "waste" means, as defined in the Low-Level Radioactive Waste Policy Act (P.L. 96-573), radioactive waste not classified as: high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in Section 11 e.2 of the Atomic Energy Act of 1954, as amended through 1978;

j. "Management of waste" means the storage, treatment or disposal of waste;

k. "Notification of each party state" means transmittal of written notice to the governor, presiding officer of each legislative body, and any other persons designated by the party state's Commission member to receive such notice;

l. "Party state" means any state which is a signatory party to this compact;

m. "Person" means any individual, corporation, business enterprise or other legal entity, either public or private;

n. "Region" means the area of the party states;

o. "Regional facility" means a facility which is located within the region and which has been approved by the Commission for the benefit of the party states;

p. "Site" means any property which is owned or leased by a generator and is contiguous to or divided only by a public or private way from the source of generation;

q. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, or any other territorial possession of the United States;

r. "Storage" means the holding of waste for treatment or disposal; and

s. "Treatment" means any method, technique, or process, including storage for radioactive decay, designed to change the physical, chemical, or biological characteristics or composition of any waste in order to render such waste safer for transport or management, amenable for recovery, convertible to another usable material, or reduced in volume.

ARTICLE III. RIGHTS AND OBLIGATIONS

a. There shall be provided within the region one or more regional facilities which together provide sufficient capacity to manage all wastes generated within the region. It shall be the duty of regional facilities to accept compatible wastes generated in and from party states, and meeting the requirements of this Act, and each party state shall have the right to have the wastes generated within its borders managed at such facility.

b. To the extent authorized by federal law and host state law, a host state shall regulate and license any regional facility within its borders and ensure the extended care of such facility.

c. Rates shall be charged to any user of the regional facility, set by the operator of a regional facility, and shall be fair and reasonable and be subject to the approval of the host state. Such approval shall be based upon criteria established by the Commission.

d. A host state may establish fees which shall be charged to any user of a regional facility and which shall be in addition to the rates approved pursuant to Section c of this Article, for any regional facility within its borders. Any fees proposed by the host state shall be subject to a one hundred twenty day prior notice to the Commission with an opportunity to provide comments to the host state. Such fees shall be fair and reasonable, and shall provide the host state with sufficient revenue to cover all anticipated present and future costs associated with any regional facility and a reasonable reserve for future contingencies which are not covered by rates established in Section c of this Article including, but not limited to:

(1) The licensure, operation, monitoring, inspection, maintenance, decommissioning, closure, institutional control, and extended care of a regional facility;

(2) Response, removal, or remedial action or cleanup deemed appropriate and required by the host state as a result of a release of radioactive or hazardous materials from such regional facility;

(3) Premiums for property and third party liability insurance;

(4) Protection of the public health and safety, and the environment;

(5) Compensation and incentives to the host community;

(6) Any amount due from a judgment or settlement involving a property or third party liability claim for medical expenses and all other damages incurred as a result of personal injury or death and damages or losses to real or personal property or the environment; and

(7) Cost of defending or pursuing liability claims against any party or state.

The fees established pursuant to this Section (d) of this Article may include incentives for source and volume reduction and may be based on the hazard of the waste. Notwithstanding anything to the contrary in this compact, or in any state constitution, statute, or regulation, to the extent that such fees are insufficient to pay for any costs associated with a regional facility, including all costs under Section (d) of this Article, all party states and any other state or states whose generators use the regional facility, shall share liability for all such costs. However, there shall be no recovery from the states under Section (d) of this Article until all available funds, payments, or in-kind services have been exhausted including:

(i) Designated low-level radioactive waste funds managed by the host state;

(ii) Payable proceeds of insurance or surety policies applicable to a regional facility;

(iii) Proceeds of reasonable collection efforts against the regional facility operator or operators; and

(iv) Payments from or in-kind services by generators.

In the event any regional facility operator files or has filed against it a bankruptcy proceeding, then for purposes of determining whether or not reasonable collection efforts have been undertaken, the filing of such proceedings, if not dismissed within sixty days of filing, shall be considered exhaustion of reasonable collection efforts with respect to such party. Recovery from the states under Section (d) of Article III upon satisfaction of the exhaustion of available funds, payments, or in-kind services shall not preclude any state from further recovery of its costs from a facility operator, insurer, or generator. During the period of time that such reasonable collection efforts or exhaustion of available funds, payments, or in-kind services occur, any applicable statutes of limitation with respect to claims against any other parties or states will be deemed tolled and will not run. All costs or liabilities shared by a state shall be shared proportionately by comparing the volume of the waste received at a regional facility from the generators of each state with the total volume of the waste received at a regional facility from all generators.

e. To the extent authorized by federal law, each party state is responsible for enforcing any applicable federal and state laws and regulations pertaining to the packaging and transportation of waste generated within or passing through its borders and shall adopt practices that will ensure that waste shipments originating within its borders and destined for a regional facility will conform to applicable packaging and transportation laws and regulations.

f. Each party state has the right to rely on the good faith performance of each other party state.

g. Unless authorized by the Commission, it shall be unlawful after January 1, 1986, for any person:

(1) To deposit at a regional facility, waste not generated within the region;

(2) To accept, at a regional facility, waste not generated within the region;

(3) To export from the region, waste which is generated within the region; and

(4) To transport waste from the site at which it is generated except to a regional facility.

ARTICLE IV. THE COMMISSION

a. There is hereby established the Central Interstate Low-Level Radioactive Waste Compact Commission. The Commission shall consist of one voting member from each party state, except that each host state shall have two at-large voting members and one nonvoting member from the county in which the facility is located. All members shall be appointed according to the laws of each state. The appointing authority of each party state shall notify the Commission in writing of the identity of its member and any alternates. An alternate may act on behalf of the member only in the absence of such member or members. Each state is responsible for the expenses of its members of the Commission.

b. Except for the nonvoting member, each Commission member shall be entitled to one vote. Unless otherwise provided herein, no action of the Commission shall be binding unless a majority of the total voting membership casts its vote in the affirmative.

c. The Commission shall elect from among its membership a chairman. The Commission shall adopt and publish, in convenient form, bylaws and policies which are not inconsistent with this compact.

d. The Commission shall meet at least once a year and shall also meet upon the call of the chairman, by petition of a majority of the membership or upon the call of a host state member. All meetings of the Commission shall be open to the public with reasonable advance publicized notice given and such meetings shall be subject to those exceptions provided for in the open meetings laws of the host state. The Commission shall adopt bylaws that are consistent in scope and principle with the open meetings law of the host state or, if there is no host state, the open meetings law of the state in which the Commission headquarters are located.

e. The Commission may initiate any proceedings or appear as an intervenor or party in interest before any court of law, or any federal, state, or local agency, board, or commission that has jurisdiction over any matter arising under or relating to the terms and provisions of this compact. The Commission shall determine in which proceedings it shall intervene or otherwise appear, and may arrange for such expert testimony, reports, evidence, or other participation in such proceedings as may be necessary to represent its views.

f. The Commission may establish such committees as it deems necessary for the purpose of advising the Commission on any and all matters pertaining to the management of waste.

g. The Commission may employ and compensate a staff limited only to those persons necessary to carry out its duties and functions. The Commission may also contract with and designate any person to perform necessary functions to assist the Commission. Unless otherwise required by acceptance of a federal grant, the staff shall serve at the Commission's pleasure irrespective of the civil service, personnel, or other

merit laws of any of the party states or the federal government and shall be compensated from funds of the Commission.

h. Funding for the Commission shall be as follows:

(1) The Commission shall set and approve its first annual budget as soon as practicable after its initial meeting. Party states shall equally contribute to the Commission budget on an annual basis an amount not to exceed twenty-five thousand dollars until surcharges are available for that purpose. Host states shall begin imposition of the surcharges provided for in this Section as soon as practicable and shall remit to the Commission funds resulting from collection of such surcharges within sixty days of their receipt; and

(2) Each state hosting a regional facility shall annually levy surcharges on all users of such facilities, based on the volume and characteristics of wastes received at such facilities, the total of which:

(a) Shall be sufficient to cover the annual budget of the Commission; and

(b) Shall be paid to the Commission, provided, however, that each host state collecting such surcharges may retain a portion of the collection sufficient to cover the administrative costs of collection, and that the remainder be sufficient only to cover the approved annual budget of the Commission.

i. The Commission shall keep accurate accounts of all receipts and disbursements. An independent certified public accountant shall annually audit all receipts and disbursements of Commission funds and submit an audit report to the Commission. Such audit report shall be made a part of the annual report of the Commission required by this Article.

j. The Commission may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials and services, conditional or otherwise from any person, and may receive, utilize and dispose of same. The nature, amount, and conditions, if any, attendant upon any donation or grant accepted pursuant to this Section, together with the identity of the donor, grantor, or lender, shall be detailed in the annual report of the Commission.

k.(1) Except as otherwise provided herein, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act, omission, course of conduct, or on account of any casual or other relationships. Generators, transporters of waste, owners and operators of facilities shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto.

(2) The Commission herein established is a legal entity separate and distinct from the party states and shall be so liable for its actions. Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not be personally liable for actions taken by them in their official capacity.

l. Any person or party state aggrieved by a final decision of the Commission may obtain judicial review of such decisions in the United States District Court in the district wherein the Commission maintains its headquarters by filing in such court a petition for review within sixty days after the Commission's final decision. Proceedings thereafter shall be in accordance with the rules of procedure applicable in such court.

m. The Commission shall:

(1) Receive and approve the application of a nonparty state to become a party state in accordance with Article VII;

(2) Submit an annual report to, and otherwise communicate with, the governors and the presiding officers of the legislative bodies of the party states regarding the activities of the Commission;

(3) Hear and negotiate disputes which may arise between the party states regarding this compact;

(4) Require of and obtain from the party states, and nonparty states seeking to become party states, data and information necessary to the implementation of Commission and party states responsibilities;

(5) Approve the development and operation of regional facilities in accordance with Article V;

(6) Notwithstanding any other provision of this compact, have the authority to enter into agreements with any person for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. Such authorization to import or export waste requires the approval of the Commission, including the affirmative vote of any host state which may be affected;

(7) Revoke the membership of a party state in accordance with Articles V and VII;

(8) Require all party states and other persons to perform their duties and obligations arising under this compact by an appropriate action in any forum designated in Article IV(e); and

(9) Take such action as may be necessary to perform its duties and functions as provided in this compact.

n. All files, records, and data of the Commission shall be open to reasonable public inspection, regardless of physical form, subject to those exceptions listed within the public records law of the host state. The Commission shall adopt bylaws relating to the availability of files, records, and data of the Commission that are consistent in scope and principle with the public records law of the host state or, if there is no host state, the public records law of the state in which the Commission headquarters is located.

o. All decisions of the Commission regarding public meetings and public records issues shall be reviewable solely in a United States District Court of a host state or if there is no host state then in the state in which the Compact Commission headquarters is located.

ARTICLE V. DEVELOPMENT AND OPERATION OF REGIONAL FACILITIES

a. Following the collection of sufficient data and information from the states, the Commission shall allow each party state the opportunity to volunteer as a host for a regional facility.

b. If no state volunteers or if no proposal identified by a volunteer state is deemed acceptable by the Commission, based on the criteria in Section c of this Article, then the Commission shall publicly seek applicants for the development and operation of regional facilities.

c. The Commission shall review and consider each applicant's proposal based upon the following criteria:

(1) The capability of the applicant to obtain a license from the applicable authority;

(2) The economic efficiency of each proposed regional facility, including the total estimated disposal and treatment costs per cubic foot of waste;

(3) Financial assurances;

(4) Accessibility to all party states; and

(5) Such other criteria as shall be determined by the Commission to be necessary for the selection of the best proposal, based on the health, safety and welfare of the citizens in the region and the party states.

d. The Commission shall make a preliminary selection of the proposal or proposals considered most likely to meet the criteria enumerated in Section c and the needs of the region.

e. Following notification of each party state of the results of the preliminary selection process, the Commission shall:

(1) Authorize any person whose proposal has been selected to pursue licensure of the regional facility or facilities in accordance with the proposal originally submitted to the Commission or as modified with the approval of the Commission; and

(2) Require the appropriate state or states or the U.S. Nuclear Regulatory Commission to process all applications for permits and licenses required for the development and operation of any regional facility or facilities within a reasonable period from the time that a completed application is submitted.

f. The preliminary selection or selections made by the Commission pursuant to this Article shall become final and receive the Commission's approval as a regional facility upon the issuance of a license by the licensing authority. If a proposed regional facility fails to become licensed, the Commission shall make another selection pursuant to the procedures identified in this Article.

g. The Commission may by a two-thirds affirmative vote of its membership, revoke the membership of any party state which, after notice and hearing, shall be found to have arbitrarily or capriciously denied or delayed the issuance of a license or permit to any person authorized by the Commission to apply for such license or permit. Revocation shall be in the same manner as provided for in Section e of Article VII.

ARTICLE VI. OTHER LAWS AND REGULATIONS

a. Nothing in this compact shall be construed to:

(1) Abrogate or limit the applicability of any act of Congress, or diminish or otherwise impair the jurisdiction of any federal agency expressly conferred thereon by the Congress;

(2) Prevent the application of any law which is not otherwise inconsistent with this compact;

(3) Prohibit or otherwise restrict the management of waste on the site where it is generated if such is otherwise lawful;

(4) Affect any judicial or administrative proceeding pending on the effective date of this compact;

(5) Alter the relations between, and the respective internal responsibilities of, the government of a party state and its subdivisions; and

(6) Affect the generation or management of waste generated by the federal government or federal research and development activities.

b. No party state shall pass or enforce any law or regulation which is inconsistent with this compact.

c. All laws and regulations or parts thereof of any party state which are inconsistent with this compact are hereby declared null and void for purposes of this compact. Any legal right, obligation, violation, or penalty arising under such laws or regulations prior to enactment of this compact shall not be affected.

d. No law or regulation of a party state or of any subdivision or instrumentality thereof may be applied so as to restrict or make more costly or inconvenient access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.

ARTICLE VII. ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, ENTRY INTO FORCE, TERMINATION

a. This compact shall have as initially eligible parties the states of Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, and South Dakota. Such initial eligibility shall terminate on January 1, 1984.

b. Any state may petition the Commission for eligibility. A petitioning state shall become eligible for membership in the compact upon the unanimous approval of the Commission.

c. An eligible state shall become a member of the compact and shall be bound by it after such state has enacted the compact into law. In no event shall the compact take effect in any state until it has been entered into force as provided for in Section (f) of this Article.

d. Any party state may withdraw from this compact by enacting a statute repealing the same. Unless permitted earlier by unanimous approval of the Commission, such withdrawal shall take effect five years after the governor of the withdrawing state has given notice in writing of such withdrawal to each governor of the party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

e. Any party state which fails to comply with the terms of this compact or fulfill its obligations hereunder may, after notice and hearing, have its privileges suspended or its membership in the compact revoked by the Commission. Revocation shall take effect one year from the date such party state receives written notice from the Commission of its action. The Commission may require such party state to pay to the Commission, for a period not to exceed five years from the date of notice of revocation, an amount determined by the Commission based on the anticipated fees which the generators of such party state would have paid to each regional facility and an amount equal to that which such party state would have contributed in accordance with Section (d) of Article III in the event of insufficient revenues. The Commission shall use such funds to ensure the continued availability of safe and economical waste management facilities for all remaining party states. Such state shall also pay an amount equal to that which such party state would have contributed to the annual budget of the Commission if such party state would have remained a member of the compact. All legal rights established under this compact of any party state which has its membership revoked shall cease upon the effective date of revocation; however, any legal obligations of such party state arising prior to the effective date of revocation shall not cease until they have been fulfilled. Written notice of revocation of any state's membership in the compact shall be transmitted immediately following the vote of the Commission, by the chairman to the governor of the affected party state, all other governors of the party states, and the Congress of the United States.

f. This compact shall become effective after enactment by at least three eligible states and after consent has been given to it by the Congress. The Congress shall have the opportunity to withdraw such consent every five years. Failure of the Congress to withdraw its consent affirmatively shall have the effect of renewing consent for an additional five-year period. The consent given to this compact by the Congress shall extend to any future admittance of new party states under Sections (b) and (c) of this Article and to the power to ban the exportation of waste pursuant to Article III.

g. The withdrawal of a party state from this compact under Section (d) of this Article or the revocation of a state's membership in this compact under Section (e) of this Article shall not affect the applicability of this compact to the remaining party states.

h. This compact shall be terminated when all party states have withdrawn pursuant to Section (d) of this Article.

ARTICLE VIII. PENALTIES

a. Each party state, consistent with its own law, shall prescribe and enforce penalties against any person for violation of any provision of this compact.

b. Each party state acknowledges that the receipt by a regional facility of waste packaged or transported in violation of applicable laws and regulations can result in sanctions which may include suspension or revocation of the violator's right of access to the regional facility.

ARTICLE IX. SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. The provisions of this compact shall be liberally construed to give effect to the purpose thereof.

Added by Acts 1982, No. 791, §1; Acts 1991, No. 133, §1, eff. June 30, 1991.

§2132. Member of compact for Louisiana; secretary of the Department of Environmental Quality

The secretary of the Department of Environmental Quality shall serve ex officio as Louisiana's voting member on the Central Interstate Low-Level Radioactive Waste Commission. The secretary may designate another official of the Department of Environmental Quality to serve as an alternate member of the Central Interstate Low-Level Radioactive Waste Commission if, as, and when the secretary deems necessary.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984.

§2133. Disposal rates at compact regional facilities; approval by secretary

Pursuant to the provisions of Article III, Section c. of the Central Interstate Low-Level Radioactive Waste Compact, the secretary is authorized to approve fair and reasonable rates to be charged any user by the operator of any Central Interstate Low-Level Radioactive Waste Compact regional facility located within Louisiana. Such approval shall be based upon criteria established by the Central Interstate Low-Level Radioactive Waste Commission. The secretary shall adopt and promulgate rules and regulations, consistent with the provisions of said Article III, Section c. of the compact, establishing procedures for approving such rates and setting criteria by which proposed rates shall be judged fair and reasonable. No operator of such a regional facility shall charge or alter such rates without the prior approval of the secretary.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984.

§2134. Compact funding

The legislature shall appropriate funds as required by Article III, Section d. and Article IV, Section h. of the Central Interstate Low-Level Radioactive Waste Compact (R.S. 30:2131).

Added by Acts 1982, No. 791, §1.

CHAPTER 8. LOUISIANA SOLID WASTE MANAGEMENT AND RESOURCE RECOVERY LAW

§2151. Citation

This Chapter shall be known and may be cited as the "Louisiana Solid Waste Management and Resource Recovery Law."

Acts 1979, No. 449, §1, eff. Jan. 1, 1980.

§2152. Policy; purpose

The legislature finds and declares that the disposal and utilization of solid waste is a matter of vital concern to all citizens of this state, and that the safety and welfare of the people of Louisiana require efficient and reasonable regulation of solid waste disposal practices as well as a coordinated statewide resource recovery and management program.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980.

§2153. Definitions

As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise:

(1)(a) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include or mean solid or dissolved material in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under R.S. 30:2074, or source, special nuclear, or byproduct material as defined by the Atomic Energy

Act of 1954, as amended (42 U.S.C. Section 2011 et seq.), or hazardous waste subject to permits under R.S. 30:2171 et seq.

(b) The definition of solid waste shall not include any of the following:

(i) Uncontaminated scrap metal materials which are purchased for resale to be recycled or reused and are not destined for disposal.

(ii) Wastewaters in tanks, sumps, and existing ditches as defined by rule, upstream or downstream of designated internal or final state or federal wastewater discharge points which require no further treatment to meet applicable state or federal permit limits.

(iii) Wastewaters in tanks, sumps, and existing ditches as defined by rule, which only require pH adjustment to meet applicable pH permit limits or solids settling to meet total suspended solids permit limits.

(iv) Automotive fluff which results from the shredding of automobiles by a scrap metal recycling facility authorized under the laws of the state of Louisiana and from which metals have been recovered to the maximum extent practicable by the scrap metal recycling facility.

(2) "Resource management" means the process by which solid waste is collected, transported, stored, separated, processed, or disposed of in any other way, according to an orderly, purposeful, and planned program.

(3) "Resource recovery" means the process by which materials, excluding those under control of the Nuclear Regulatory Commission, which still have useful physical or chemical properties after serving a specific purpose are reused or recycled for the same or other purposes, including uses as an energy source.

(4) "Resource recovery and management facility" means any solid waste disposal area or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste, excluding any "processing, treatment, or disposal facility" as defined in R.S. 30:2173.

(5) "Solid waste disposal facility" means any land area or structure or combination of land areas and structures, used for storing, salvaging, processing, reducing, incinerating, or disposing of solid wastes, excluding any "processing, treatment, or disposal facility" as defined in R.S. 30:2173.

(6) "Sanitary landfilling" means an engineered method of disposing of nonhazardous solid waste on land in a manner that protects the environment.

(7) "Sanitary landfill" means a controlled area of land upon which nonhazardous solid waste is deposited in such a manner that protects the environment with no on-site burning of wastes, and so located, contoured, and drained that it will not constitute a source of water pollution.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1991, No. 379, §1; Acts 1993, No. 555, §1, eff. June 10, 1993; Acts 1997, No. 96, §1.

§2154. Powers; duties; restrictions; prohibitions; penalties

A. The department is hereby directed:

(1) To prepare and develop a general solid waste management plan which shall encourage the maximum practicable use of resource recovery procedures.

(2) To promote the planning and application of recycling and resource recovery systems which preserve and enhance the quality of the air, water, and other natural resources of the state.

(3) By appropriate order to control and regulate pollution of the environment caused by solid waste disposal practices.

(4) To develop rules, regulations, and standards for the disposal of sewage sludge in sludge lagoons, dedicated land farms, surface disposal facilities, composting facilities, or processing facilities when the sewage sludge is admixed with other wastes regulated pursuant to this Chapter.

(5) To provide for the disposal of incinerator ash derived from the thermal treatment of sewage sludge.

B. The secretary is hereby directed:

(1)(a) To adopt and promulgate rules, regulations, and standards for the transportation, processing, resource recovery, and disposal of solid wastes consistent with the general solid waste management plan adopted by the department. Such rules and regulations shall include but not be limited to the disposal site location, construction, operation, compliance deadlines, siting of stations for the off-loading and trans-loading of treated solid waste and sewage sludges destined for disposal, and maintenance of the disposal process as necessary to implement the purpose and intent of this Chapter.

(b) However, such rules and regulations shall not include any of the following:

(i) Wastewaters in tanks, sumps, and existing ditches as defined by rule, upstream or downstream of designated internal or final state or federal wastewater discharge points which require no further treatment to meet applicable state or federal permit limits.

(ii) Wastewaters in tanks, sumps, and existing ditches as defined by rule, which require only pH adjustment to meet applicable pH permit limits or solids settling to meet total suspended solids permit limits.

(2)(a) To adopt by regulation a system for the registration and permitting of all solid waste disposal facilities within the state and to delegate the authority to issue or deny registrations, permits, and licenses to the appropriate assistant secretary when such delegation is deemed appropriate by the secretary. The authority to execute minor permit actions and to issue registrations, certifications, notices of deficiency, and notification of inclusion under a general permit may be delegated by the secretary or the appropriate assistant secretary to an authorized representative, notwithstanding the provisions of R.S. 30:2050.26.

(b) It shall be unlawful for any person registered, licensed, or permitted as a commercial solid waste disposal facility under the system authorized pursuant to this Section and duly promulgated by the secretary, to receive solid waste from the cleanup of a site listed on the National Priorities List by the United States Environmental Protection Agency at a commercial solid waste facility without notifying the secretary thirty days prior to the arrival of such waste.

(c) Any person who operates a permitted commercial solid waste facility in this state shall publish in the official journal of the parish in which the facility is located not less than thirty days prior to commencement of disposal a notice of the pending disposal of any nonhazardous waste generated from the remediation of sites listed on the National Priorities List by the United States Environmental Protection Agency.

(d) The system adopted by the secretary as provided in Subparagraph (2)(a) of this Paragraph shall include a requirement that a permittee or licensee of a commercial solid waste facility notify the secretary, on a form provided by the secretary, of the arrival of any shipment of waste for disposal, treatment, or processing, at the permittee's or licensee's facility if the waste from a single event or one-time removal that exceeds twenty-thousand cubic yards and is from the remediation of a Superfund site listed on the National Priorities List by the United States Environmental Protection Agency. The notice shall describe the amounts and kind of substances contained in the wastes, their origin, and the method and identification of their transportation. The notice shall be received by the secretary thirty days prior to the arrival of the waste at the facility. The secretary shall forward a copy of such notice to the local governing authority where the shipment is destined.

(e) Violations of this Paragraph may be subject to a fine of up to five hundred dollars per violation.

(f) The provisions of Subparagraphs (2)(b), (d), and (e) of this Paragraph shall become effective January 1, 1993, and shall affect the disposal of solid wastes from a Superfund site at any commercial solid waste facility on or after thirty days from that date.

(g) The effects of this Subparagraph shall become null and void on January 1, 2012. Notwithstanding any provision of law to the contrary, the secretary shall not register or permit a solid waste disposal facility in St. Helena Parish, except those facilities disposing or processing non-industrial waste or wood waste or facilities disposing or processing industrial waste generated and disposed on site. Notwithstanding any provision of this Subparagraph, if the parish of St. Helena sites and permits its own solid waste disposal facility, such parish shall receive and dispose of any and all residential, commercial, and industrial solid waste produced in the parish.

(3) To adopt regulations to require that all presently existing solid waste disposal facilities be upgraded to operate as sanitary landfills within five years from the effective date of regulations under this Chapter and that all solid waste disposal facilities constructed after the effective date of this Chapter shall be sanitary landfills or utilize any other environmentally sound technique.

(4) Facilities for the disposal of solid waste shall register with the department when the regulations promulgated by the secretary under Paragraph (2) of this Subsection become effective and shall apply for a permit in accordance with the requirements of such regulations. State permits granted to solid waste disposal facilities prior to the effective date of the regulations under Paragraph (2) shall continue in effect until the issuance or denial of a new permit under such regulations.

(5) To adopt and promulgate rules, regulations, and standards for the processing, resource recovery, and use for agricultural, horticultural, or silvicultural purposes, of those solid wastes except sewage sludges which are capable of beneficial agricultural, horticultural, or silvicultural use and which will not pose a threat to the environment or to human health or safety. The secretary shall adopt and promulgate rules, regulations, and standards which provide for all of the following:

(a) Procedure and criteria for selecting solid waste application sites, including providing the opportunity for public comment and public hearing as provided in R.S. 49:950 et seq.

(b) Requirements for solid waste treatment and processing before such solid waste is applied.

(c) Methods and minimum frequency for analyzing solid waste, and soil to which solid waste is applied.

(d) Records that a solid waste applicator must keep.

(e) Restrictions on public access to and cropping of land on which solid waste has been applied.

(f) Any other requirement necessary to protect surface water, groundwater, public health, and soil productivity from any adverse effects resulting from solid waste application.

(g) Any other rules or regulations reasonably necessary to implement the purposes as provided herein.

(6) Repealed by Acts 2001, No. 524, §2.

(7) To adopt and promulgate rules, regulations, and standards for the advance notification of those local governing authorities whose jurisdiction may be affected by the siting of stations for the off-loading and trans-loading of treated solid waste and sewage sludges destined for disposal.

(8)(a) To prohibit the disposal of solid waste, except as exempted by regulation, on the site of disposal without written authorization by the Department of Environmental Quality and notice by the department to the local governing authority and the public as provided in this Paragraph. Such authorization shall contain the types of items authorized for the on-site disposal. Any such closure shall require delivery by the department of written notice of the authorization to the parish governing authority and municipal governing authority, if applicable, in which the solid waste is to be disposed at least fifteen days prior to the closure, and publication, at the expense of the person granted the authorization, of the notice of authorization in the official journal of the parish in which the waste is to be disposed at least fifteen days prior to the disposal.

(b) This Paragraph shall not apply to closure at a solid waste disposal facility operating pursuant to a permit or an order of the department or a solid waste management facility regulated pursuant to Chapter 8 or 18 of this Subtitle. This Paragraph shall not apply to maintenance of public utility rights of way.

C.(1) Notwithstanding any other provision of the law to the contrary, the secretary shall not issue any permit or promulgate any rule or regulation which would allow the construction or operation of a medical waste incinerator disposal facility of any type in this state until such rules and regulations are specifically authorized by law.

(2) The prohibition in this Subsection shall not apply to the regulation or permitting of any such facility possessing a permit or interim permit on April 16, 1990 nor to an application which was pending and had not been denied prior to July 1, 1990.

(3) In no event shall any such permit be issued without prior notification of legislators representing the area which includes the proposed site of the facility and prior public hearing in that area.

(4) The department shall promulgate necessary rules and regulations for the permitting of medical waste incinerator disposal facilities within one hundred eighty days after being specifically authorized by law.

D. The secretary shall adopt rules and regulations no later than December 1, 1995, to govern the disposal of oil and gas industry wood board road waste, if by burning, by the use of an air curtain process. Until such rules are adopted, the department shall extend any existing permits, variances, or exemptions annually for such operations, provided that the recipient has complied with the requirements of such permits, variances, or exemptions and has paid the fees required by the department.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1985, No. 318, §1; Acts 1990, No. 716, §1, eff. July 20, 1990; Acts 1990, No. 1010, §1, eff. July 26, 1990; Acts 1990, No. 1074, §1, eff. July 26, 1990; Acts 1992, No. 919, §1; Acts 1993, No. 555, §1, eff. June 10, 1993; Acts 1995, No. 706, §1; Acts 1997, No. 27, §1; Acts 1997, No. 123, §1; Acts 1997, No. 1119, §1; Acts 1999, No. 303, §1; Acts 2001, No. 524, §2; Acts 2004, No. 150, §1, eff. June 10, 2004.

§2155. Prohibitions

No person shall dispose of solid waste in violation of this Subtitle, the regulations of the secretary, or a permit or order issued by the secretary.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984.

§2155.1. Solid waste disposal fees; exemptions

On and after January 1, 1995, all small businesses that dispose of less than one hundred tons of solid waste per year and all nonprofit, civic, and fraternal organizations shall be exempt from the payment of solid waste disposal fees assessed by state law. Any fees collected shall be reimbursed to the payees no later than September 1, 1995.

Acts 1995, No. 1135, §1.

§2156. Limitations on responsibility of landowners for removal of solid waste

No landowner shall be held responsible, by an order of the secretary or the courts, for removal or the cost of removal of solid waste which has been disposed of on his land by the act of a third party without his knowledge or consent or by a fortuitous event. The burden of proof shall rest with the landowner. The provisions of this Section shall not apply to any land located within the corporate limits of a municipality.

Acts 1988, No. 950, §1, eff. July 27, 1988.

§2157. Emergency response standards

A. Except as provided in R.S. 30:2157.1, prior to the issuance of the permit, an applicant for a solid waste disposal facility shall review and consider the ability of the local emergency response agencies and medical care facilities to respond to a hazardous material incident at the facility subject to the permit.

B. The applicant shall obtain certification from the local fire department as to whether or not that department has the ability to meet the response requirements of Section 472 of the Life Safety Code of the National Fire Protection Association. The applicant shall obtain certification from the local emergency medical services agency as to whether or not that agency has the ability to meet the response requirements of Section 473 of the Life Safety Code of the National Fire Protection Association. The applicant shall obtain certification from the local hospital as to whether they are able to accept and treat patients who are contaminated with hazardous materials.

C. In the event any such agency or hospital cannot certify that it is able to meet the requirements referenced in Subsection B of this Section, the applicant shall identify in the permit application the closest fire department, emergency medical service and hospital that can provide the services listed in Subsection B above. The department shall review and consider these agencies and hospitals to be the emergency response agencies and medical care facilities to respond to a hazardous material incident at the facility as a condition of the permit.

D. The requirements of this Section shall not apply if the applicant has the ability to meet the response requirements of Section 472 of the Life Safety Code of the National Fire Protection Association.

Acts 1997, No. 345, §1, eff. June 20, 1997; Acts 2003, No. 1176, §1, eff. July 3, 2003.

§2157.1. Type 2 and type 3 emergency response standards

A. Prior to the issuance of the permit, an applicant for a type 2 or type 3 solid waste disposal facility shall review and consider the ability of the local emergency response agencies and medical care facilities to respond to a hazardous material incident at the facility subject to the permit.

B. The secretary shall promulgate rules designed to develop meaningful, understandable and concise emergency response standards for type 2 and type 3 solid waste facilities.

C. The applicant shall obtain certification from the local fire department as to whether or not that department has the ability to meet the response requirements as set forth in emergency response regulations promulgated by the secretary. The applicant shall obtain certification from the local emergency medical services agency as to whether or not that agency has the ability to meet the response requirements as set forth in emergency response regulations promulgated by the secretary. The applicant shall obtain certification from the local hospital as to whether it is able to accept and treat patients who are contaminated with hazardous materials.

D. In the event any such agency or hospital cannot certify that it is able to meet the requirements referenced in Subsection C of this Section, the applicant shall identify in the permit application the closest fire department, emergency medical service and hospital that can provide the services listed in Subsection C of this Section. The department shall review and consider these agencies and hospitals to be the emergency response agencies and medical care facilities to respond to a hazardous material incident at the facility as a condition of the permit.

E. The provisions of this Section shall not apply to a type 1 facility which is also a type 2 or type 3 facility.

Acts 2003, No. 1176, §1, eff. July 3, 2003.

§2158. Sanitary landfills; regional establishment; planning

A.(1) The department shall, in cooperation with parish and municipal governing authorities, develop a plan for the orderly establishment of regional sanitary landfills.

(2) Such plan shall be based on consideration of the following:

(a) Regional need for solid waste disposal.

(b) Available sites which will minimize hazards to the environment and which are consistent with the overall plan established pursuant to R.S. 30:2154(A)(1), including preventing the contamination of

groundwater through migration. For any permit application filed after July 1, 2003, for a new sanitary landfill site, or for an expansion of an existing landfill site, such migration may be prevented through the use of innovative technologies. The department shall consider the use of innovative technologies such as horizontally or vertically positioned high density polyethylene or any other synthetic material that is as chemically resistant and that is as impermeable for preventing contamination of groundwater.

(c) Ability of those who would be served by such regional sites to finance and manage such facilities.

(d) Minimizing the amount of waste which cannot be recycled.

(e) The concerns of local governments, private industry, and environmental groups.

(f) The potential for eliminating the proliferation of alternate sites by the establishment of such a regional system.

(g) Ensuring adequate competition within any region developed or implemented pursuant to such plan.

(3) The secretary shall develop and adopt certain siting criteria for regional commercial solid waste disposal facilities by rules and regulations by January 1, 1991.

(4) A notice of any expansion of the areas to be serviced by a regional sanitary landfill shall be given to the local governing authority of the parish in which the landfill is located by the secretary. Upon request by the local governing authority, a public hearing shall be held to review the appropriateness of such changes.

B. The plan required by this Section shall be prepared and submitted to the natural resource committees of the Senate and House of Representatives for their review and input no later than March 15, 1991.

Acts 1990, No. 1001, §1; Acts 1997, No. 27, §1; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 2001, No. 524, §1; Acts 2003, No. 280, §1.

§2159. Closure of the Crescent Acres Landfill

A. The Legislature of Louisiana does hereby require the closure of the Crescent Acres Landfill, located in St. Bernard and Orleans Parishes, in order to assist in fulfilling its duty to protect, conserve, and replenish the natural resources of this state in accordance with Article IX, Section 1 of the Constitution of Louisiana.

B. On and after January 1, 1994, no waste of any nature shall be disposed of in the Crescent Acres Landfill located in St. Bernard and Orleans Parishes. The secretary of the Department of Environmental Quality shall issue, no later than September 1, 1993, such orders as are necessary for the proper closure of the Crescent Acres Landfill.

Acts 1993, No. 155, §1, eff. May 31, 1993.

{{NOTE: SEE ACTS 1993, NO. 155, §3.}}

§2160. Bauxite waste impoundments

The secretary, his designee, or the appropriate assistant secretary may exempt from the regulations provided in this Chapter liners and final covers for surface impoundments which receive spent bauxite and related waste resulting from production of alumina, whether generated on-site or at a separate industrial site in this state owned and operated by the same generator.

Acts 1993, No. 556, §1, eff. June 10, 1993; Acts 1997, No. 27, §1; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2161. Waste to energy management authority; contractual provisions

A. Any waste management authority, district, or organization created by law prior to January 1, 1993, which is authorized to convert solid waste to energy may make and enter into contracts with the federal or any state government or with any political subdivision or person within the state of Louisiana providing for or relating to the acquisition, construction, management, operation, and maintenance of any project in this state or the furnishing of services by or to any project in this state or in connection with the services of any project in this state owned, operated, or controlled by the other contracting party. Such contracts may provide for the payment by the other contracting party to the authority of a fee dependent on the amount of waste recycled, composted, collected, processed, or disposed.

B. Any waste management authority created by law prior to January 1, 1993, shall not engage in any project involving the conversion of waste to fuel, steam, electricity, or energy through burning or any type of incineration, until the lapse of three years from the establishment of the authority. However, within this time frame, the authority may establish a plan to acquire, construct, operate, finance, or otherwise provide for projects that are comprised of waste reduction, reuse, recycling, composting, compacting, or land disposal technologies. If such a plan for projects is established, an additional two years shall be allowed for its implementation before the authority shall engage in any project involving incineration or conversion of waste to fuel, steam, electricity, or energy, or through burning or any type of incineration.

C. Any local or parish government which enters into an agreement to join any waste management authority, district, or organization created by law prior to January 1, 1993, which is authorized to convert solid waste to energy or to incinerate waste must do so by ordinance, duly advertised, and with a public hearing. To borrow money, incur debt, or to issue bonds, a waste management authority must have consent and approval of the State Bond Commission in accordance with provisions of R.S. 39:1410.60 et seq. and any such other local approving agency as required by law.

D. Repealed by Acts 2001, No. 524, §2.

Acts 1993, No. 974, §1; Acts 2001, No. 524, §2.

§2162. Solid waste capacity

A.(1) Not later than January 1, 2007, and at least every two years thereafter, the secretary of the Department of Environmental Quality shall evaluate the volume and types of solid waste managed in Louisiana, which shall include solid waste that is reduced, generated, transported, recycled, processed, incinerated, treated, stored, or disposed.

(2) In performing such evaluations, the secretary shall determine the permitted capacity that is available to safely manage the solid waste. After each such determination, the secretary shall submit a report to the House Committee on the Environment and the Senate Committee on Environmental Quality and shall make such determination available to the public through public notification and the department mail list.

B.(1) The secretary shall ensure that sufficient available permitted capacity exists to safely and efficiently manage solid waste resulting from a declared emergency originating from an in-state emergencies.

(2) Permitted capacity shall be considered along with other relevant factors in the permitting of solid waste.

Acts 2006, No. 829, §1.

CHAPTER 9. HAZARDOUS WASTE CONTROL LAW

§2171. Citation

This Chapter may be cited as the "Louisiana Hazardous Waste Control Law."

Acts 1979, No. 449, §1, eff. Jan. 1, 1980.

§2172. Policy and purpose

A. The legislature finds and declares that:

(1) The manufacture, refinement, processing, and treatment of petroleum, natural gas, raw chemicals, ores, and other natural and synthetic products is a basic and essential activity making a significant contribution to the economy of this state.

(2) This activity often produces byproducts and wastes of a character and in quantities that pose substantial present and potential danger to the health and safety of the citizens of this state and to the integrity of the environment unless such wastes and byproducts are transported, treated, stored, and disposed of in a prudent and responsible manner.

(3) Present state laws and regulations applicable thereto are inadequate to assure that necessary safeguards and practices are adhered to on a continuing basis in matters pertaining to the transportation, treatment, storage, and disposal of such hazardous wastes, which has resulted in substantial abuse of the environment, damage to private and public property and unnecessary endangerment of the health and safety of the citizens of this state.

B. In order to diminish the risks to which the citizens and environment of this state are being exposed it is in the public interest, and within the police power of the state, to establish a framework for the regulation, monitoring, and control of the generators, transportation, treatment, storage, and disposal of such hazardous wastes, and it is the declared purpose of this Chapter to authorize the development, implementation, and enforcement of a comprehensive state hazardous waste control program.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980.

§2173. Definitions

As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section, unless the context of use clearly indicates otherwise:

(1) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such waste, or any constituent thereof, may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(2) "Hazardous waste" means any waste, or combination of wastes, which because of its quantity, concentration, physical, or chemical characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. Such definition shall be applied only to those wastes identified and designated as such by the department, consistent with applicable federal laws and regulations.

(3) "Manifest" means the system and forms used for identifying the quantity, composition, origin, routing, and destination of hazardous wastes during its transportation from the point of generation to any point of disposal, treatment, or storage.

(4) "Storage" means the containment of hazardous waste on a temporary basis, for such time as may be permitted by regulations, in such a manner as not to constitute disposal of such hazardous waste.

(5) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or render it nonhazardous, safer for transport, amenable for recovery or storage, or reduced in volume. The term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste to render it nonhazardous.

(6) "Transportation" means the movement of hazardous wastes from the point of generation or storage to the point of treatment, storage, or disposal by any means of commercial or private transport. The term does not apply to the movement of hazardous wastes on the premises of a hazardous waste generator or on the premises of a permitted hazardous waste treatment, storage, or disposal facility.

(7) "Processing, treatment, or disposal facility" means any facility or location where any treatment, incineration, processing, or deposition of hazardous waste occurs or is contained.

(8) "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under R.S. 30:2074, or source, special nuclear, or byproduct material as defined by R.S. 30:2103.

(9) "Abandoned site fund" shall mean the Abandoned Hazardous Waste Site Fund as created by Section 2205 of this Subtitle.

(10) "Pollution source" means the site or location of a discharge or potential discharge, including such surrounding property necessary to secure or quarantine the area from access by the general public.

(11) "Reusable material" means any waste material which is destined for reuse or reprocessing, but which because of quantity, concentration, or physical or chemical characteristics may:

(a) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed and which have been designated by the department as requiring special handling and tracking due to their hazardous characteristics and the danger caused by improper handling.

(12) "Transfer facility" means any transportation-related facility designed and constructed to be used exclusively for the handling of regulated hazardous wastes including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1980, No. 194, §12; Acts 1982, No. 800, §1, eff. Aug. 4, 1982; Acts 1984, No. 826, §1, eff. July 13, 1984; Acts 1985, No. 669, §1; Acts 1990, No. 1012, §1.

§2174. Administration; interim authority

A. Except as may be otherwise specifically provided in this Chapter, the department shall have exclusive jurisdiction for the development, implementation, and enforcement of a comprehensive state hazardous waste control program consistent with the provisions of this Chapter and applicable federal laws and regulations.

B. The department may accept, operate under, and enforce all interim authority for hazardous waste control in the state, as such interim authority may become necessary or advisable pursuant to Public Law 94-580* and the regulations applicable thereto.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980.

*42 U.S.C.A. §6901 et seq.

§2175. Hazardous waste control program; time frame

On or before October 21, 1980, the commission shall promulgate regulations implementing a comprehensive state hazardous waste control program. The commission shall hold not less than three public hearings for the purpose of receiving public input on the development of the regulations. Such regulations shall be promulgated after public hearing thereon in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be consistent with the mandates of 42 USCA §6901 et seq. and the minimum criteria hereinafter set forth.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1987, No. 607, §1, eff. July 9, 1987.

§2176. §§2176, 2177 Repealed by Acts 1989, No. 776, §2, eff. July 9, 1989.

§2178. Authority of the secretary to assess location

A. The secretary shall prior to the issuance of any permit for a commercial hazardous waste treatment, storage, or disposal facility, assess the impact of the location of the facility on the citizens in the surrounding area, the local infrastructure, and on the environment. He shall adopt rules and regulations consistent with this Section establishing criteria for making this determination and prior to any determination on the permit issue a report summarizing his findings. He shall also request from the local governmental subdivision a report detailing the impact of the facility on the local infrastructure including but not limited to roads and transportation systems, schools, medical institutions, police and fire departments, and such other matters as the local government may determine will be impacted by the facility.

B.(1) The secretary may determine an additional fee schedule applicable to commercial hazardous waste facilities not to exceed five percent of the hazardous waste permit application fee by rule in accordance with the Administrative Procedure Act. A portion of this additional permit application fee shall be allocated to the local governmental subdivision for the preparation of an infrastructure assessment report as determined by the secretary. When siting a commercial facility, the secretary shall determine whether the local governmental subdivision should be compensated for any reasonable and necessary cost for preparation of the infrastructure report. The purpose of the report shall be to adequately assess the capability of the local communities to effectively manage and monitor the ongoing operations of the proposed commercial facility and to respond to emergencies which may potentially threaten the health, safety, or welfare of the communities or any of their inhabitants. The report may propose alternate siting for the facility and propose actions to mitigate any infrastructure deficiencies found by the report.

(2) With regard to the siting area of the proposed commercial facility, the report prepared by the secretary shall include a determination of whether or not:

(a) The area is environmentally sensitive. An area may be deemed environmentally sensitive for the following nonexclusive reasons:

(i) The area is a wetland or immediately adjacent to a wetland.

(ii) The area is in close proximity to any wildlife management area or wildlife preserve.

(iii) The area is, or is adjacent to, any aquifer recharge zone.

(b) The facility or proposed commercial facility poses undue health risks because of potential human exposure. A facility or proposed facility may be deemed to pose undue health risks for the following nonexclusive reasons:

(i) Proximity of the facility or proposed commercial facility to schools or day care centers.

(ii) Proximity of the facility or proposed commercial facility to hospitals or nursing homes.

(iii) Proximity of the facility or proposed commercial facility to any facility or structure used to store or contain any foodstuffs for human or animal consumption.

(iv) Proximity of the facility or proposed commercial facility to public buildings or entertainment facilities.

(v) Proximity to a residential area.

(vi) Proximity to a prison.

(vii) The number and density of existing hazardous waste disposal facilities, solid waste disposal facilities, and inactive and abandoned hazardous waste sites in the area.

(viii) The number and density of existing industrial facilities that discharge hazardous or toxic substances into the air or water.

(ix) The existence of any community health problem that may be aggravated by the operation of a commercial hazardous waste disposal facility.

(c) Siting of the facility in the area may reasonably be determined to preclude the economic development of the area by businesses or industries because of undue risk associated with establishing such operations of such entities adjacent to said facility.

C. The secretary shall consider the local infrastructure report and may deny an application for a commercial hazardous waste disposal permit if he finds that the proposed siting area is environmentally sensitive, the facility or proposed facility poses undue health risks, the siting of the facility may preclude economic development of the area by businesses or industries, or the facility or proposed facility fails to meet the criteria established by the rules and regulations adopted pursuant to this Section.

Acts 1989, No. 776, §1, eff. July 9, 1989.

{{NOTE: SEE ACTS 1989, NO. 776, §3.}}

§2179. Hazardous waste management assessment

A.(1) Not later than January 1, 2007, the secretary of the Department of Environmental Quality shall evaluate the volume and types of hazardous waste managed in Louisiana, which shall include hazardous waste reduced, generated, transported, managed, recycled, disposed of, or otherwise handled in the state.

(2) Not later than July 1, 2007, the secretary shall determine the available permitted capacity for management of hazardous waste.

B.(1) The secretary shall consider pending applications for the expansion or modification of existing hazardous waste facilities and approved construction of new hazardous waste facilities when evaluating available permitted capacity.

(2) The secretary shall consider available permitted capacity as it relates to the management of hazardous waste resulting from an emergency situation before issuing an additional hazardous waste permit.

C. A fifteen percent limitation above the total permitted capacity shall be applied on an aggregate basis and shall not be applied individually to a certain facility. The fifteen percent limitation shall not be applicable during a response to a natural disaster impacting the state where such limitation could significantly impede or prevent the protection of human health and the environment. Upon completing an evaluation and determination of permitted hazardous waste capacity, the fifteen percent limitation may be revised. The secretary shall provide notice to the House Committee on the Environment and the Senate Committee on Environmental Quality and public notice and shall receive and consider comments of any revision of the fifteen percent limitation provision.

Acts 1987, No. 875, §1; Acts 1993, No. 556, §1, eff. June 10, 1993; Acts 2006, No. 112, §1.

§2180. General powers and duties of the secretary

A. In addition to any other authority or responsibility vested in him by this Chapter, the secretary shall have the following powers:

(1) From time to time to adopt, amend, or repeal the standards and regulations authorized by this Chapter in accordance with the Administrative Procedure Act.

(2) To issue, continue in effect, revoke, modify, or deny in accordance with regulations, hazardous waste transporter licenses and hazardous waste treatment, storage, and disposal facility permits and schedules of compliance, and when the secretary deems it advisable, to delegate the power to issue or deny such permits, licenses, variances, or compliance schedules to the appropriate assistant secretary, subject to his continuing oversight. The authority to execute minor permit actions and to issue registrations, certifications, notices of deficiency, and notification of inclusion under a general permit may be delegated by the secretary or the appropriate assistant secretary to an authorized representative, notwithstanding the provisions of R.S. 30:2050.26.

(3) To exercise all incidental powers necessary to assure that the state program is consistent with any federal laws or regulations applicable thereto.

(4) To determine and set reasonable schedules of compliance with performance guidelines for the conformance of transportation equipment and treatment, storage, and disposal facilities with the operating standards and rules and regulations of the secretary.

(5) To adopt rules and regulations relative to tracking and regulating the generation, transportation, or disposition of reuseable material.

(6) To regulate all surface and waste storage facilities incidental to hazardous waste injection wells, in such a manner as to prevent the escape of the waste into any area surrounding the surface facility.

(7) To regulate all hazardous waste transfer facilities in such a manner as to prevent the escape of waste into any area surrounding the transfer facilities.

(8) To adopt rules and regulations which set forth standards applicable to persons who produce, burn for purposes of energy recovery, distribute, or market fuel containing hazardous waste. This Subparagraph shall not apply to petroleum refinery wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more characteristics by which a substance would be identified as a hazardous waste. Regulations adopted pursuant to this Subparagraph, applicable to petroleum refinery and production wastes which result from normal petroleum refining, production and transportation practices, and which are classified as recyclable materials by the United States Environmental Protection Agency, shall be consistent with federal regulations applicable thereto.

B. The department is hereby directed to formulate plans and procedures for testing, sampling, analysis, containment, control, and abatement of sites which it suspects have been abandoned or which are declared abandoned under the provisions of R.S. 30:2204.

C. In order to achieve and maintain uniform and comprehensive statewide regulation in conformity with the provisions of this Chapter, the state shall have exclusive jurisdiction over the generation, transportation, or disposal of hazardous wastes, and no subordinate political subdivision of this state shall enact, pass, or otherwise approve any ordinance or other regulatory measure regulating or purporting to regulate any activity pertaining to the generation, transportation, or disposal of hazardous wastes. Nothing contained herein shall be construed to deny such local body authority over the siting of facilities pursuant to any general land use planning, zoning, or solid waste disposal ordinances.

D.(1) The secretary shall promulgate rules in accordance with the Administrative Procedure Act to regulate the transportation, incineration, cleanup, remediation, and disposal of infectious waste.

(2) The rules adopted pursuant to this Subsection shall provide for the following:

(a) The designation of waste categories and a determination of which waste categories are considered to be infectious waste.

(b) The separation of infectious waste at the point of origin for management and treatment purposes.

(c) The use of distinctive containers or plastic bags with the universal biological hazard symbol, as appropriate. The packaging and method of packaging for infectious waste are to be appropriate for the different types of wastes and are to maintain their integrity during storage and transportation.

(d) The storage of infectious waste for a minimal amount of time in a clearly marked limited access area free of rodents and vermin.

(e) The transportation and handling of infectious waste in a manner that avoids rupture of the packaging and any leaking of the waste from the packaging or the transporter.

(f) The treatment of infectious waste by steam sterilization, incineration, thermal inactivation, chemical disinfection, irradiation sterilization, or any other method, technique, or process designed to change the biological character or composition of the waste and the use of biological indicators to monitor the treatment. The rules shall not, however, require that incinerators used for the disposal of infectious waste have a temperature range capability greater than sixteen hundred to two thousand degrees Fahrenheit and a gas phase retention time in the secondary chamber greater than one and one-half seconds.

(g) The disposal of infectious waste that has been treated in an appropriate manner and in accordance with law, including the rendering of body parts unrecognizable before land disposal.

(h) Permits and permit fees in order to effectuate the provisions of this Subsection.

(i) The cleanup or remediation of any infectious waste that spills or discharges as a result of an accident, incident, or improper disposal in violation of this Subtitle. The department shall be entitled to recover the reasonable cost of cleanup or remediation from the transporter of the infectious waste or any other person who is responsible for such spills or discharges. The generator of the infectious medical waste shall be responsible for any costs incurred by the department for any spills or discharges where the transporter was not licensed or permitted by the Department of Health and Hospitals as required by law and the regulations.

(3) Repealed by Acts 1990, No. 1012, §2.

(4)(a) Notwithstanding any other provision of the law to the contrary, the secretary shall not issue any permit or promulgate any rules and regulations which would allow the construction or operation of any medical waste incinerator disposal facility of any type in this state until such rules and regulations are specifically authorized by law.

(b) The prohibition in this Subsection shall not apply to the regulation or permitting of any such facility possessing a permit or interim permit on April 1, 1990, nor to an application which was pending and had not been denied prior to July 1, 1990.

(c) In no event shall any such permit be issued without prior notification of legislators representing the area which includes the proposed site of the facility and prior public hearing in that area.

(d) The department shall promulgate necessary rules and regulations for the permitting of medical waste incinerator disposal facilities within one hundred eighty days after being specifically authorized by law.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1984, No. 795, §1, eff. July 13, 1984; Acts 1985, No. 669, §1; Acts 1986, No. 781, §1, eff. July 10, 1986; Acts 1987, No. 615, §1, eff. July 9, 1987; Acts 1988, No. 962, §1, eff. July 27, 1988; Acts 1989, No. 233, §1, eff. June 26, 1989; Acts 1989, No. 583, §1, eff. July 6, 1989; Acts 1990, No. 1006, §1, eff. July 26, 1990; Acts 1990, No. 1012, §§1, 2; Acts 1991, No. 21, §1, eff. June 14, 1991; Acts 1996, 1st Ex. Sess., No. 36, §1, eff. May 7, 1996; Acts 1997, No. 27, §1; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 2001, No. 820, §1.

§2181. Notice to legislators

The assistant secretary for the office of environmental services shall send a list of the applications for hazardous waste permits and a list of the hazardous waste permits that have been granted to each member of the legislative committees on natural resources and the environment in the Louisiana House of Representatives and the Louisiana Senate, and to each member of the legislature in whose district a facility that has applied for or been granted a hazardous waste permit is located. The lists shall be mailed monthly to their district offices and shall include the nature of the permit, the dates of application or granting, the person or company affected, and the parish of the location of the facility subject to the permit. However, the failure of the assistant secretary to provide the list required by this Section shall not affect the validity of the action taken on the applications or permits.

Acts 1997, No. 979, §1, eff. July 10, 1997; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2182. Repealed by Acts 1999, No. 303, §3, eff. June 14, 1999.

§2183. Notice; permits and licenses; enforcement; violations; penalties; notification

A. No later than ninety days after the effective date of the regulations authorized by this Chapter, every person not otherwise exempt who generates, transports, or desires to transport in the state any hazardous waste or who owns, operates, or desires to own or operate a treatment, storage, transfer, or disposal facility which handles hazardous wastes within the state shall file with the secretary or commission a notification stating the nature and location of the activity conducted or desired to be conducted and, if required by regulations, a request for an application for any necessary licenses, permits, schedules of compliance, or performance guidelines. Transfer facilities which are part of facilities that generate, transport, or dispose of hazardous waste which have already notified or applied for any necessary permits, where the notice or application describes the transfer facility adequately, shall not be required to file an additional notification or permit application to assure compliance with this Section.

B. It shall be unlawful to initiate or continue the generation, transportation, treatment, storage, or disposal of hazardous wastes after the time period provided in Subsection A of this Section except in compliance with the notice requirements thereof.

C. Upon receipt of the notices required in Subsection A of this Section or as soon as practicable thereafter, the secretary shall initiate the procedures as required by this Chapter and the regulations applicable thereto for the issuance or denial of permits and licenses and the establishment of schedules of compliance and performance guidelines for facilities and equipment.

D. All facilities which have interim status shall comply with all applicable operating standards and shall comply with all regulatory requirements regarding the application for standard permits for such facilities. It shall be unlawful for any person who has received a request for submission of an application for a standard permit from the secretary or commission to initiate or continue the treatment, storage, or disposal of hazardous waste under interim status, unless such person submits an application in accordance with applicable regulations within the time required by the secretary or commission for such submission. The interim status of any facility which fails to comply with this Subsection shall be subject to revocation by the secretary or commission. The interim status of any existing facility shall not exceed two years beyond the effective date of this Subsection unless extended by order of the secretary.

E. Upon the issuance of a license or permit or the establishment of a schedule of compliance or performance guidelines, it shall be unlawful to transport, treat, store, or dispose of hazardous wastes except in accordance with the terms and conditions thereof and the regulations applicable thereto.

F. Except as provided in Subsection G of this Section, enforcement of this Chapter and the rules and regulations promulgated hereunder shall be in accordance with R.S. 30:2025.

G.(1) Any person who willfully or knowingly discharges, emits, or disposes of any substance in contravention of any provision of this Chapter or any regulations or of any permit or license terms and conditions adopted in pursuance thereof, or any person who otherwise knowingly violates any provision of this Chapter, shall, upon conviction be subject to a fine of not more than one hundred thousand dollars per day of violation and costs of prosecution, or imprisonment at hard labor for not more than ten years, or both.

(2) Any person who knowingly transports, treats, stores, disposes of, or exports any substance in contravention of any provisions of this Chapter or the regulations or of any permit or license terms and conditions adopted in pursuance thereof, or any person who otherwise knowingly violates any provisions of this Chapter, in such manner that he knows, or should have known, at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than two hundred fifty thousand dollars per day of violation and costs of prosecution, or imprisonment at hard labor for not more than fifteen years, or both.

(3) Any person who knowingly omits any material information or knowingly and intentionally makes any false statement, representation, or certification in any application, record, label, manifest, report, plan, or other document filed or required to be maintained under this Chapter, or under any permit, rule, or regulation issued under this Chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method to be maintained under this Chapter, or under any permit, rule, or regulation issued under this Chapter, shall upon conviction be punished by a fine of not more than twenty-five thousand dollars or imprisonment for not more than six months, or both.

H. No person shall tamper with or cause to be tampered with any hazardous waste container or the contents thereof, shall discharge or cause to be discharged the contents of said container between the point of origin and point of destination listed in the manifest, or shall discharge or cause to be discharged the contents of said container at any location other than that for which it is permitted unless ordered to do so by the Department of Environmental Quality or otherwise allowed by this Subtitle and rules or regulations promulgated thereunder. Any person willfully violating this Subsection shall be subject to the civil and criminal penalties provided by this Chapter.

I. Whenever the owner or operator of any active site or other facility obtains information indicating that hazardous waste is leaching, spilling, discharging, or otherwise moving in, into, within, or on any land or water, such person shall notify the department in accordance with regulations to be adopted. This notification requirement shall apply to leaching, spilling, discharging, or moving of hazardous waste occurring hereafter although the hazardous waste was heretofore present at the site or facility.

J. No person shall operate an incinerator at a commercial facility that accepts hazardous waste or hazardous waste products for a fee, or a recycling process at a commercial facility which recycles hazardous waste to produce aggregates and that accepts hazardous waste or hazardous waste products for a fee, in a manner which increases the volume of the hazardous waste or hazardous waste products received.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Amended by Acts 1980, No. 194, §14; Acts 1981, No. 246, §1; Acts 1982, No. 146, §1; Acts 1982, No. 797, §1, eff. Aug. 4, 1982; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1983, No. 459, §2, eff. July 6, 1983; Acts 1984, No. 669, §1; Acts 1985, No. 337, §1; Acts 1985, No. 669, §1; Acts 1988, No. 730, §1; Acts 1990, No. 988, §1; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2183.1. Commercial hazardous waste recycling and incineration facilities; standards and criteria for operation; permits and licenses

A. Each commercial hazardous waste incineration facility that accepts hazardous waste or hazardous waste products for a fee, and each commercial recycling or resource recovery facility which recycles hazardous waste to produce aggregates and that accepts hazardous wastes or hazardous waste products for a fee, shall be strictly subject to the Louisiana Hazardous Waste Control Law and any rule or regulation adopted thereunder and any permit, license, or schedule of compliance required thereunder.

B. The secretary shall establish, by rule, within one hundred and eighty days from September 9, 1988, requirements and operating standards for all commercial hazardous waste incineration facilities that accept hazardous waste or hazardous waste products for a fee, and for all commercial recycling and resource recovery facilities which recycle hazardous waste to produce aggregates and that accept hazardous waste or hazardous waste products for a fee. The rules shall be established for each category of facility under the Louisiana Hazardous Waste Control Law. The standards and requirements shall include, but shall not be limited to:

(1) Permit procedures for such facilities.

(2) Air emission standards based on the best demonstrated available technology, minimum destruction and removal efficiency for hazardous constituents no less restrictive than national performance standards, trial burn requirements, stack emission monitoring requirements, and automatic feed cutoff systems and procedures.

(3) Analysis of all hazardous waste and hazardous waste products prior to incineration, recycling, or use, including the definition, classification, or identification of those products or residuals produced by such commercial facilities which are waste or hazardous waste.

(4) Inspection requirements for all equipment at such commercial facilities.

(5) Discharge restrictions and standards on wastewaters produced as a result of treatment or processing of hazardous waste or hazardous waste products by such commercial facilities.

(6) Auditing procedures and requirements for the sale of any recycled products or residuals produced by such commercial facilities.

Acts 1988, No. 730, §1.

§2183.2. Permitting in ozone nonattainment parishes

The department shall not issue or grant any permit for the operation of any new, commercial hazardous waste incinerator whose primary business activity involves accepting hazardous wastes or hazardous waste products for a fee, as defined by the department as of July 10, 1997, in any parish that is on the nonattainment list for ozone standards and classified as "serious" or worse by the United States Environmental Protection Agency as of January 1, 1997. This Section shall not apply to temporary, mobile incinerators authorized by the department.

Acts 1997, No. 942, §1, eff. July 10, 1997.

§2184. Commercial hazardous waste recycling and resource recovery facilities; standards

A. Without exception and irrespective of any limiting provision thereof, commercial recycling and resource recovery facilities, including any facility heretofore determined to be a recycling or resource recovery facility, which accept hazardous waste or hazardous waste products for a fee and which as a part of their process subjects hazardous wastes or hazardous waste products to combustion to accomplish recovery or recycling of materials or energy, shall be strictly subject to the provisions of the Louisiana Hazardous Waste Control Law and any rule or regulation adopted thereunder or any permit, license, order, or schedule of compliance required thereunder. The purpose of this Section is to extend the Louisiana Hazardous Waste Control Law to provide specifically for the inclusion of all commercial recycling and resource recovery facilities, including any facility heretofore determined to be a recycling or resource recovery facility, which accept hazardous waste or hazardous waste products for a fee and which as a part of their process subjects hazardous wastes or hazardous waste products to combustion to accomplish recovery or recycling of materials or energy.

B. The secretary shall, within one hundred and eighty days of July 19, 1988, amend the rules and regulations promulgated under the Louisiana Hazardous Waste Control Law or any permit, license, order, or schedule of compliance, as necessary, to establish standards for commercial recycling and resource recovery facilities, including any facility heretofore determined to be a recycler or resource recovery facility, which accept hazardous waste or hazardous waste products for a fee and which as a part of their process subjects hazardous wastes or hazardous waste products to combustion to accomplish recovery or recycling of materials or energy. These standards can be no less restrictive than general facility standards for hazardous waste treatment, storage, and disposal facilities, including requirements concerning emergency procedures, waste analysis, manifest of hazardous wastes, inspection procedures, closure, and financial assurance and shall apply irrespective to the purpose of burning, whether for energy recovery, materials recovery, destruction, or some other purpose. Additionally, any rules or regulations promulgated pursuant to this Section shall, at a minimum:

(1) Require the development of a detailed trial burn plan by such facilities. The secretary shall designate those Principal Organic Hazardous Constituents (POHCs) in waste or waste products that are to be accepted by the facilities, are considered the most difficult to destroy, and are present in significant concentrations; and shall specify one or more of these hazardous constituents to be monitored during the trial burn. A trial burn conducted in compliance with this Section and under the supervision of the secretary after July 1, 1988, and which meets all the requirements herein provided shall be deemed in compliance herewith. The following, at a minimum, must be monitored during the trial burn:

(a) The exhaust gas must be analyzed for emissions of each POHC and for emissions of oxygen and hydrogen chloride.

(b) The destruction and removal efficiency (DRE) must be computed for each POHC.

(c) The emission of particulates and carbon monoxide must be quantified.

(d) The fugitive emissions from the boiler or furnace must be identified.

(2) Require a permit for the operation of the facility which assures, at a minimum, a destruction and removal efficiency of 99.99 percent; and that specifications be set for:

(a) Continuous monitoring of combustion temperature.

(b) Continuous monitoring of carbon monoxide concentration.

(c) Combustion gas velocity.

(d) Fugitive emissions.

(e) Automatic waste feed cut-off.

(3) Define, classify, or otherwise identify those products produced by a facility subject to such rules and regulations which are waste or hazardous waste.

(4) Establish requirements for the manifest of any products produced by such facilities or the materials from which such products are processed which are defined, classified, or otherwise identified as hazardous waste pursuant to Paragraph (3); and establish auditing requirements and procedures for the sale of any recycled products or residuals produced by such facilities, including receipts or official state or federal tax documents, as necessary to verify any such transactions.

(5) Establish restrictions and standards on the discharge of any wastewaters.

Acts 1987, No. 907, §1; Acts 1988, No. 874, §1, eff. July 19, 1988.

§2185. Hazardous waste cooperatives

A. The secretary may license facilities, which are owned and operated by intrastate hazardous waste cooperatives for handling, transfer, storage, treatment, or disposal of hazardous waste in accordance with requirements of law and the regulations promulgated by the department.

B. Intrastate hazardous waste cooperatives consist of individual businesses, industries, associations, and allied businesses and industries located in the state of Louisiana which generate hazardous waste in the state of Louisiana of a similar nature and quality so as to be compatible for efficient, combined handling, transfer, storage, treatment, or disposal, except that no cooperative may admit to membership, any person, business, corporation, or association that is engaged for a fee or other consideration, in the business of waste transportation, treatment, disposal, or transfer.

C. Any facility owned or operated by or on behalf of such cooperative shall not accept hazardous waste except from those members of the cooperative. No such cooperative shall accept any waste generated outside of the state of Louisiana or generated by a nonmember of such cooperative. Such facility shall not, for the purposes of this Subtitle, be a commercial facility; however, such facility shall not be subject to any less standards and requirements than those provided for the operation of any similar commercial facility, provided however that prior to licensing of any such cooperative facility a public hearing shall be conducted in conformity with the same laws and regulations governing similar such commercial waste facilities.

D. No such cooperative shall begin accepting any waste without having signed its cooperative agreement with the Department of Environmental Quality. No such cooperative shall receive any waste from new or additional members of such cooperative without having first notified the Department of Environmental Quality thirty days prior to the acceptance of such waste.

E. The secretary shall adopt rules in accordance with the Administrative Procedure Act to provide for:

(1) The requirements, licensing, procedure, and designation of intrastate hazardous waste cooperatives.

(2) The licensing of facilities owned or operated by or on behalf of any such cooperatives.

(3) Licensing fees.

Acts 1987, No. 881, §1.

§2186. Identification of hazardous wastes; exemptions

A.(1) The secretary shall develop, consistent with federal regulations, objective criteria for identifying characteristics of hazardous wastes and for listing the hazardous wastes which shall be subject to the provisions of this Chapter.

(2) The secretary shall promulgate rules and regulations for the review and determination of environmental media, such as soil, sediments, or surface or ground water, as hazardous waste. Such rules and regulations shall provide for the department to collect a fee not to exceed three thousand dollars per such review and determination.

B. Radioactive products and byproducts regulated by the United States Nuclear Regulatory Commission or any successor thereto shall be exempted from the provisions of this Chapter and the regulations applicable thereto. Individual homeowners and farmers who generate only small quantities of hazardous wastes and any person the department determines generates only small quantities of hazardous waste on an infrequent basis shall be exempt.

C. Nothing in this Chapter shall be construed to prohibit the office of public safety services, with the approval of the secretary in accordance with regulations adopted pursuant to this Chapter, in cases of emergency, from disposing of hazardous wastes which may be explosive in nature where said disposal is necessary to relieve an imminent threat to public safety.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1985, No. 336, §1, eff. July 9, 1985; Acts 2006, No. 778, §1.

§2187. Monitoring of drinking water wells which provide public water supplies located near commercial hazardous waste facilities

A. The secretary shall adopt and promulgate rules and regulations to ensure that drinking wells which provide public water supplies within a two-mile radius of all commercial hazardous waste disposal facilities shall be sampled and tested in the following manner:

(1) The secretary shall establish a test area around each such disposal facility. Such test area shall consist of a circle with a two-mile radius with the disposal facility at its center.

(2) The secretary shall divide each such test area into four quadrants of equal size by bisecting the test area twice with lines which are at right angles to each other.

(3) The secretary shall select, at random, one drinking well which provides public water supplies in each quadrant and shall sample and test the water from such well. Such selection, sampling, and testing shall be conducted every six months. The secretary shall not select any one such well in a quadrant for retesting until all such wells in that quadrant have been tested, unless there exists some need or reason to retest such well.

(4) The purpose of such sampling and testing shall be to insure that the drinking water wells which provide public water supplies located near said disposal facilities are not contaminated with toxic or hazardous pollutants which may be stored, treated, or disposed of at said disposal facility.

B. The secretary may additionally require that the cost of said sampling shall be done at the expense of the disposal facility.

Added by Acts 1983, No. 718, §1; Acts 1999, No. 348, §1, eff. June 16, 1999.

§2188. Generators

A. The secretary shall promulgate such standards applicable to generators of hazardous waste subject to the provisions of this Chapter as may be necessary to protect public health and the environment. Such standards shall, at a minimum, include requirements for:

(1) Record keeping practices that accurately identify quantities and constituents of hazardous waste, as designated by the secretary, and the disposition of such wastes.

(2) Labeling practices for containers used for storage, transport, or disposal of such hazardous wastes as will accurately identify such waste.

(3) Use of appropriate containers for such hazardous waste.

(4) Furnishing of information on the general chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such waste.

(5) Use of a manifest system to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in treatment, storage, or disposal facilities, other than facilities on the premises where the waste is generated, for which a permit has been issued by the secretary.

(6) Identification of all generators of hazardous wastes located within the state and all generators of hazardous wastes located outside of the state which ship such hazardous wastes into the state for treatment, storage, or disposal.

(7) Such other standards and criteria as are necessary to administer this Chapter or to comply with federal laws and regulations.

B. Generators of hazardous waste shall dispose of such wastes in accordance with one of the following methods, which shall be more fully set forth in regulations:

(1) A generator may reprocess and reuse such wastes or may contract with other persons to reprocess and reuse such wastes in a manner consistent with this Chapter or rules or regulations promulgated hereunder.

(2) A generator may dispose of such wastes at its own private site provided such site is operated under a valid permit issued by the secretary and in compliance with performance standards promulgated by the secretary.

(3) A generator may dispose of such wastes at a privately operated disposal site provided such site is operated under a valid permit issued by the secretary or, if out of state, approved by such state's designated authority.

(4) A generator may contract with a private transporter to transport such wastes provided that the transporter is operating under a valid license issued by the secretary.

(5) A generator may dispose of such wastes at a public site operated under a valid permit from the secretary, or if out of state, approved by such state's designated authority.

C. The secretary shall promulgate regulations requiring registration of generators of hazardous waste. Such registration shall, as a matter of law, be conditioned upon the right of the secretary or his representative to make inspections for the purpose of enforcing any regulations applicable to hazardous waste generators.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984. Acts 1984, No. 824, §1, eff. July 13, 1984; Acts 1993, No. 270, §1.

§2189. Transporters

A. The Department of Public Safety is authorized and directed to promulgate regulations and oversee compliance therewith governing the transportation of hazardous wastes by any means of commercial or private transport. The Department of Environmental Quality shall advise and cooperate in the promulgation of regulations pursuant to this Section.

B. Such regulations at a minimum shall require:

(1) Record keeping sufficient to determine the types and quantities of hazardous wastes transported in the state, the generator source, the treatment, storage, or disposal site to which such wastes have been transported, and periodic reports thereon.

(2) Adherence to the manifest system otherwise authorized by this Chapter.

(3) Transportation equipment standards which will assure the safe handling and transport of hazardous waste.

(4) Permitting or licensing procedures for transporters by the Federal Environmental Protection Agency which, when coupled with the manifest system, will require identification of the transporters. Political subdivisions which operate such transportation systems with their own personnel shall not be required to provide a surety bond, certificate of public liability insurance, or other financial assurance, but shall be liable for any such damages.

(5) Consistency and uniformity of standards as applied to interstate and intrastate transporters.

(6) Such other regulations as are deemed necessary to effectively administer this Chapter and to comply with federal law.

C. The use of any equipment, including, without limitation, containers and holding tanks, used to transport or store hazardous waste is expressly prohibited from being used to transport or store any item, product, or commodity intended for human or animal consumption unless the equipment has been properly decontaminated.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1984, No. 419, §1; Acts 1986, No. 891, §1.

§2190. Hazardous wastes from foreign nations; findings; prohibitions

A. The legislature finds and declares that:

(1) The laws of the United States require testing, manifesting, and safe transportation of hazardous wastes to insure proper identification and handling from generation to ultimate disposal. These laws are not applicable to hazardous wastes generated in foreign nations until such wastes are actually in this country.

(2) The laws of foreign nations are inadequate to insure that hazardous wastes sought to be exported to the United States do not contain unknown or unauthorized pollutants and that such wastes are not released into the environment due to inadequate containment, labeling, or handling during transport.

(3) The only practical method for insuring that the environment and the health of the citizens of this state are not endangered by the importation of hazardous wastes generated in foreign nations is to prohibit the introduction or receipt of such wastes into this state for the purpose of treatment, storage, or disposal.

B. It shall be unlawful for any person to transport or cause or allow to be transported into this state, for the purpose of treatment, storage, or disposal, any hazardous waste generated outside the United States and its territories.

C. It shall be unlawful for any person to receive for treatment, storage, or disposal in this state any hazardous waste generated outside the United States or its territories.

D. This Section shall not apply to any hazardous waste generated outside of the United States and its territories which must be disposed of in accordance with the provisions of Public Law 96-478 adopted by the United States Congress and known as the Act to Prevent Pollution from Ships. This Section shall only apply to hazardous waste which is imported into this state directly from a foreign nation.

E. Notwithstanding any other provision of law, the importation of spent petroleum catalysts from foreign countries for purposes of recycling utilizing processes which produce no hazardous wastes, is not prohibited.

Acts 1983, No. 694, §1, eff. July 21, 1983; Acts 1984, No. 826, §1, eff. July 13, 1984; Acts 1987, No. 506, §1.

§2191. Importation of hazardous waste from foreign countries; prohibition

A. The commission or the assistant secretary shall deny hazardous waste transporter licenses and hazardous waste treatment, storage, and disposal facility permits to all persons who propose to transport into and dispose of in Louisiana hazardous waste generated in a country other than the United States.

B. The provisions of this Section shall not apply to the disposal or storage of any hazardous or solid waste which must be disposed of according to the provisions of Public Law 96-478, adopted by the United States Congress and known as the Marine Pollution Protocol Law.

C. The commission shall revoke the permit of any permitted hazardous waste facility which hereafter disposes of hazardous waste generated in a country other than the United States. This power shall be in addition to other powers and remedies available to the Commission under this Subtitle.

D. The provisions of this Section shall not apply to spent petroleum catalysts from foreign countries imported for purposes of recycling utilizing processes which produce no hazardous wastes.

Acts 1983, No. 260, §1, eff. June 30, 1983; Acts 1987, No. 506, §2.

§2191.1. Hazardous Waste Importation and Exportation Report

Beginning June 1, 1993, the secretary shall file an annual Hazardous Waste Importation and Exportation Report with the president of the Senate, the speaker of the House of Representatives, the Senate Committee on Environmental Quality, and the House Committee on Natural Resources regarding the amount of hazardous waste imported into or exported from Louisiana for treatment, storage, or disposal during each twelve-month period, or such other annual period determined appropriate by the secretary. In preparing the report, the secretary shall utilize information concerning the total quantity of each hazardous waste, by units of weight in tons, or, if the weight is unknown, by the volume and estimated weight, as is acquired by the department from original manifests filed with the department by hazardous waste facilities pursuant to rules and regulations of the secretary, and may use such other information as the secretary deems appropriate.

Acts 1992, No. 337, §1.

§2192. Treatment, storage, and disposal facilities

A. The secretary, with the advice and cooperation of the Department of Health and Hospitals and the Department of Wildlife and Fisheries, shall promulgate regulations providing for the identification and regulation of all hazardous waste treatment, storage, and disposal facilities.

B. The regulations at a minimum shall require:

(1) Licensing or permit procedures for the operation of every such facility which treats, stores, or disposes of hazardous wastes.

(2) Design, construction, and operational standards which will assure safe treatment, storage, and disposal without substantial risk to the environment, water supplies, air, and human health, and in connection therewith, require the submission of plans, designs, engineering reports, geological, hydrological, and other relevant data incidental to the determination of the suitability of an existing or a proposed facility for the treatment, storage, and disposal of hazardous wastes.

(3) Adequate record keeping to reflect the types and quantities of hazardous wastes treated, stored, or disposed of, and the manner of treatment, storage, and disposal, together with periodic reports thereon.

(4) A surety bond in favor of the state, a certificate of public liability insurance, payments into the Environmental Trust Fund, other financial assurance, or any combination thereof, sufficient to assure financial responsibility for damages resulting from accidents or negligence, when corrective action is required or as

specified in the permit, and to assure closure and post-closure care, said assurance to be consistent with the degree and duration of risks associated with the treatment, storage, or disposal of the type of hazardous waste handled.

(5) Repealed by Acts 1989, No. 392, §3, eff. June 30, 1989.

(6) Classification of facilities as necessary for the acceptance of only particular categories of hazardous wastes.

(7) Such other regulations as are deemed necessary to effectively administer this Chapter and to comply with federal law.

C. The secretary of the Department of Environmental Quality shall not grant a permit or license for any commercial hazardous waste incinerator facility in the parish of St. Helena.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1984, No. 826, §1, eff. July 13, 1984; Acts 1986, No. 423, §1, eff. July 2, 1986; Acts 1987, No. 226, §1, eff. July 2, 1987; Acts 1989, No. 392, §§1, 3, eff. June 30, 1989.

§2193. Land disposal of hazardous waste; restrictions; prohibition

A. It is the determination of the legislature that Louisiana is particularly ill-suited both hydrologically and climatically to hazardous waste land disposal methods and past land disposal methods, siting criteria, and maintenance procedures have, despite the degree of stringency, been inadequate to insure the health of the citizens of the state and in maintaining the integrity of the environment generally and water resources specifically. It is further determined that eventual releases of hazardous constituents from land disposal facilities are highly probable if land disposal methods continue to be relied upon and that there presently exists alternatives which may be used to destroy, reduce, or lessen the toxicity of or lessen the leaching potential of hazardous wastes. In order to preclude further environmental damage and endangerment to the citizens of the state, it is the purpose of this Section to provide for restrictions and incentives designed to encourage alternative methods of hazardous waste disposal, destruction, and reduction; to lessen the possibility of hazardous waste releases from existing land disposal sites; and to provide for the eventual prohibition of land disposal of hazardous waste.

B. As used in this Section, the following terms shall have the meaning ascribed to them in this Subsection, unless the context clearly indicates otherwise:

(1) "Containment system" means a system designed to contain hazardous waste or materials within the confines of a hazardous waste disposal, storage, or treatment facility and operating within and according to the limits and conditions of its permit.

(2) "Encapsulation" means the pressing or bonding together and completely enclosing within a coating or jacket of inert material so as to prevent leaching potential from a department approved hazardous waste containment system.

(3) "Land disposal" means placement in or on the land and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt-dome formation, salt-bed formation, underground mine or cave, or placement in a concrete vault or bunker intended for disposal purposes.

(4) "Stabilization or Solidification" means the modification of wastes in a manner which ensures that the hazardous constituents are maintained in their least soluble form.

C. The secretary shall promulgate rules and regulations which:

(1) Identify generic categories of hazardous wastes that are inappropriate for land disposal and selected recycling, treatment, and destruction technologies applicable to waste streams in each category.

(2) Identify the waste constituents that present the greatest risks when disposed of in the land.

(3) Set target dates for the prohibition of land disposal of those wastes identified in Paragraph (2) based on:

(a) The risks involved.

(b) The availability of alternative facilities and methods within the state.

(4) Use the following general characteristics to determine which wastes pose the greatest risk to public health and environment when disposed of in the land:

(a) Toxicity.

(b) Persistence in the environment.

(c) Ability to bioaccumulate.

(d) Mobility in a land disposal environment.

(5) Provide for emergency variances.

(6) Provide for an exception from the application of this Section for special wastes which include:

(a) Spent bauxite (red mud) resulting from production of alumina.

(b) Byproduct gypsum and related wastes resulting from the production of phosphoric acid, phosphate fertilizers, and hydrofluoric acid.

(c) Coal residue (bottom ash and slag, fly ash, and flue-gas emission control waste) after use as a boiler fuel.

(d) Cement kiln dust.

(e) Industrial waste water in a NPDES treatment train when that train includes ponds, impoundments, or similar facilities.

(7) Prohibit the storage of hazardous waste that has been banned from land disposal unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal by appropriate means.

D.(1) Not later than January 1, 1986, the secretary shall determine what economically and technically feasible and environmentally sound alternatives are available in the state for processing, treating, destroying, recycling, reducing, or neutralizing the hazardous waste as identified in Subsection C.

(2) Between January 1, 1986, and June 1, 1992, any hazardous waste for which there is no alternative disposal, destruction, reduction, or recycling method in the state shall be land disposed only after stabilization, solidification, containment, encapsulation, or approved land treatment techniques in a manner and with a material sufficient to prevent the leaching potential of such wastes except that the secretary may, upon a showing that no other reasonable alternative exists, permit the injection of hazardous waste in an injection well. The burden of proof shall rest with the generators of such hazardous waste that they cannot meet the requirements of this Subsection, and the secretary shall determine the sufficiency and adequacy of such proof and evidence presented by generators.

E.(1) Effective June 1, 1992, and thereafter, the land disposal of hazardous waste shall be prohibited, except as provided in this Subsection and by regulations promulgated by the secretary pursuant to Subsection C of this Section.

(2) Any person seeking an exemption from the prohibition on the land disposal of hazardous waste shall file a written request for such exemption with the secretary. The secretary, after considering reasonable economic and environmental alternatives, may allow the land disposal of certain hazardous waste if in his determination:

(a) The best available technology cannot further reduce the toxicity, corrosiveness, virulent or infectious character, or volume of the hazardous waste.

(b) The waste cannot be further reduced through production modifications.

(c) The waste or specific constituents of the waste cannot be reclaimed and reused.

(d) The waste can be permanently confined within a department-approved hazardous waste containment system.

(e) The land disposal of the hazardous waste does not and will not endanger public health or the environment.

(f) No reasonable alternative exists to the injection of hazardous waste in an injection well.

(3) The burden of proof that the conditions of Paragraph (2) of this Subsection have been met shall rest with the person requesting the exemption.

(4) Hazardous waste or residues thereof which have been treated to the level of or by a method specified in regulations promulgated under Subsection C of this Section shall not be subject to any prohibition promulgated under this Subsection, and may be disposed of in a land disposal facility which meets the requirement of this Subtitle.

(5) Hazardous waste or residues thereof which have been granted a case-by-case extension, emergency variance, or variance pursuant to the regulations promulgated under Subsection C are not prohibited and may be disposed of in a land disposal facility which meets the requirements of this Subtitle.

(6) Newly listed hazardous waste or residues thereof which have no treatment standard are not prohibited and may be disposed of in a land disposal facility which meets the requirements of this Subtitle until standards are established pursuant to the regulations promulgated under Subsection C.

F. Any person found by the secretary to be in violation of any requirement or provision of this Section may be liable for a civil penalty of one hundred thousand dollars for each separate violation.

G. This Section shall not apply to the land disposal of hazardous waste by injection well provided that:

(1) Such land disposal has been exempted by the United States Environmental Protection Agency from land disposal prohibitions contained in the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

(2) A permit has been issued for such injection well by the Louisiana office of conservation pursuant to Chapter 1 of Subtitle I of this Title and of the Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.

(3) The secretary determines that there are no economically reasonable and environmentally sound alternatives to the injection of such hazardous waste.

Acts 1984, No. 803, §1; Acts 1986, No. 422, §1, eff. July 2, 1986; Acts 1987, No. 852, §1; Acts 1989, No. 485, §1; Acts 1990, No. 649, §1; Acts 1990, No. 979, §1, eff. July 25, 1990; Acts 1997, No. 548, §1, eff. July 3, 1997.

§2194. Underground storage tanks; registration

A. It is the determination of the legislature that regulated substances contained in underground storage tanks pose a present and future hazard to the public health, safety, and welfare of the citizens of the state of Louisiana, and consequently, there is a need to have all such facilities register with the state.

B. As used in R.S. 30:2194 through 2195.11, the following terms shall have the meaning ascribed to them in this Subsection, unless the context clearly indicates otherwise:

(1) "Bulk facility" means a facility, including pipeline terminals, refinery terminals, motor fuel distribution terminals, rail and barge terminals, and associated tanks, connected or separate, from which motor fuels are withdrawn from bulk and delivered into a cargo tank or a barge used to transport these materials.

(2) "Cargo tank" means an assembly that is used for transporting, hauling, or delivering liquids and that consists of a tank having one or more compartments mounted on a wagon, truck, trailer, railcar, or wheels.

(3) "Date of release" means the specific date in which evidence indicates that a release (leak) is occurring or has occurred. If a tank is taken out of service, the date of release is the last date of operation.

(4) "Eligible participant" means any owner of an underground storage tank who has registered a newly installed or operating tank with the department prior to the date of a release, has paid the annual tank registration fees along with any late payment fees, has met the financial responsibility requirements imposed by R.S. 30:2195.9, and has met the noncompliance financial responsibility amounts imposed by R.S. 30:2195.10.

(5) "Motor fuel underground storage tank" means an underground storage tank used only to contain an accumulation of motor fuels.

(6) "Motor fuels" shall be defined as all grades of gasoline including but not limited to gasohol, No. 1 diesel, No. 2 diesel, kerosene, and all aviation fuels. Liquid petroleum (LP) gas shall not be included in this definition of motor fuel. Effective September 6, 1991, this term shall include new and used motor oil that is used for lubricating engines of motor vehicles. If, however, used oil is determined to be a hazardous waste by the United States Environmental Protection Agency, used oil shall no longer be included in this term.

(7) "Operating tank" means a tank that is actively receiving and dispensing motor fuels, including a tank which actively receives used motor oil.

(8) "Regulated substance" means:

(a) Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, but not including any substance regulated as a hazardous waste under the hazardous waste regulations of the department.

(b) Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, 60° Fahrenheit and 14.7 pounds per square inch absolute.

(9) "Response action" means any technical services activity or specialized services activity, including but not limited to assessment, planning, design, engineering, construction, operation of recovery system, or ancillary services which are carried out in response to any discharge or release or threatened release of motor fuels into the groundwater, surface waters, or soils.

(10) "Response action contractor" means a person who has been approved by the department and is carrying out any response action, excluding a person retained or hired by such person to provide specialized services relating to a response action. When emergency conditions exist as a result of a release from a motor fuel underground storage tank, this term shall also include any person performing department-approved emergency response actions during the first seventy-two hours following the release.

(11) "Specialized services" means activities associated with the preparation of a reimbursement application, laboratory analysis, or any construction activity, construction of trenches, excavations, installing monitoring wells, conducting borings, heavy equipment work, surveying, plumbing, and electrical work, which

is carried out by a response action contractor or a subcontractor hired or retained by a response action contractor in response to a discharge or release or threatened release of motor fuels into the groundwater, surface waters, or soils.

(12) "Technical services" means activities performed by a response action contractor, including but not limited to oversight of all assessment field activities, all reporting, planning, development of corrective action plans, designing remedial activities, performance of groundwater monitoring, discharge monitoring, performance of operation and maintenance of remedial systems, and oversight of specialized services performed by a subcontractor.

(13) "Third-party claim" means any civil action brought or asserted by any person against the secretary of the department and any owner of any underground storage tank for damages to person or property when damages are the direct result of the contamination of surface water, groundwater, or soils by motor fuels released during operation of storage tanks as provided for in R.S. 30:2194 through 2195.11. The term "damages to person" shall be limited to damages arising directly out of the ingestion or inhalation of petroleum constituents from water well contamination or inhalation of petroleum constituents seeping into homes or buildings, and the term "damages to property" shall be limited to the unreimbursed costs of a response action and the amount by which real property is proven to be permanently devalued as a result of the release.

(14) "Underground storage tank" means any one or combination of tanks and their attendant product piping which is used to contain an accumulation of regulated substances and the volume of which is ten percent or more beneath the surface of the ground. Such term may be further defined by regulations adopted under this Subtitle.

(15) "Withdrawal from bulk" means the removal of a motor fuel from a bulk facility storage tank directly into a cargo tank or a barge to be transported to another location other than another bulk facility and deposited into an underground storage tank for distribution, direct consumption, or sale in this state.

(16) Repealed by Acts 2004, No. 692, §4, eff. July 6, 2004.

C. The secretary shall promulgate regulations requiring the registration of all underground storage tanks with a capacity in excess of one hundred ten gallons which contain regulated substances. The secretary may adopt rules and regulations to require the registration of certain underground storage tanks; establish requirements for ensuring sound underground storage tank management for preventing, controlling, remediating, and abating actual or potential contamination of surface water, groundwater, or soils; establish requirements for reporting of known releases and for taking corrective action in response to known releases from underground storage tank systems; establish a field citation program with penalty imposing authority; and establish a certification program for persons installing, repairing, or closing underground storage tank systems. For the purpose of this Section, "underground storage tank" shall not include a:

(1) Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) Tank used for storing heating oil for consumptive use on the premises where stored.

(3) Septic tank.

(4) Pipeline facility, including gathering lines:

(a) Regulated under the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C.A. 1671 et seq.;

(b) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C.A. 2001 et seq.; or

(c) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of law referred to in Subparagraph (a) or (b) above.

(5) Surface impoundment, pit, pond, or lagoon.

(6) Storm water or waste water collection system.

(7) Flow-through process tank.

(8) Liquid trap or associate gathering lines directly related to oil or gas production and gathering operations.

(9) Storage tank situated in an underground area such as a basement, cellar, mineworking drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

D. The secretary shall have the authority to issue, deny, suspend, or revoke certifications for underground storage tank workers. Issuance, denial, suspension, or revocation of these certifications shall be conducted in accordance with the regulations established by the department. An appeal of any action taken by the secretary pursuant to this Subsection shall be conducted in accordance with R.S. 30:2024.

E. Registration of underground storage tanks as required by Subsection C of this Section and issuance of certificates as referenced in Subsection D of this Section and R.S. 30:2195.3(A)(4) shall not be subject to the provisions of R.S. 30:2022 and 2023.

Acts 1985, No. 493, §1, eff. July 12, 1985; Acts 1986, No. 421, §1, eff. July 2, 1986; Acts 1988, No. 767, §1, eff. July 15, 1988; Acts 1989, No. 513, §1; Acts 1990, No. 1014, §1, eff. Sept. 1, 1990; Acts 1991, No. 223, §1; Acts 1991, No. 890, §1; Acts 1995, No. 336, §1, eff. June 16, 1995; Acts 1999, No. 567, §1, eff. June 30, 1999; Acts 1999, No. 589, §1, eff. June 30, 1999; Acts 2001, No. 550, §1; Acts 2004, No. 692, §§1, 4, eff. July 6, 2004.

§2194.1. Prohibitions

On or after January 1, 1996, no person shall place or dispense a regulated substance into an underground storage tank that has not been registered with the Louisiana Department of Environmental Quality.

Acts 1995, No. 336, §1, eff. June 16, 1995.

§2195. Motor Fuels Underground Storage Tank Trust Fund

A. The legislature hereby finds and declares that the preservation of its groundwater is a matter of highest urgency and priority, as these waters provide a primary source of potable water in this state and that the leakage of motor fuels from underground storage tanks within the state poses threats of damage to the environment of this state, to citizens of the state, and to interests deriving livelihood from this state. It further finds and declares that such hazards have occurred in the past, are now occurring, and will continue to occur, and that remediation of contamination of surface water, groundwater, or soils should be conducted with all due haste, and to the extent possible those persons who have owned such storage tanks should bear the costs of such remediation, and that such remediation should be done under the supervision and regulation of the department. The legislature also declares that taxpayers' funds should, to the greatest extent possible, not be used for the payment of the cost of such remediation, that the state should be encouraged where possible to use assistance from private sources for the payment of these costs, that where private sources cannot obtain insurance or other means of financial assurances to pay for said remediation that a state private contractor agreement between the state and the private legal entity administered by the secretary of the department can best provide assurance of financial responsibility for remediation of leaking motor fuel underground storage tanks.

B. There is hereby established a special custodial trust fund in the state treasury to be known as the Motor Fuel Underground Storage Tank Trust Fund, hereafter referred to as the "Tank Trust Fund", into which the state treasurer shall, each fiscal year, deposit the revenues received from the collection of the fees as established in R.S. 30:2195.3(A)(1)(a) and (B). The secretary is authorized pursuant to Article VII, Section 9(A) of the Constitution of Louisiana and R.S. 30:2031 to enter into an agreement with a private legal entity to receive and administer the Tank Trust Fund for the purpose of providing financial responsibility for underground motor fuel storage tanks. On an annual basis, all owners of registered tanks shall remit to the department a tank registration fee of fifty-four dollars for each tank. The revenue from the tank registration fees shall be deposited directly into the Environmental Trust Fund as provided by R.S. 30:2015 and utilized for underground storage tank activities only; and any deviation from the aforesaid shall be documented and reported to the House Committee on Environment and the Senate Committee on Environmental Quality. Revenues received from annual maintenance and monitoring fees, other than those established in R.S. 30:2195.3(B), shall be deposited into the Environmental Trust Fund. The department shall promulgate rules and regulations for the implementation of this Section in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

C. Monies so deposited in the Environmental Trust Fund shall be used to defray the cost to the state of administering the underground storage tank program and the cost of investigation, testing, containment, control, and cleanup of releases from underground storage tanks containing regulated substances. These monies shall also be used to provide money or services as the state share of matching funds for federal grants involving underground storage tanks. At the end of each fiscal year, all monies that were deposited into the Environmental Trust Fund from the fees established in R.S. 30:2195.3(A)(1)(a) and (B) which remain unspent, including all accrued interest, shall be transferred to the Tank Trust Fund.

D. The funds placed in the Tank Trust Fund shall only be used in accordance with the terms and conditions of R.S. 30:2194 through 2195.9 and shall not be placed in the general fund but shall be subject to the appropriation process of the legislature. The monies in the Tank Trust Fund shall be invested by the state treasurer in the same manner as monies in the state general fund.

E. Annually the department shall prepare a report for the Environment Committee of the House of Representatives and the Environmental Quality Committee of the Senate of all disbursements of monies from

the Tank Trust Fund and the Environmental Trust Fund. The report shall include the number of sites actively seeking reimbursement from the Tank Trust Fund as of June thirtieth of each year, the number of sites deemed eligible for the Tank Trust Fund during the previous fiscal year, and the number of sites that have been granted "No Further Action" and the department has received the last application for reimbursement during the previous fiscal year. Regarding disbursements from the Tank Trust Fund as provided by R.S. 30:2195.2, the report shall include a list of all reimbursements, all pending reimbursements, the date the application was made for reimbursement, and the date reimbursement was made by the department. The report shall be delivered to the respective legislative committees no later than March first of each year.

F.(1) Beginning July 1, 2001, all interest monies earned by the Motor Fuels Underground Storage Tank Trust Fund shall be used for the closure of abandoned motor fuel underground storage tanks and assessment and remediation of property contaminated by abandoned motor fuel underground storage tanks.

(2) The state shall have a lien or privilege against immovable property for the costs incurred for closure of abandoned motor fuel underground storage tanks and for costs incurred associated with the assessment and remediation of property contaminated by an abandoned motor fuel underground storage tank. Following the expenditure of funds by the state of Louisiana through the department, such lien or privilege may be perfected against such property by filing a notice of lien containing the name of the current record owner and the legal description of the immovable property in the mortgage records of the parish in which the immovable property is located. Except as otherwise provided in this Paragraph, the lien of the state, through the Department of Environmental Quality, shall have priority in rank over all other privileges, liens, encumbrances, or other security interest affecting the property. As to all privileges, liens, encumbrances, or other security interests affecting the property that are filed or otherwise perfected before the filing of the notice of lien of the state authorized by this Section, such prior recorded security interests shall have priority over the state lien, but only to the extent of the fair market value that the property had prior to closure, assessment, or remedial action by the state, and prior recorded security interests shall be subordinate to the state lien for any amount in excess of the fair market value of the property prior to such closure, assessment, or remediation.

(3) A site may be declared to be an abandoned motor fuel underground storage tank site by the secretary upon a finding that all of the following apply to the site:

(a) It has received motor fuels in an underground storage tank.

(b) The motor fuel underground storage tank was not closed or the site was not assessed or remediated in accordance with the requirements of this Subtitle and the regulations adopted hereunder.

(c) It constitutes or may constitute a danger or potential danger to the public health or the environment.

(d) It has no financially responsible owner or operator who can be located, or such person has failed or refused to undertake action ordered by the secretary pursuant to R.S. 30:2194 and the regulations adopted thereunder.

(e) The release at the site is not eligible for the Motor Fuels Underground Storage Tank Trust Fund.

Acts 1985, No. 493, §1, eff. July 12, 1985; Acts 1995, No. 336, §1, eff. June 16, 1995; Acts 1997, No. 27, §1; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 1999, No. 348, §1, eff. June 16, 1999; Acts 2001, No. 1121, §1; Acts 2002, 1st Ex. Sess., No. 134, §1, eff. July 1, 2002; Acts 2004, No. 692, §1, eff. July 6, 2004.

§2195.1. Repealed by Acts 1995, No. 336, §2, eff. June 16, 1995.

§2195.2. Uses of the Tank Trust Fund

A. The department shall administer the Tank Trust Fund and shall make disbursements from the fund for all necessary and appropriate expenditures. Pursuant to the authorization in R.S. 30:2195, the secretary of the Department of Environmental Quality shall use the Tank Trust Fund as follows:

(1) Whenever in the secretary's determination incidence of surface water, groundwater, or soils contamination resulting from the storage of motor fuels may pose a threat to the environment or the public health, safety, and welfare and the owner of the motor fuel underground storage tank has been found to be an eligible participant, the department shall obligate monies available in the Tank Trust Fund to provide for the following response actions:

(a) Investigation and assessment of sites shown to be contaminated by a release into the surface water, groundwater, or soils from a motor fuel underground storage tank.

(b) Interim replacement and permanent restoration of potable water supply where it has been demonstrated that the supply was contaminated by a leak from a motor fuel underground storage tank.

(c)(i) To remediate sites contaminated by a leak from a motor fuel underground storage tank to the extent necessary to return the site to the use and occupancy in effect at the time the release occurred. Remediation may consist of cleanup of affected soil, groundwater, and inland surface waters, using cost-effective methods that are technologically feasible and reliable, while ensuring adequate protection of the

public health, safety, and welfare and minimizing environmental damage, in accordance with the site selection and cleanup criteria established by the department. Notwithstanding any provision of R.S. 30:2194 through 2195.11 to the contrary, any remediation work contracted for on or after August 1, 1995, shall be paid by the department to the response action contractor who performed the department-approved assessment or remediation work upon the presentation of proper invoices for the work.

(ii) The monies expended from the Tank Trust Fund for any of the above approved costs shall be spent only up to such sums as that which is necessary to satisfy federal petroleum underground storage tank financial responsibility requirements (40 CFR 280.93) or one million dollars, whichever is greater.

(2) Whenever costs have been incurred by the department for taking response actions with respect to the release of motor fuels from an underground storage tank or the department has expended funds from the Tank Trust Fund for response costs or third-party liability claims, the owner of the motor fuel underground storage tank shall be liable to the department for such costs only if the owner was not an eligible participant on the date of discharge of the motor fuels which necessitates the cleanup; otherwise liability is limited to the provisions contained in R.S. 30:2195.9 and 2195.10. The expenditure of funds to reimburse any party for costs otherwise authorized by this Subsection shall be expressly prohibited if the costs were incurred as the result of a release of motor fuels, excluding new and used motor oil, which occurred prior to July 15, 1988. For new and used motor oil releases, the expenditure of funds to reimburse any party for costs otherwise authorized by this Subsection shall be expressly prohibited for any costs relating to a release which occurred prior to September 6, 1991. Nothing contained herein shall be construed so as to authorize the expenditure from the Tank Trust Fund on behalf of any owner of an underground storage tank who is not an eligible participant at the time of the release for any third-party liability.

(3) In the event funds have been expended by the secretary on behalf of an owner who was not an eligible participant, and the Tank Trust Fund is entitled to reimbursement of those funds so expended, the secretary shall use any and all administrative and judicial remedies, including the filing of a lien with the same ranking as that provided in R.S. 30:2195(F)(2), which may be necessary for recovery of the expended funds plus legal interest from the date of payment by the secretary and all costs associated with the recovery of the funds.

(4) The Environmental Trust Fund may be used to reimburse or pay for any costs associated with the review of applications for reimbursement from the trust, legal fees associated with the collection of costs from parties who are not eligible participants, audits of the Tank Trust Fund and bulk operators, and accounting and reporting of the uses of the trust. The Environmental Trust Fund will also reimburse the Department of Environmental Quality for costs associated with administering the underground storage tank program in accordance with R.S. 30:2195(C) up to the amount appropriated pursuant to R.S. 30:2195(B).

(5) The Tank Trust Fund may be used to make payments to a third party who brings a third-party claim against the secretary of the department and any owner of a motor fuel underground storage tank because of damages sustained by a release into the groundwater, surface waters, or soils and who obtains a final judgment in said action enforceable in this state against the owner and the secretary if and only if it has been satisfactorily demonstrated that the owner was an eligible participant at the time that the release occurred as defined in R.S. 30:2194(B)(3). The indemnification limit of the trust with respect to satisfaction of third-party claims shall be that which is necessary to satisfy federal petroleum underground storage tank financial responsibility requirements.

B.(1) Nothing herein shall be construed to authorize the expenditure from the Tank Trust Fund for response actions and third party claims for the following facilities:

(a) Motor fuel underground storage tanks owned by state and federal governmental entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(b) Any motor fuel underground storage tank excluded or deferred from regulation under 40 CFR 280.10, with the exception of an underground storage tank that stores fuel solely for use by emergency power generators.

(c) Repealed by Acts 2001, No. 550, §2.

(2) Nothing herein shall be construed to authorize or require the department to obligate funds for payment of costs which may be associated with but are not integral to site rehabilitation, such as the cost of retrofitting, replacing leaking motor fuel underground storage tanks and attendant piping, or unapproved purchases of equipment needed in assisting cleanup operations.

Acts 1988, No. 767, §2, eff. July 15, 1988; Acts 1989, No. 513, §1; Acts 1990, No. 1014, §1, eff. Sept. 1, 1990; Acts 1991, No. 890, §1; Acts 1995, No. 336, §1, eff. June 16, 1995; Acts 1997, No. 27, §1; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 2001, No. 550, §§1 and 2; Acts 2004, No. 692, §1, eff. July 6, 2004; Acts 2006, No. 447, §1.

§2195.3. Source of funding; limitations on disbursements from the Tank Trust Fund; limit on amount in Tank Trust Fund

A.(1)(a) A fee is imposed on the first sale or delivery of a motor fuel upon withdrawal from bulk of that fuel. This fee shall not, however, apply to new or used motor oil. Each operator of a bulk facility on withdrawal from bulk of a motor fuel shall either retain or collect from the person who ordered the fuel a fee in an amount determined as follows:

(i) Seventy-two dollars for each separate withdrawal of nine thousand gallons.

(ii) For withdrawals either greater or smaller than nine thousand gallons, the fee shall be adjusted by the cent-per-gallon conversion equivalent calculated according to the fee established in Item (A)(1)(a)(i) of this Section.

(b) However, those persons ordering the withdrawal of motor fuel from a bulk facility into a cargo tank which is directly transported and completely unloaded into either tanks exempted from registration requirements as provided by R.S. 30:2194(C), those underground storage tanks exempted from taxation pursuant to R.S. 47:715 and 720, or those underground storage tanks identified in R.S. 30:2195.2(B)(1)(a) and (b) shall not be required to pay the fees established by this Paragraph. These fees shall also not apply to exchanges between bulk facilities.

(2) The fee required under this Section shall be computed on the net (60 degrees fahrenheit) amount of a motor fuel delivered into a cargo tank.

(3) Any person who imports motor fuel in a cargo tank or a barge destined for delivery into an underground storage tank, shall pay to the secretary a fee on a number of gallons imported, computed as provided by Paragraph (A)(1) of this Section. If a bulk facility operator imports motor fuel in a cargo tank or a barge, the bulk facility operator is not required to pay the fee on that imported motor fuel if the motor fuel is delivered to a bulk facility from which the motor fuel will be withdrawn from bulk.

(4) Within thirty days of beginning operation of a bulk facility, each operator of a bulk facility and each person covered by Paragraph (3) of this Subsection shall file an application with the secretary for a certificate to deliver motor fuels into a cargo tank destined for delivery into underground storage tanks, regardless of whether these tanks are exempted from the registration requirements of R.S. 30:2194(C). All applications shall be filed utilizing a form approved by the secretary. A certificate issued by the secretary under this Subsection is valid on and after the date of its issuance and until the certificate is surrendered by the holder or cancelled by the secretary.

(5) Fees required by this Section shall not apply to a delivery of motor fuel destined for export from this state.

(6) All invoices or transaction statements issued by operators of bulk facilities for the transfer of motor fuels into a cargo tank shall clearly indicate whether or not the transaction was a withdrawal from bulk as defined by R.S. 30:2194(B)(13).

(7) Each operator of a bulk facility shall list, as a separate line item on each invoice, the amount of the fees due under this Section, and file the report with the secretary and remit the amount of fees required to be collected or paid during the preceding month. The report and any fees required shall be deemed received if postmarked on or before the twenty-fifth day of the month following the end of each calendar month, and shall be filed on a form approved by the secretary. Filing of the report and remittance of the fee is required of each operator of a bulk facility, regardless of whether the certificate specified in Paragraph (4) of this Subsection is sought or obtained. Fees not received in a timely manner will be subject to a late penalty of an additional five percent per month of the calculated fee that is not remitted. Late penalty charges shall not exceed fifteen percent of the fee that is not remitted for a particular month. Failure to pay the fee in accordance with this Section within ninety days after the due date shall constitute a violation and shall subject the person to applicable enforcement actions under the Louisiana Environmental Quality Act, including but not limited to revocation or suspension of the applicable permit, license, registration, or variance.

(8) All invoices, reports, and any other records required under this Section as well as rules adopted by the secretary pursuant to this Section, or copies thereof, shall be retained for a period of four years after the date on which the document is prepared.

(9) Repealed by Acts 1995, No. 336, §2, eff. June 16, 1995.

(10) Fees imposed by Subparagraph (A)(1)(a) of this Section shall not be collected or required to be paid on or after the first day of the second month following a determination that has been made by the board that the unobligated balance in the Tank Trust Fund equals or exceeds twenty million dollars. If the board determines that the unobligated balance in the Tank Trust Fund falls below ten million dollars, the fee shall be reinstated effective on the first day of the second month following this determination. For these purposes, the unobligated balance in the Tank Trust Fund shall be determined by subtracting from the cash balance in the

Tank Trust Fund at the end of each month the sum of the total estimates made by the board of eligible payment requests pending review and the outstanding balance of the estimated costs to be incurred associated with correction action plans approved by the department.

(11) A bulk facility operator may retain an amount not to exceed one percent of the monthly fee collected pursuant to Paragraph (1) of this Subsection by that operator as compensation for collecting and remitting the fee. One percent of the fee can be retained by the bulk facility operator if the report and fee are remitted to the secretary in the time frame specified in Paragraph (7) of this Subsection.

B. All owners of motor fuel underground storage tanks storing new or used motor oil shall pay to the secretary a fee not to exceed two hundred seventy-five dollars per eligible underground motor fuel storage tank per year. Late fees shall be established by the department by rule in accordance with the Administrative Procedure Act. Failure to pay the prescribed fee as provided herein, within ninety days after the due date, shall constitute a violation and shall subject the person to applicable enforcement actions under the Louisiana Environmental Quality Act, including but not limited to revocation or suspension of the applicable permit, license, registration, or variance.

C. The secretary shall not make any disbursements from the Tank Trust Fund to any person who has not complied with and paid the fee assessment as required by Subsection B of this Section.

Acts 1988, No. 767, §2, eff. July 15, 1988; Acts 1989, No. 513, §1; Acts 1990, No. 1014, §§1, 2, eff. Sept. 1, 1990; Acts 1991, No. 890, §1; Acts 1993, No. 176, §1; Acts 1995, No. 336, §§1, 2, eff. June 16, 1995; Acts 1999, No. 348, §1, eff. June 16, 1999; Acts 1999, No. 349, §1, eff. June 16, 1999; Acts 2001, No. 550, §1; Acts 2004, No. 692, §1, eff. July 6, 2004.

§2195.4. Procedures for disbursements from the Tank Trust Fund

A. Monies held in the Tank Trust Fund established hereunder shall be disbursed by the secretary in the following manner:

(1) Payments shall be made in reasonable amounts to motor fuel underground storage tank owners for reimbursement of payment to approved response action contractors for response actions taken when authorized by the secretary or his designee only after the amounts required by R.S. 30:2195.9 and 2195.10 have been paid by the underground motor fuels storage tank owner or those authorized to act for the owner. The secretary may substitute a lien with the same ranking as that authorized by R.S. 30:2195(F)(2) for the amount required by R.S. 30:2195.9 and 2195.10, but such lien shall not be substituted on behalf of an owner or operator who continues to operate the system. An underground motor fuel storage tank owner who is an eligible participant and a response action contractor will not be reimbursed for response actions, excluding emergency response actions performed during the first seventy-two hours following a release, performed at his own site. Underground motor fuel storage tank owners will not be reimbursed for response actions, excluding emergency response actions performed during the first seventy-two hours following a release, performed by a response action contractor who is known to have performed actions which contributed to or resulted in the release.

(2) The owner and response action contractor shall file a sworn application with the department indicating fair and reasonable value of the cost of site assessment and remediation, subject to those regulations and limitations as set by the department. Proof of payment of the financial responsibility amounts required by R.S. 30:2195.9 and 2195.10, or a certified copy of the lien authorized in this Section, shall be provided with the initial application for reimbursement.

(3)(a) Except in cases of emergency, no disbursement from the Tank Trust Fund may be made by the secretary until such time that the secretary obtains verification that the owner applicant is an eligible participant in compliance with the law.

(b) Except as otherwise provided in Subparagraph (c), no disbursements from the Motor Fuels Underground Storage Tank Trust Fund may be made by the secretary when the application for reimbursement is filed with the department more than two years after the date that the response action work is performed.

(c)(i) When the initial site assessment has not been completed within two years, the applicant will have ninety days from the completion of the initial site assessment to submit the reimbursement application.

(ii) When the department's action results in a reimbursement application not being submitted within two years of the date the work was performed, the applicant will have ninety days from the date the issue is resolved to submit the reimbursement application.

B.(1) Payments shall be made to third parties who bring suit against the secretary in his official capacity as representative of the Tank Trust Fund and the owner of an underground motor fuel storage tank, who is an eligible participant as stated in R.S. 30:2194(B)(3), and such third party obtains a final judgment for a third party claim which is enforceable in this state. The owner shall pay the amount required by R.S.

30:2195.9 toward the satisfaction of said judgment, and after that payment has been made, the Tank Trust Fund will pay the remainder of said judgment.

(2) The attorney general of the state of Louisiana is hereby responsible to appear in said suit for and in behalf of the secretary as representative of the Tank Trust Fund. The secretary, as representative of the Tank Trust Fund, is a necessary party in any suit that is brought by any third party which would allow that third party to collect from this trust, and must be made a party to the initial proceedings. Payment shall be made to the third party claimant if and only if the judgment is against the secretary and an owner who was an eligible participant on the date the incident occurred which gave rise to the claim.

(3) The costs of defending these suits by the attorney general or those assistants employed by the secretary, or appointed by the attorney general to assist, shall be recovered from the Tank Trust Fund. In the event the Tank Trust Fund is insufficient to make payments at the time the claim is filed, such claims shall be paid in the order of filing at such time as monies are paid into the Tank Trust Fund. Neither the amount of money in this trust, the method of collecting the Tank Trust Fund, nor any of the particulars involved in setting up this trust shall be admissible as evidence in any trial where suit is brought when the judgment rendered could affect the trust.

(4) If the attorney general declines to appear in a suit for and on behalf of the secretary as representative of the trust, or does not respond to the secretary's request for representation within sixty days of such request and agree to appear on behalf of the secretary, an attorney from the department may, with the concurrence of the attorney general, appear in said suit for and on behalf of the secretary as representative of the trust.

C.(1) For any month during which the collection of fees assessed pursuant to R.S. 30:2195.3 is suspended, the treasurer shall transfer an amount equal to twenty percent of the average monthly fee amount collected according to the schedule specified in R.S. 30:2195.3(A)(1) from the trust into the Environmental Trust Fund for use as provided by R.S. 30:2195.3(A)(9).

(2) If the secretary determines that the funds deposited on a monthly basis into the Environmental Trust Fund pursuant to R.S. 30:2195(B) are insufficient relative to the legislatively approved fiscal appropriation for the department during a given year, the secretary may order the treasurer to transfer from the Tank Trust Fund to the Environmental Trust Fund only that amount necessary to reach the authorized ceiling.

Acts 1988, No. 767, §2, eff. July 15, 1988; Acts 1989, No. 513, §1; Acts 1990, No. 1014, §1, eff. Sept. 1, 1990; Acts 1995, No. 336, §1, eff. June 16, 1995; Acts 1995, No. 1160, §1; Acts 1997, No. 27, §1; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 1999, No. 602, §1, eff. June 30, 1999; Acts 2004, No. 692, §1, eff. July 6, 2004; Acts 2006, No. 447, §1.

§2195.5. Audits

An annual independent audit of the Tank Trust Fund shall be conducted. Such funds as are necessary to perform the audit shall be authorized from the Tank Trust Fund. The secretary shall authorize funding from the Environmental Trust Fund, R.S. 30:2015, for the purpose of auditing bulk operators regarding the remittance of motor fuel delivery fees.

Acts 1988, No. 767, §2, eff. July 15, 1988; Acts 1995, No. 336, §1, eff. June 16, 1995.

§2195.6. Ownership of Tank Trust Fund

The Tank Trust Fund shall be used only for the purposes set forth in R.S. 30:2194 through 2195.11 and for no other governmental purposes, nor shall any portion thereof ever be available to borrow from by any branch of government; it being the intent of the legislature that this trust and its increments shall remain intact and inviolate. Any interest or earnings of the trust shall be credited only to the Tank Trust Fund.

Acts 1988, No. 767, §2, eff. July 15, 1988; Acts 1995, No. 336, §1, eff. June 16, 1995; Acts 2004, No. 692, §1, eff. July 6, 2004.

§2195.7. No inference of liability on the part of the state

Nothing in R.S. 30:2194 through 2195.11 shall establish or create any liability or responsibility on the part of the department or the state of Louisiana to pay any cleanup cost or third-party claims from any source other than the Tank Trust Fund created by R.S. 30:2195, nor shall the department or the state of Louisiana have any liability or responsibility to make any payments for cleanup costs or third-party claims if the Tank Trust Fund created herein is insufficient to do so.

Acts 1988, No. 767, §2, eff. July 15, 1988; Acts 1995, No. 336, §1, eff. June 16, 1995; Acts 2004, No. 692, §1, eff. July 6, 2004.

§2195.8. Advisory board

A. There shall be a Motor Fuels Underground Storage Tank Trust Fund Advisory Board, hereinafter referred to as the "board", to advise the secretary with regard to implementation of the Tank Trust Fund including investment of the trust, changing of the trust ceiling if after a reasonable time this would be deemed appropriate and with regard to the minimum level of funding. The board shall annually review the "Louisiana Motor Fuels Underground Storage Tank Trust Fund Cost Control Guidance Document" and may make recommendations for changes. Prior to the promulgation of any proposed underground storage tank regulations, the department shall provide proposed changes to the board for review. The board shall also determine the role of the Tank Trust Fund in establishing financial responsibility as required by federal or state law, except that such requirement shall not exceed those established by the U.S. Environmental Protection Agency. The board shall additionally examine claims made and loss experience, make recommendations to the secretary regarding minimum levels of financial responsibility for underground storage tank owners, and the necessity for and contents of rules and regulations issued under the Environmental Quality Act in similar matters. The board may recommend standards for the qualification of response action contractors as defined herein. The board may recommend at any time that response action contractors be added to or deleted from the list. The board shall also have the authority to review applications for disbursements from the Tank Trust Fund.

B. The board shall consist of the secretary of the Department of Environmental Quality or his designee and seven members, as follows:

(1) Four members appointed by the president of the Louisiana Oil Marketers and Convenience Store Association.

(2) One member appointed by the Mid-Continent Oil and Gas Association.

(3) Two members appointed by the secretary who represent the response action contractor community.

C. The board shall meet at least four times each year and each member shall have one vote concerning any matter coming before the board. The board shall elect its own chairman. The secretary shall provide notice of regularly held board meetings thirty days prior to the meeting. The board may meet at any other time upon twenty-four-hour notice from the secretary, his designee, or any two of the board's members.

D.(1) Each member of the board, except the secretary or his designee, shall be appointed for a three-year term except as provided in Paragraph (2) of this Subsection.

(2) Two members shall serve an initial term of one year, two shall serve an initial term of two years, and three shall serve an initial term of three years as determined by lot at the first meeting of the advisory board after January 1, 2005.

E. When a vacancy on the board occurs prior to the expiration of a term, the successor shall be appointed for the remainder of the unexpired term.

F. No member of the board shall be appointed for more than two consecutive terms.

Acts 1988, No. 767, §2, eff. July 15, 1988; Acts 1995, No. 336, §1, eff. June 16, 1995; Acts 2001, No. 550, §1; Acts 2004, No. 692, §2, eff. Jan. 1, 2005.

§2195.9. Financial responsibility

A. The financial responsibility requirements for taking response actions and third-party judgments by motor fuel underground storage tank owners who are eligible participants in the Tank Trust Fund are hereby established as follows:

(1) Ten thousand dollars per occurrence for cleanup and an additional ten thousand dollars per occurrence for third-party judgments for the period following July 15, 1988 through the year 1989.

(2) Fifteen thousand dollars per occurrence for cleanup and an additional fifteen thousand dollars per occurrence for third-party judgments for the period from January 1, 1990 through July 14, 1992.

(3) For the period from July 15, 1992 through June 15, 1995:

(a) Five thousand dollars per occurrence for cleanup and an additional five thousand dollars for third-party judgments for owners with one to twelve tanks in Louisiana.

(b) Ten thousand dollars per occurrence for cleanup and an additional ten thousand dollars for third-party judgments for owners with thirteen to ninety-nine tanks in Louisiana.

(c) Fifteen thousand dollars per occurrence for cleanup and an additional fifteen thousand dollars for third-party judgments for owners with one hundred or more tanks in Louisiana.

(4) Five thousand dollars per occurrence for cleanup and an additional five thousand dollars per occurrence for third-party judgments, beginning on June 16, 1995, and continuing through December 31, 2001.

(5) Thereafter the advisory board shall review the financial responsibility requirements on an annual basis and may recommend to the secretary adjusting the requirements. The secretary shall determine and set the financial responsibility requirements annually.

(6) A lien filed by the department with the same ranking and privilege as that authorized by R.S. 30:2195(F)(2) may be substituted for the financial responsibility requirement of this Section, but in no case shall the lien be substituted on behalf of an owner or operator who continues to operate the system. The department shall promulgate regulations to provide for the use of this lien that ensures the fiscal stability of the fund. Such regulations shall provide that the use of the funds in the Tank Trust Fund in any fiscal year on sites for which the lien authorized by this Section has been used to substitute for the financial responsibility amount shall not exceed twenty percent of the amounts collected in the previous fiscal year. The secretary is authorized to exceed the twenty percent limitation contained in this Paragraph upon recommendation of the Motor Fuels Underground Storage Tank Trust Fund Advisory Board. Upon recommendation of the board to exceed the twenty percent limitation as provided for in this Paragraph, the secretary shall send written notice to the Senate Committee on Environmental Quality and the House Committee on the Environment listing the project name, project location, and the amount of the project that exceeds the twenty percent limitation.

B. Financial responsibility may be established by any one or combination of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. A person may qualify as a self-insurer by showing tangible net worth in the amount established by the U.S. Environmental Protection Agency.

Acts 1988, No. 767, §2, eff. July 15, 1988; Acts 1995, No. 336, §1, eff. June 16, 1995; Acts 2001, No. 550, §1; Acts 2004, No. 692, §1, eff. July 6, 2004; Acts 2006, No. 447, §1.

§2195.10. Financial responsibility for noncompliance

A. Releases at sites that have been determined eligible for funds from the Motor Fuels Underground Storage Tank Trust Fund prior to July 6, 2004 are not subject to the financial responsibility amounts for noncompliance specified in this Section.

B. After August 1, 2006, for sites that are determined to be noncompliant with regulations promulgated by the department providing for release reporting, release detection installation operating recordkeeping, release detection reporting, spill and overfill operating requirements, cathodic protection construction, cathodic protection operation maintenance recordkeeping or proper assessing at closure or change in service, the financial responsibility amount is ten thousand dollars.

C. The secretary or his designee may exclude from coverage by the Tank Trust Fund any underground storage tank system whose owner or operator has been found to have consistently failed to comply with the requirements enumerated in Subsection B of this Section. Consistent failure is a failure to comply with more than three of the requirements enumerated in Subsection B or repeated releases from the same underground storage tank system accompanied by failure to comply with the regulations enumerated in Subsection B. Notwithstanding any provision to the contrary, the secretary or his designee may prohibit the delivery of fuel to any underground storage tank excluded from coverage under this provision until such time as the owner operator secures financial assurance that satisfies the federal petroleum underground storage tank financial responsibility requirements.

D. Annually the advisory board shall review the financial responsibility requirements for noncompliance and may recommend adjustments to the requirements to the secretary. The secretary shall determine and set the financial responsibility amounts for noncompliance annually. Adjustments to the financial responsibility for noncompliance shall be no less than the amounts currently established by law.

Acts 1988, No. 767, §2, eff. July 15, 1988; Acts 2004, No. 692, §1, eff. July 6, 2004; Acts 2006, No. 447, §1.

§2195.11. Voluntary cleanup; private contracts; exemptions

Nothing in R.S. 30:2194 through this Section shall be deemed to prohibit a person from conducting site rehabilitation and remediation through approved response action contractors. Voluntary rehabilitation of contaminated sites shall be encouraged by the department provided that such rehabilitation and remediation is conducted in a manner and to a level of completion which will protect the public health, safety, and welfare and will minimize damage to the environment. To accomplish this purpose, the department shall promulgate rules and regulations for the approval and compensation of response action contractors. Response action contracts shall not be construed as state contracts, and said contracts shall be exempt from the public bid laws as provided in R.S. 30:2031.

Acts 2004, No. 692, §1, eff. July 6, 2004.

§2196. Manifest system

Within its comprehensive hazardous waste control program, the secretary shall require the use of a manifest system for the orderly tracking of hazardous wastes from the generation site to the site of treatment, storage, and disposal. The system shall at a minimum require the designation of the generator, each transporter, the disposal facility, and the type and quantity of waste involved. The secretary may establish additional criteria to accommodate the manifest system to internal record keeping and to facilitate the monitoring of hazardous wastes activity within the state. Any requirements of the secretary shall be consistent with regulations promulgated by the Department of Public Safety which govern the transportation of hazardous wastes.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984.

§2197. Payment of tax on disposal of hazardous waste

Every person subject to the provisions of this Chapter, except those persons disposing of special waste as defined in the rules and regulations adopted pursuant to this Chapter, may be liable for the payment of the tax imposed by R.S. 47:821 et seq.

Added by Acts 1984, 1st Ex. Sess., No. 8, §2, eff. July 1, 1984.

§2198. Hazardous Waste Protection Fund

A. There is hereby established a Hazardous Waste Protection Fund, hereinafter referred to as the "Protection Fund", to which shall be deposited all bonds forfeited to the state under this Chapter and all hazardous waste protection payments under Section 2192(B)(4) of this Chapter, after being deposited into the state treasury and credited to the Bond Security and Redemption Fund, as provided by laws of this state and the constitution. After a sufficient amount is allocated from the Bond Security and Redemption Fund to pay all obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall pay into the Protection Fund an amount equal to the total amount of the bonds forfeited to the state under this Chapter and all the payments made as hazardous waste protection payments, under Section 2192(B)(4) of this Chapter. The Protection Fund shall additionally consist of sums appropriated specifically to it by the legislature for maintenance and custody of closed sites, for emergencies caused by closed sites, and to assure financial responsibility for damages caused by closed sites.

B. Any grants or allocations made to the state of Louisiana from the United States government for the purposes of protecting the public from hazards associated with closed sites shall be paid by the treasurer directly into the Hazardous Waste Protection Fund.

C. The secretary shall provide by rule or regulations for the Protection Fund to consist of sums sufficient to assure financial responsibility for closed hazardous waste facilities, and shall provide for the procedures for assessing said payments to the protection fund.

D. The secretary shall administer the Protection Fund and shall make disbursements from the protection fund for all necessary and appropriate expenditures. Disbursements shall be made upon sufficient proof of services rendered and materials or equipment used or expended.

E. The monies in the Protection Fund shall be used only in cases where the site has been permitted under this Subtitle and has been closed in accordance with the rules and regulations of the secretary pertaining to closure of hazardous waste facilities, for the following purposes:

(1) Emergency responses to hazardous waste accidents;

(2) The maintenance and custody of hazardous wastes and hazardous waste facilities;

(3) To assure financial responsibility in the event of damages resulting from accidents and negligence; and

(4) To provide money or services as the state share of matching funds for federal grants.

F. Interest earned through investments of the fund capital may be utilized to finance research concerning hazardous waste management, disposal, and resource recovery from hazardous waste.

G. In any case where monies in the Hazardous Waste Protection Fund are expended because of damages resulting from a violation of this Subtitle, the secretary shall institute a civil action under Section 2025(B) of this Subtitle to recover from the responsible person as damages, all such monies expended from the Protection Fund.

Acts 1979, No. 449, §1, eff. June 1, 1980. Amended by Acts 1980, No. 194, §15; Acts 1983, No. 97, §1, eff. Feb. 1, 1984.

§2199. Applications; comments; local government

A. The secretary shall furnish a copy of each permit or license application to the Department of Wildlife and Fisheries, the office of public works within the Department of Transportation and Development,

the Department of Health and Hospitals, the Department of Justice, and the local governing authorities of any municipality and parish within whose territorial jurisdiction the facility or activity is or will be located. The permittee shall file with the secretary two extra copies of each application, with one copy to be provided to the first intervenor and the other copy to be used by the office to allow for public access and inspection of the application.

B. No facility shall be granted a permit or license if the location thereof violates a parish or municipal land use or zoning ordinance applicable to its siting in effect at the time of the original permit or license application.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Amended by Acts 1980, No. 748, §2; Acts 1982, No. 802, §1, eff. Jan. 1, 1983. Acts 1983, No. 97, §1, eff. Feb. 1, 1984.

§2200. Subsurface injection

Nothing herein shall limit the power of the assistant secretary of the office of conservation to issue permits and make regulations relative to the subsurface injection of waste products and oil and gas field salt water in compliance with Chapter 1 of Title 30 of the Louisiana Revised Statutes of 1950 and the subsurface injection of hazardous wastes in compliance with the Safe Drinking Water Act, 42 USC §300(F) et seq., and the Resource Conservation and Recovery Act of 1976, 42 USC §6901 et seq.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984. Acts 1984, No. 795, §1, eff. July 13, 1984.

§2201. Repealed by Acts 1999, No. 348, §2, eff. June 16, 1999.

§2202. Prohibitions

A. No person shall initiate or continue the generation, transportation, treatment, storage, or disposal of hazardous waste except as in compliance with the provisions of this Subtitle.

B. No person shall violate any rule or regulation adopted by the secretary under this Subtitle.

C. Notwithstanding any law, order, or regulation to the contrary, no person shall dispose of hazardous waste by injection into a Class I underground injection well when the well head or any portion of the casing is within the banks or boundaries of a lake, stream, or other surface water body within the jurisdiction of the state of Louisiana, whether man-made or occurring naturally, whether on a temporary or permanent basis.

D. No person shall treat, store, or dispose of hazardous waste in salt domes or sulphur mines within and under the jurisdiction of this state. However, nothing in this Section shall in any way limit the authority of the federal government with regard to petroleum storage activities in the state.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1983, No. 375, §1; Acts 1985, No. 448, §1, eff. July 1, 1985.

§2203. Remediation; evidence; prohibitions

A. Any person who causes, suffers, allows, or permits hazardous waste to be transported, generated, treated, stored, or disposed in such manner that it enters any groundwaters of the state upon obtaining knowledge of such shall notify the secretary and if necessary take prompt remedial action pursuant to regulations adopted under this Subtitle or as ordered by the secretary or by the appropriate assistant secretary.

B. The pollution of any waters of the state beneath or adjacent to any site to or from which hazardous waste has been transported or where hazardous waste has been treated, stored, or disposed, intentionally or accidentally, shall be presumed to be evidence of pollution from such site unless evidence is shown to rebut it, and the secretary may issue such orders in accordance with R.S. 30:2025 as may be necessary to contain, abate, control, and cleanup the pollution and may suspend, revoke, or terminate the operating authority of the site in addition to any other action provided by this Subtitle.

C. This Section shall not apply to discharges into waters of the state in accordance with state or federal licenses or permits issued under the authority of this Subtitle or the regulations promulgated hereunder.

Acts 1984, No. 319, §1, eff. July 2, 1984; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2204. Hazardous waste sites; cleanup

A.(1) Whenever any owner, operator, or responsible person of any site obtains information that indicates hazardous waste or hazardous waste constituents are leaching, spilling, discharging, or otherwise moving in, into, within, or on any land, subsurface strata, water, or air, such person shall notify the department in accordance with regulations to be adopted. This notification requirement shall apply to leaching, spilling, discharging, or moving of hazardous waste or hazardous waste constituents occurring hereafter although the hazardous waste or hazardous waste constituents were heretofore present at the site.

(2) Upon receipt of the information required to be provided in Paragraph A(1) of this Section, the secretary may order any owner, operator, or responsible person to test, monitor, and analyze to ascertain the nature and extent of any hazard and require such owner, operator, or responsible person to contain, abate, or

clean up the site, or the secretary may undertake such activities and order an investigation of the site, take samples to be analyzed by the department, or may expend monies from the Hazardous Waste Site Cleanup Fund for these purposes. Any person ordered by the secretary to undertake certain actions as provided herein on property outside a facility's boundary shall either obtain permission from the owner of the property to perform such required actions or, if unable to obtain the owner's permission, request the secretary to order access to the property for the purpose of performing such required actions. In those cases where the secretary orders any owner, operator, or responsible person to test, monitor, and analyze to ascertain the nature and extent of such hazard, the order shall require the person to whom such order is issued to submit to the secretary within thirty days from the issuance of such order a proposal for carrying out the required monitoring, testing, and analysis.

(3) The goal of such regulations is to eliminate those releases that may reasonably pose a threat to human health or the environment and to remediate contaminated media, taking into consideration current and expected uses.

B. Any failure or refusal by an owner or operator or responsible person to undertake such action as ordered by the secretary to test, monitor, analyze, contain, abate, or clean up a hazardous waste site shall be a violation of this Subtitle, and the secretary, in order to prevent damage to the public health and environment, may immediately declare the site abandoned, notwithstanding the provisions of R.S. 30:2225 or commence appropriate action or initiate proceedings under R.S. 30:2025, including the recovery of penalties, revocation of any permit, closure of the site, or any combination thereof.

C. A "hazardous waste site" as used in this Section includes the entire contaminated area and may extend beyond a facility's boundary.

D. Repealed by Acts 1992, No. 669, §2.

Added by Acts 1980, No. 194, §17. Amended by Acts 1981, No. 702, §2, eff. July 23, 1981; Acts 1982, No. 799, §1, eff. Aug. 4, 1982; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1983, No. 459, §1, eff. July 6, 1983; Acts 1984, No. 674, §1; Acts 1986, No. 329, §1, eff. June 30, 1986; Acts 1991, No. 666, §1, eff. July 17, 1991; Acts 1992, No. 122, §1; Acts 1992, No. 669, §2; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2204.1. Limitations on responsibility of landowners for removal of hazardous waste

No landowner shall be held responsible, by an order of the secretary or the courts, for removal or the cost of removal of hazardous waste which has been disposed of on his land by the act of a third party without his knowledge or reasonable belief thereof or consent or by a fortuitous event. The burden of proof by clear and convincing evidence shall rest with the landowner. The provisions of this Section shall not apply to any landowner engaged in the production, transportation, or disposal of solid or liquid waste with regard to the involvement of any specific property in any such operation.

Acts 1993, No. 930, §1, eff. June 25, 1993.

§2205. Hazardous Waste Site Cleanup Fund

A.(1) All sums recovered through judgments, settlements, assessments of civil or criminal penalties, funds recovered by suit or settlement from potentially responsible parties for active or abandoned site remediation or cleanup, or otherwise under this Subtitle, or other applicable law, each fiscal year for violation of this Subtitle, shall be paid into the state treasury and shall be credited to the Bond Security and Redemption Fund. After a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer, prior to placing such remaining funds in the state general fund, shall pay into a special fund, which is hereby created in the state treasury and designated as the "Hazardous Waste Site Cleanup Fund", all of those funds generated by the hazardous waste tax under the provisions of Chapter 7-A of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950 and the sums recovered through all judgments, settlements, assessments of civil or criminal penalties, fees and oversight costs received from potentially responsible parties for the department's work in overseeing of assessment and remediation at inactive or abandoned sites, funds recovered by suit or settlement from potentially responsible parties for active or abandoned site remediation or cleanup, or otherwise, for violation of this Subtitle, except as provided in R.S. 30:2025 and 2198; however, the balance in the fund shall not exceed six million dollars at any time and upon the accumulation of six million dollars in the fund, the treasurer shall pay all remaining sums provided for in this Subsection into the Environmental Trust Fund, R.S. 30:2015.

(2) The Hazardous Waste Site Cleanup Fund, hereinafter referred to as the "Site Cleanup Fund", shall additionally consist of all funds designated to that fund and received by donation, grant, gift, or otherwise from any source and sums appropriated specifically to it by the legislature and any other allocations made directly to it, including reimbursements for restoration of the environment damaged by a hazardous waste site.

B. Any grants or allocations made to the state of Louisiana from the United States government for the purposes of investigation, analysis, containment, or cleanup of hazardous waste sites shall be paid directly into the Site Cleanup Fund to be used for that purpose.

C. The secretary shall administer the Site Cleanup Fund and shall make disbursements from the fund for all necessary and appropriate expenditures, including the operating expenses of the inactive and abandoned sites activities. Disbursements shall be made upon sufficient proof of services rendered and materials or equipment used or expended. For both the design and conduct of remedial actions, including cleanup at hazardous waste sites, the secretary shall select an appropriate action based on cost effectiveness that also meets the requirement that any exposure or potential exposure to hazardous wastes present at the site is reduced to such level as not to pose any significant threat to public health or the environment.

D. The monies in the Site Cleanup Fund shall be used to defray the cost of investigation, testing, containment, control, and cleanup of hazardous waste sites, to provide money or services as the state share of matching funds for federal grants, to defray the cost of securing and quarantining hazardous waste sites, including the acquisition of rights-of-way, easements, or title when necessary, and to pay the operating expenses of the inactive and abandoned sites activities. In addition, the monies in the fund may be used to defray assessment, cleanup, and associated costs of nonhazardous waste sites determined to be priority sites by the secretary in accordance with rules and regulations promulgated by the department. Interest earned through investment of the fund capital shall be credited to the Hazardous Waste Site Cleanup Fund.

E. In cases where monies from the Site Cleanup Fund are expended, the attorney general may institute a civil action to recover from the responsible persons all such monies expended from the Site Cleanup Fund. If the secretary requests that the attorney general institute a civil action to recover monies expended from the Site Cleanup Fund, and the attorney general declines to institute such action or does not respond within sixty days of such request agreeing to institute a civil action, an attorney from the department may, with the concurrence of the attorney general, institute a civil action to recover monies expended from the fund. Any monies recovered shall be paid into the Hazardous Waste Site Cleanup Fund.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1983, No. 467, §1, eff. July 6, 1983; Acts 1984, No. 674, §1; Acts 1985, No. 331, §1, eff. July 9, 1985; Acts 1986, No. 941, §1, eff. July 11, 1986; Acts 1986, No. 943, §2, eff. July 11, 1986; Acts 1987, No. 799, §§2, 3, eff. July 20, 1987; Acts 1989, No. 392, §1, eff. June 30, 1989; H.C.R. No. 8, 1989 2nd Ex. Sess.; Acts 1990, No. 974, §1, eff. July 1, 1990; Acts 1995, No. 689, §1; Acts 1997, No. 27, §1; Acts 1997, No. 755, §1, eff. July 1, 1998; Acts 1999, No. 505, §1, eff. June 29, 1999; Acts 2002, 1st Ex. Sess., No. 93, §1, eff. April 18, 2002.

{{NOTE: ACTS 1990, NO. 974, §4, TERMINATED ON SEPT. 7, 1990. SEE ACTS 1990, NO. 1001, §2.}}

§2206. Contracting for hazardous waste site cleanup

A. Whenever a hazardous waste site must be permanently closed, isolated, cleaned up, or otherwise rendered safe and there is no responsible party other than the state to perform the work, the secretary, in the name and on behalf of the state, may enter into contracts with a responsible person or corporation to provide the necessary services and materials. Contracting for such cleanup shall be based on priorities to be determined by the department. Any party to such an agreement must be licensed according to law before negotiating or entering into such a contract.

B. If the secretary cannot reach an agreement for the contract with a party to perform the work without inclusion within the contract of a hold-harmless clause, the secretary is hereby authorized to include such a clause, which shall be binding upon the state of Louisiana. The hold-harmless clause may obligate the state to hold harmless the party performing the work for property damages and personal injuries arising from the performance of the contract although the party may be found to be negligent in the performance of the contract. However, this agreement to hold the contractor harmless may only cover acts of ordinary negligence and shall not cover damages resulting from intentional acts or acts of gross negligence.

C. Contracts pursuant to this Section shall be negotiated informally by the secretary and shall not be subject to any other requirements of law for entering into public contracts. Prior to the execution of such contract it shall be reviewed by the secretary of the department and the commissioner of the Division of Administration.

Acts 1983, No. 97, §1, eff. Feb. 1, 1984. Acts 1986, No. 319, §1.

CHAPTER 10. INACTIVE AND ABANDONED HAZARDOUS WASTE SITES

§2221. Citation

This Chapter, consisting of Sections 2221 through 2226 of Title 30, may be cited as the "Louisiana Inactive and Abandoned Hazardous Waste Site Law."

Added by Acts 1983, No. 547, §2, eff. July 14, 1983.

§2222. Policy and purpose; duties

A. The Legislature finds and declares that:

(1) Hazardous wastes in inactive or abandoned pits, ponds, lagoons, landfills, or other pollution sources pose a present and future hazard to the public health, safety, and welfare.

(2) State laws and regulations must comprehensively address those situations where the state must direct or participate in the clean-up, closure, or post-closure of inactive and abandoned hazardous waste sites through the exercise of its police powers and the expenditure of public monies or both.

B. In order to eliminate the hazards associated with inactive and abandoned hazardous waste sites, it is in the public interest and within the police power of this state to establish an inactive and abandoned hazardous waste site program and to establish a Hazardous Waste Site Cleanup Fund to provide for the control, prevention, abatement, and cleanup of inactive and abandoned hazardous waste sites through administrative or legal action and expenditures from the Hazardous Waste Site Cleanup Fund and to provide for the recovery of all monies so expended therefrom.

C. The secretary shall assign the duties, responsibilities, and authority provided for by this Chapter as appropriate within the department.

Acts 1983, No. 547, §2, eff. July 14, 1983; Acts 1989, No. 232, §1, eff. June 26, 1989; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2223. Definitions

As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section, unless the context or use clearly indicates otherwise:

(1) "Hazardous wastes" or "wastes" means those elements or compounds defined or identified as hazardous wastes pursuant to the Louisiana Hazardous Waste Control Law, La. R.S. 30:2171 et seq., and regulations thereunder.

(2) "Waste site" means a landfill, pit, pond, lagoon, or other pollution source that contains hazardous wastes, including such surrounding property necessary to contain and impound the site and to secure or quarantine the area from access by the general public.

(3) "Office" means the office or offices within the Department of Environmental Quality to which the secretary has assigned the duties, responsibilities, and authority provided for by this Chapter.

(4) "Hazardous Waste Site Cleanup Fund" means the fund established by Act 194 of 1980 as provided for in R.S. 30:2205.

Acts 1983, No. 547, §2, eff. July 14, 1983; Acts 1989, No. 232, §1, eff. June 26, 1989; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2224. Contingency plans; agency coordination

A. In administering this Chapter, the department shall:

(1) Develop contingency plans and adopt guidelines for the containment, closure, and post-closure maintenance of inactive and abandoned hazardous waste sites; and

(2) Develop and periodically revise cooperative agreements with the state Departments of Wildlife and Fisheries, Public Safety and Corrections, the Military Department, the United States Environmental Protection Agency, United States Coast Guard, and all other appropriate local, state, and federal agencies, whereby personnel, equipment, and materials in possession or under control of these departments and agencies may be diverted and utilized to address inactive or abandoned hazardous waste sites under the following, nonexclusive conditions:

(a) Personnel, equipment, and materials may be diverted only with the approval of the heads of the respective state departments and agencies, or their designated representative, or by order of the governor;

(b) All expenses and costs of use or acquisition of equipment and materials and their replacement, costs of sampling and testing, or other expenses that result directly from responding to an inactive or abandoned

hazardous waste site, shall be paid by responsible persons or from the Hazardous Waste Site Cleanup Fund; and

(c) Subsequent to activities in response to waste sites, a full report of all expenditures and significant actions shall be prepared and submitted to the governor and secretary by the heads of all state agencies and departments involved in the activities.

B. The secretary or his representative shall coordinate the state response to a waste site with any on-scene coordinator designated by federal law. Nothing in this Chapter, however, shall prevent the department from responding independently to an inactive or abandoned waste site where no on-scene coordinator is present or no action is being taken by the federal government. In all appropriate cases the secretary shall seek reimbursement from the designated agencies of the federal government for all costs incurred in addressing inactive or abandoned hazardous waste sites including but not limited to costs of personnel, equipment, use of equipment, and supplies.

C. The secretary or his representative shall be the state contact and coordinator for all negotiations and site responses under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq.

Added by Acts 1983, No. 547, §2, eff. July 14, 1983; Acts 1999, No. 193, §1, eff. June 9, 1999; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2225. Abandoned hazardous waste sites

A. A site may be declared to be an abandoned hazardous waste site by the secretary upon a finding that the site:

(1) Has received for storage, treatment, or disposal or now contains or emits wastes that are identified, classified, or defined to be hazardous wastes in accordance with the regulations adopted under the provisions of this Subtitle.

(2) Was not closed in accordance with the requirements of this Subtitle and the regulations adopted hereunder.

(3) Constitutes or may constitute a danger or potential danger to the public health and the environment.

(4) Has no financially responsible owner or operator who can be located, or such person has failed or refused to undertake actions ordered by the secretary pursuant to R.S. 30:2204(A) or (B).

B. For the purposes of this Chapter and Chapter 9, "financially responsible person" or "responsible person" shall mean that the person has insurance, bonds, or assets sufficient to take action as necessary or as ordered by the secretary to protect the health and welfare of the citizens or to protect the environment.

C. Prior to declaring a site to be an abandoned hazardous waste site, the secretary shall seek to notify every person who may own an interest therein that the site is to be declared abandoned, shall publish on three consecutive occasions in the official journal of the parish that the site is to be declared abandoned, and, if requested by any owner within ten days after notice, shall hold a hearing prior to declaring the site abandoned.

D.(1) Upon declaration that a site is an abandoned hazardous waste site, the secretary shall notify the attorney general of such declaration and shall request the attorney general to take such specific legal actions as deemed necessary, including the acquisition of emergency easements and rights of way, conducting negotiations for property acquisition, and exercise of eminent domain as provided by R.S. 30:2036 to secure such site or compel cleanup or containment consistent with regulations and guidelines established by the secretary.

(2) If the secretary requests the attorney general to take legal actions in accordance with the provisions of this Subsection and if the attorney general declines to take such action or does not respond to the secretary's request for representation within sixty days of such request and agree to take such legal actions, an attorney from the department may, with the concurrence of the attorney general, take legal actions as deemed necessary in accordance with the provisions of this Subsection.

E.(1) When a site has been declared an abandoned hazardous waste site, the secretary is authorized to undertake the physical control, containment and cleanup, or closure of the abandoned hazardous waste site and may retain personnel for these purposes who shall operate under his direction.

(2) In all cases in which the secretary proposes to treat, store, or dispose of hazardous wastes at the abandoned hazardous waste site, he shall prepare a closure plan setting forth how the site will be closed. The secretary shall provide an opportunity for the public to submit comments about the plan. The secretary shall provide adequate notice to the public of any public hearings on the closure plan by placing a notice in the general circulation newspaper of the parish in which the hearing is to be held. If the secretary determines that immediate action is required to secure the site or dispose of any waste in order to protect the health or safety of persons affected by the site or its contents or to protect the environment, he may take such action prior to

submission of the plan and may subsequently submit a plan detailing emergency actions taken and those actions which he will be taking in the future.

(3) The secretary shall have authority to implement the closure plan and to take all actions including erecting fences, signs, gates, levees, and monitoring devices as are reasonably necessary to secure the site and prevent unauthorized or inadvertent entry.

F.(1) The secretary, by recording the declaration of abandonment in the mortgage records of the parish where the property is located, may create a lien against property declared to be abandoned to the extent of the expenditures by the state necessary to remedy the problem or to the extent of the appraised value after said expenditures, whichever is less. The secretary may provide in the declaration that the lien is limited to certain portions of property declared to be abandoned and may provide that a lien shall not be recorded against property of a person that the department finds was in no way responsible for the spill or accident causing the damage requiring the expenditure of money from the fund. The filing of a sworn statement of the amount expended perfects the lien retroactively to the date of the recordation of the declaration.

(2) Subsequent to a declaration of abandonment, a person whose property has been declared to be abandoned and against which a lien has been created thereby may apply to the secretary or file an action in the district court to require that the clerk erase the lien from the records if the secretary or the court finds that the spill was in no way caused by any action or negligence on the part of the person who is the owner of the property subject to the lien or may file an action to have the debt reduced to the appraised value of the property.

Acts 1984, No. 674, §1; Acts 1995, No. 1160, §1; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 1999, No. 348, §1, eff. June 16, 1999.

§2226. Hazardous Waste Assessment Report; requirements; submission

A. The secretary is hereby authorized and mandated to develop a comprehensive evaluation of hazardous waste in Louisiana, and to issue such evaluation in the form of a report as provided for herein. The department shall assist the secretary in the development and ongoing update of the report.

B. Prior to January 31, 1986, the secretary shall present a report as authorized in Subsection A of this Section to the Senate and House Natural Resources Committees. The report shall, at a minimum, provide the following information:

(1) An inventory of the known hazardous waste sites in Louisiana, including:

(a) The types of wastes as determined by the secretary to be present in the waste sites.

(b) An estimate of the amount of each type of waste in a waste site as may be reasonably determined by the secretary.

(c) The actual methods used to reduce, recycle, neutralize, or dispose of the various amounts of hazardous waste.

(d) An enumeration of those facilities operating under a valid permit within the state and of those facilities deemed abandoned or inactive.

(2) An assessment of Louisiana's hazardous waste disposal capacity, which at a minimum shall include:

(a) A compilation of available hazardous waste data indicative of the volume of hazardous waste generated in Louisiana heretofore.

(b) An estimate of anticipated hazardous waste generation from the date the report is to be presented to five years from that date.

(c) A determination by the secretary as to Louisiana's ability to properly manage the volume of waste generated and disposed of in Louisiana given the number and capacity of permitted facilities within the state.

(d) A recommendation by the secretary as regards the necessity to:

(i) Further reduce the generation of hazardous waste within Louisiana.

(ii) Increase the number of permitted facilities and/or increase the handling and disposal capacity of existing facilities.

(3) An assessment of the potential environmental and public health risks associated with known and presently permitted facilities, which at a minimum shall include:

(a) A separate assessment of each known hazardous waste facility to determine the enforcement history and risk potential of said facility, including any actual or threatened water, air, and land pollution.

(b) Any recommendations by the secretary to reduce the potential for environmental and public health risks.

(4) An assessment of available funding for the clean up of hazardous waste in Louisiana, including:

(a) Anticipated availability of federal, state, regional, local, or other sources of funding which might be used to clean up hazardous waste sites in Louisiana.

(b) Amount of funds generated through the imposition of fees on the regulated community, including:

(i) The percentage of expenditures by the department which have been funded by the imposition of fees on the regulated community.

(ii) Any anticipated changes in such fees imposed.

(c) An estimate of the total funds needed to clean up Louisiana's hazardous waste sites.

(d) Any action the secretary anticipates taking to insure adequate funding for the clean up of hazardous waste sites in Louisiana.

C. The secretary shall establish a five-year plan for the clean up of hazardous waste sites. Such plan shall include at a minimum:

(1) A determination by the secretary of that percentage of hazardous waste sites in Louisiana which should be immediately cleaned up and which can be cleaned up with present funding.

(2) Any recommendations by the secretary to secure additional funding as necessary to clean up any remaining sites which should be immediately addressed but for which there is inadequate funding.

(3) A timetable developed for the purpose of establishing the rate of expected clean up of the state's hazardous waste sites.

D. The secretary shall evaluate and include in his report all those grants made for theoretical and practical research and development of alternative technologies for destroying, reducing, recycling, neutralizing, and disposing of hazardous waste pursuant to R.S. 30:2011(G)(19).

E. Following the initial report required to be presented prior to January 31, 1986, the secretary shall report any updates on a semiannual basis to the Senate Committee on Environmental Quality and the House Committee on the Environment which shall reflect any new technological or regulatory developments, anticipated fee changes, newly available funds from any source, any grants made by the secretary for research, and the effect of any of the aforementioned phenomena on the secretary's five-year plan as herein required.

F. The secretary shall make all necessary investigations and shall obtain all information from any person as necessary to carry out the requirements and purposes of this Section.

G. All reports, plans, presentations, and information provided for herein shall be public record.

H.(1) The secretary shall promulgate rules and regulations implementing a comprehensive state inactive and abandoned hazardous waste site cleanup program. Such rules and regulations shall be promulgated after public hearing thereon in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. The purpose of the program shall be to identify each inactive and abandoned hazardous waste site in the state, and to implement procedures for cleanup of those sites, and to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions to achieve more permanent protection of human health and the environment. The department shall consider the use of innovative technologies, such as horizontally or vertically positioned high density polyethylene for preventing contamination of groundwater from migration of substances from inactive and abandoned sites.

(2) The secretary shall provide a written report to the legislature prior to March 1, 1989 which shall contain a list of all inactive and abandoned hazardous waste sites in the state, and a proposed time frame for the cleanup of each site. Each site cleanup shall be completed within the minimum time feasible. The Department of Environmental Quality shall provide an initial timetable for such cleanup proposed as provided in R.S. 30:2226(C) within six months of discovery of the site, and shall update this timetable annually until cleanup is completed.

Acts 1985, No. 361, §1; Acts 1988, No. 874, §1, eff. July 19, 1988; Acts 1990, No. 998, §1; Acts 1991, No. 21, §1, eff. June 14, 1991; Acts 1996, 1st Ex. Sess., No. 36, §1, eff. May 7, 1996; Acts 1997, No. 27, §1; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 2003, No. 280, §1.

CHAPTER 11. TAXATION OF DISPOSAL AND STORAGE OF HAZARDOUS WASTE

§2241. Definitions

A. The terms used in this Chapter shall be defined as provided in R.S. 30:2004 and R.S. 30:2173, with R.S. 30:2173 governing in any case of conflict between them, unless another definition is specifically provided or a definition is specifically modified herein.

B. For the purposes of this Chapter the following terms shall be defined as follows:

(1) "Accurate and complete manifest records" means records that conform to the requirements of the Department of Environmental Quality or its predecessors for the reporting of generation, handling, or disposing of hazardous waste in effect at the time the records were created.

(2) "Contributor's list" means that list prepared by the Department of Environmental Quality indicating known and ongoing generators and disposers of hazardous wastes.

(3) "Contribution report" is the report prepared by a generator or disposer under the provisions of this Chapter that calculates the estimate of dry weight tons of hazardous waste, for which the generator or disposer is responsible under this Chapter, disposed in such manner as to incur tax liability under this Chapter.

(4) "Dispose" means the discharge, deposit, injection, dumping, or placing of any hazardous waste into or on any land or into water so that any of the hazardous waste so disposed becomes part of the surrounding or underlying land.

(5) "Disposer" means any person who disposes or who receives for disposal the hazardous waste of a generator.

(6) "Dry weight ton" means a ton of hazardous waste excluding the weight of the water and for underground injection shall include no more than one percent of the inorganic solids contained in the hazardous waste.

(7) "Generator of hazardous waste" means any person whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation by the department.

(8) "Hazardous waste" means a substance identified and listed as a hazardous waste in the Louisiana Hazardous Waste Regulations of the Department of Environmental Quality in effect on the effective date of this Chapter; except that the term "hazardous waste" shall not include special waste as defined in this Chapter.

(9) "Special waste" means and includes the following:

(a) Spent bauxite (red mud) resulting from production of alumina.

(b) Byproduct gypsum and related wastes resulting from the production of phosphoric acid, phosphate fertilizers, and hydrofluoric acid.

(c) Coal residue (bottom ash and slag, fly ash, and flue-gas emission control waste) after use as a boiler fuel.

(d) Cement kiln dust.

(e) Industrial waste water in a NPDES treatment train when that train includes ponds, impoundments, or similar facilities.

(10) "Tax" means the amount of tax due under this Chapter, and any amount of interest due under this Chapter, unless the intention to give it a more limited meaning is disclosed by the context.

(11) "Taxpayer" means any person liable to pay any tax or file any return under this Chapter, regardless of whether such person has paid any tax or filed the required return.

Acts 1984, 1st Ex. Sess., No. 8, §1, eff. March 27, 1984.

§2242. Imposition

There is hereby levied a one time tax upon the hazardous waste content, as of July 1, 1984, of land in Louisiana, as determined in this Chapter.

Acts 1984, 1st Ex. Sess., No. 8, §1, eff. March 27, 1984. Acts 1984, No. 108, §1, eff. June 15, 1984.

§2243. Rate

The one time tax levied in this Chapter shall be levied upon the hazardous waste content of land in Louisiana at the rate of two dollars a dry weight ton of hazardous waste content. The one time tax shall be determined and shall be due at the time and in the manner provided in this Chapter.

Acts 1984, 1st Ex. Sess., No. 8, §1, eff. March 27, 1984.

§2244. Tax collectible from disposers and generators

The one time tax levied in this Chapter shall be collectible from and shall be paid by the generators or disposers who have contributed to the hazardous waste content of land in Louisiana to the extent of their contribution to such hazardous waste content as determined in this Chapter.

Acts 1984, 1st. Ex. Sess., No. 8, §1, eff. March 27, 1984.

§2245. Contribution report of disposers and generators

A. By October 1, 1984, all disposers and generators of hazardous waste in Louisiana shall determine the extent of their contribution to the hazardous waste content of land in Louisiana. That determination shall be made by the following:

(1) Adding the total dry weight tons of hazardous waste disposed or generated at the site by the disposer or generator or their predecessor at the same site for the years 1981, 1982, 1983, and the first six months of 1984 as shown on the complete and accurate manifest records of the disposer or generator and their predecessor of those years.

(2) Subtracting, at the discretion of the disposer or generator, that portion of the sum of the total dry weight tons added in R.S. 30:2245(A)(1) and (2) where the complete and accurate manifest records for those years indicate that the hazardous waste was received by the disposer or generator from another disposer or generator with an EPA Identification Number on the Existing Contributor's List to be furnished by the secretary to all disposers and generators.

(3) Subtracting, at the discretion of the disposer or generator, that portion of the sum of the total dry weight tons added in R.S. 30:2245(A)(1) and (2) where the complete and accurate manifest records for those years indicate that the hazardous waste was delivered by the disposer or generator to a disposer who did not dispose of the hazardous waste in Louisiana.

(4) Subtracting, at the discretion of the disposer or generator, that portion of the total dry weight tons added in R.S. 30:2245(A)(1) and (2) where the complete and accurate manifest records for those years indicate that hazardous waste was removed from the land.

B.(1) If a disposer or generator does not have complete and accurate manifest records for 1981, 1982, 1983, and the first six months of 1984 or any portion thereof, the secretary may allow the disposer or generator to project the total dry weight tons of hazardous waste disposed or generated at a site by the disposer or generator or their predecessors at the same site from available records if the secretary finds the following:

(a) There are good and sufficient reasons for the absence of such records.

(b) There are sufficient, accurate manifest records upon which the projection may be based.

(2) If a disposer or generator does not have complete and accurate records of manifests for 1981, 1982, 1983, and the first six months of 1984 or any portion thereof, and the secretary finds that there are not good and sufficient reasons for the absence or that there are not sufficient accurate manifest records upon which a projection may be based, the secretary shall make a projection of the dry weight tons of hazardous waste disposed or generated at the site by the disposer or generator or their predecessors using in his discretion any or all of the following:

(a) Any records of the disposer or generator or of a third party which are available to the secretary.

(b) Any records, files, documents, or studies available to the secretary.

(c) An estimate of the disposal or generation rate of a facility of a similar size for a similar period.

(d) On-site inspection and analysis including monitoring disposals or generation of hazardous waste for test periods.

(e) Any combination of the above or any method the secretary believes will be reasonably calculated to achieve an accurate estimate of the amount of hazardous waste disposed or generated at the site for 1981, 1982, 1983, and the first six months of 1984.

(3) The secretary may make any appropriate adjustments to the projections made under this Subsection B which are reasonable and necessary to make an accurate projection, including subtracting a projection of the amount of hazardous waste which has been removed from the land for the years 1981, 1982, 1983, and the first six months of 1984.

(4) If written notice of the lack of sufficient records is received from a disposer or generator by the secretary before August 1, 1984, any projection shall include a projected deduction for dry weight tons of hazardous waste received at a site by the disposer or generator or their predecessors at the same site from another disposer or generator on the Existing Contributor's List, or for any dry weight tons of hazardous waste delivered to disposers who did not dispose of the hazardous waste in Louisiana. In no case shall such a deduction be allowed or ordered if the secretary has not received the written notice provided for in this Subsection.

C. A taxpayer shall be allowed to provide to the secretary complete and accurate manifests and other appropriate records to indicate that his business declined or was economically damaged during any particular year, which information shall be considered by the secretary in determining the amount of the tax.

D. The result of the calculations in this Section shall be deemed to be the extent of the disposer's or generator's contribution to the hazardous waste content of land in Louisiana, subject to the adjustments allowed in R.S. 30:2248. The contribution report along with any work papers, listings of manifests, or other records required by the secretary, shall be filed with the secretary by October 1, 1984.

Acts 1984, 1st. Ex. Sess., No. 8, §1, eff. March 27, 1984. Acts 1984, No. 108, §1, eff. June 15, 1984.

§2246. Failure to file contribution report timely; false reports

A. Unless an extension is granted in writing by the secretary as provided for in R.S. 30:2247, contribution reports are due from all disposers and generators for hazardous waste in Louisiana by October 1, 1984.

B. Upon the failure of a disposer or generator to file the contribution report by October 1, 1984, or upon the timely filing of an incorrect report with the circumstances indicating negligence or intentional disregard of the requirements of this Chapter or the requirements and rules and regulations of the secretary in preparing the incorrect report, the secretary shall:

(1) Make an estimate from the best sources available to the secretary of the dry weight tons of hazardous waste generated or disposed in Louisiana by the disposer or generator or their predecessors at the same site, which estimate shall be deemed to be the extent of the disposer's or generator's contribution to the hazardous waste content of the land in Louisiana; provided that no adjustments provided in R.S. 30:2248 shall be allowed to any estimate made under this Subsection.

(2) Add a penalty of twenty-five percent of the tax determined to be due under this Chapter, which penalty shall be collected and enforced by the secretary of the Department of Revenue as part of the assessment and tax debt created by this Chapter against the generator or disposer, their successors, or any persons who are directors and officers of the generator or disposer on October 1, 1984.

C. In addition to the actions described above, if the facts and circumstances indicate that the contribution report was not filed by October 1, 1984 or was grossly incorrect intentionally, the secretary shall add a penalty of fifty percent.

D. If any assessment has already been issued under this Chapter by the secretary of revenue, that assessment shall be increased by the amount of any estimate and penalty levied herein, which tax shall be due from the date levied.

E. The intentional failure to file a return or the intentional filing of a grossly incorrect report by the individual or officer submitting it shall be punishable by imprisonment at hard labor for up to one year.

Acts 1984, 1st. Ex. Sess., No. 8, §1, eff. March 27, 1984; Acts 1984, No. 104, §1; Acts 1997, No. 658, §2.

§2247. Extension of time to file Contribution Report

Upon timely written application therefor, the secretary may grant an extension of time in which to file the contribution report not in excess of sixty days.

Acts 1984, 1st Ex. Sess., No. 8, §1, eff. March 27, 1984.

§2248. Modification of contribution report

A. If a disposer or generator has timely filed the contribution report required in R.S. 30:2245 and if he has complete and accurate records for 1981, 1982, 1983, and the first six months of 1984, the secretary may, upon the filing by the disposer or generator of a detailed request with supporting documentation on or before October 1, 1984, consider and allow modifications of the contribution reports if the disposer or generator shows, to the satisfaction of the secretary according to standards included in the rules and regulations promulgated by the secretary, that the contribution report does not accurately reflect the extent of his contribution to the hazardous waste content of land, provided that this Subsection shall not allow an adjustment to reduce a disposer's or generator's contribution because of disposal or generation by a predecessor at the same site.

B. The secretary may make any reasonable and necessary modifications or adjustments to the contribution report which will increase the contribution of hazardous waste attributable to any disposer or generator if the secretary determines that the increase will more accurately reflect the extent of the disposer's or generator's contribution to the hazardous waste content of land in Louisiana based on the disposal or generation of hazardous waste by the disposer or generator or his predecessor at the same site.

C.(1) After all adjustments provided for in this Chapter, the total amount of dry weight tons contributed by any disposer or generator to the hazardous waste content of Louisiana lands shall be reduced by the total amount of dry weight tons of hazardous wastes generated or disposed because of an order by the secretary, the

secretary of the Department of Natural Resources, or a court, ordering the cleanup of any abandoned waste site where the parties held responsible for the waste at the site are bearing the cost of the cleanup.

(2) A disposer or generator liable for the tax under this Chapter may be given a credit against his tax liability for any voluntary removal of hazardous waste from a site if there is proper documentation as to the removal and the amount removed which documentation must be approved by the secretary. If the removal occurs after the tax has been paid the taxpayer may receive a refund in the amount of the credit, upon showing of the proper documentation as required by the secretary. The credit shall be calculated by deducting the total dry weight tons removed from the total dry weight tons in the contribution report upon which the tax is based.

D. Whenever there is a contest between the secretary and a disposer or generator as to whether any adjustment or modification should be allowed to a contribution report which is timely filed, there shall be a rebuttable presumption that the original contribution report provided for in R.S. 30:2245 is correct.

Acts 1984, 1st Ex. Sess., No. 8, §1, eff. March 27, 1984. Acts 1984, No. 108, §1, eff. June 15, 1984.

§2249. Disposition of tax

The secretary shall determine the tax imposed on each disposer or generator according to the rate set forth in R.S. 30:2243 as applied to the disposer's or generator's contribution to the dry weight tons of hazardous waste content of land as provided in each contribution report, as adjusted; except that the tax based on any estimate made or the penalty levied under R.S. 30:2246 shall be determined as provided in that Section.

Acts 1984, 1st Ex. Sess., No. 8, §1, eff. March 27, 1984.

§2250. Notice of determination of tax imposed

Upon determining the tax imposed on each disposer or generator of hazardous waste in Louisiana, the secretary shall mail a written notice of such determination to each disposer or generator and to the secretary of the Department of Revenue, setting out the amount of tax imposed on the disposer or generator, the fact that the notice is being mailed to the Department of Revenue, and the fact that the amount of tax in the written notice will be due on January 1, 1985, and that the secretary of the Department of Revenue will proceed to collect the tax on that date.

Acts 1984, 1st Ex. Sess., No. 8, §1, eff. March 27, 1984; Acts 1997, No. 658, §2.

§2251. Payment of tax

The tax determined to be due under this Chapter shall be due January 1, 1985, and payable on January 1, 1985.

Acts 1984, 1st Ex. Sess., No. 8, §1, eff. March 27, 1984.

§2252. Collection

Upon receipt of the written notice provided for in R.S. 30:2250 by the secretary of the Department of Revenue of the amount of tax determined to be imposed and due under this Chapter, said secretary shall proceed to collect and enforce the tax in accordance with the provisions of Chapter 18 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950. In addition to the authority given to the secretary of the Department of Revenue, said secretary shall have any additional authority conferred by this Chapter, and shall specifically have the authority to audit and investigate all books and records of taxpayers under this Chapter and any reports and records of the Department of Environmental Quality and to impose interest and penalties as provided in that Chapter.

Acts 1984, 1st Ex. Sess., No. 8, §1, eff. March 27, 1984; Acts 1997, No. 658, §2.

§2253. Delinquency penalty

Failure to pay the tax due to the secretary of the Department of Revenue on January 1, 1985, shall result in the imposition of a penalty of twenty-five percent of the tax due hereunder in addition to interest as provided by Chapter 18 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950.

Acts 1984, 1st Ex. Sess., No. 8, §1, eff. March 27, 1984; Acts 1997, No. 658, §2.

CHAPTER 12. LIABILITY FOR HAZARDOUS SUBSTANCE REMEDIAL ACTION

PART I. GENERAL PROVISIONS

§2271. Findings and purpose

A. The legislature hereby finds and declares the following:

(1) Hazardous chemicals and substances have been disposed of in Louisiana for many years in a manner that, although possibly legal at the time, was careless and inappropriate and created conditions which are extremely dangerous and may cause long-term health and environmental problems for the people of this state.

(2) Hazardous substances are produced and transported on a regular basis around this state and there have been numerous recent discharges resulting from accidents which have caused extensive damage to the citizens of the state and have caused the state to expend large sums to respond to these incidents.

(3) Those persons generating these substances knew or were in a position to know of the hazardous and dangerous nature of the substances which they were producing and knew or should have known that improper disposal could have long-term health risks and could cause irreversible environmental damage.

(4) The state cannot and should not bear the costs associated with a private profit making venture.

B. The purpose of this Chapter is to encourage prompt notification to the department of any hazardous substance discharge or disposal, to identify locations at which a discharge or disposal of a hazardous substance may have occurred at any time in the past, to provide a mechanism to the department to insure that the costs of remedial actions are borne by those who contributed to the discharge or disposal, and to allow the department to respond as quickly as possible to hazardous substance discharges while retaining the right to institute legal actions against those responsible for remedial costs.

Acts 1984, No. 791, §1; Acts 1995, No. 1092, §2, eff. July 1, 1996.

§2272. Definitions

As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) "Bona fide prospective purchaser" shall have the meaning ascribed to such term in 42 U.S.C. 9601(40).

(2)(a) "Contractual relationship" includes but is not limited to land contracts, deeds, easements, leases, or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in Item (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

(i) At the time the defendant acquired the facility, the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The defendant acquired the facility by inheritance or bequest.

(iv) In addition to establishing one or more of the circumstances described in Item (i), (ii), or (iii) of this Subparagraph, the defendant must establish that the defendant has satisfied the requirements of R.S. 30:2277(3)(a) and (b), provides full cooperation, assistance, and facility access to the persons that are authorized to conduct response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility, is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action.

(b) To establish that the defendant had no reason to know of the matter described in Item (a)(i) of this Paragraph, the defendant must demonstrate to a court that on or before the date on which the defendant acquired the facility, the defendant carried out all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and the defendant took reasonable steps to stop any continuing release; prevent any threatened future release; and prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance. For purposes of satisfying the requirement to carry out all appropriate inquiries, the standards, practices, criteria, and site inspection and title search responsibilities otherwise applicable to a defendant under 42 U.S.C. 9601(35)(B) shall apply.

(c) Nothing in this Paragraph shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Chapter. Notwithstanding the provision of this Paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the

property to another person without disclosing such knowledge, such defendant shall be treated as liable under this Chapter, and no defense under R.S. 30:2277 shall be available to such defendant.

(d) Nothing in this Paragraph shall affect the liability under this Chapter of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

(3) "Discharge" means discharge as defined in R.S. 30:2004.

(4) "Disposal" means disposal as defined in R.S. 30:2173.

(5) "Facility" means facility as defined in R.S. 30:2004.

(6)(a) "Hazardous substance" means any gaseous, liquid, or solid material which because of its quantity, concentration, or physical, chemical, or biological composition when released into the environment poses a substantial present or potential hazard to human health, the environment, or property, and which material is identified or designated as being hazardous by rules and regulations adopted and promulgated by the secretaries of the Department of Environmental Quality or of the Department of Public Safety and Corrections, regardless of whether it is intended for use, reuse, or is to be discarded.

(b) The secretary, in finding that a material is hazardous, shall consider the following factors with respect to each material:

(i) Actual or relative potential for harm to human health, the environment, or property.

(ii) Scientific evidence of its potential for harm based upon quantity, concentration, or chemical or biological composition.

(iii) State of current scientific knowledge regarding the material.

(iv) Its history and current pattern of harm.

(v) Actual or potential volatility when combined with other common substances likely to be encountered when disposed of, stored, or transported.

(vi) Actual or relative potential for harm to human health if allowed to escape its containment.

(c) The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under this Subsection, and the term does not include natural gas, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(7) "Hazardous waste" means hazardous waste as defined in R.S. 30:2173.

(8) "Nonparticipating party" means a person who refuses to comply with the demand of the secretary, or fails to respond to the demand, or against whom a suit has been filed by the secretary.

(9) "Owner or operator" means any person owning or operating a facility.

(10) "Participating party" means a person who undertakes remedial action after receiving a demand from the secretary in compliance with the demand and as approved by the secretary.

(11) "Pollution source" means pollution source as defined in R.S. 30:2004 and R.S. 30:2173.

(12)(a) "Remedial cost" means after the discharge or disposal of a hazardous substance the cost of:

(i) Removing, confining, or storing any hazardous substance; constructing barriers, securing the site, encapsulating in clay or other impermeable material;

(ii) Cleaning up a contamination, recycling, or reuse of a hazardous substance;

(iii) Diversion, destruction, or segregation of reactive or other wastes;

(iv) Dredging or excavating a site;

(v) Repairing or replacing leaking containers;

(vi) Collection of leachate and runoff;

(vii) Onsite treatment or incineration of a substance;

(viii) Provision of alternative water supplies;

(ix) Monitoring, testing, or analyzing;

(x) Employing legal, engineering, chemical, biological, architectural, or other professional consultants or personnel;

(xi) Investigation, initiation, or prosecution of lawsuits to final judgment;

(xii) Transporting and disposing of waste from the site; or

(xiii) Any other action the secretary deems necessary to restore the site or remove the hazardous substance.

(b) Remedial costs as used herein shall include only such costs as are reasonable after consideration of the cost effectiveness of such action, the extent of remediation, and alternative methods of treatment or disposal.

Acts 1984, No. 791, §1; Acts 1988, No. 624, §1; Acts 2003, No. 1127, §1, eff. July 2, 2003.

§2272.1. Minimum remediation standards

A.(1) The Department of Environmental Quality shall adopt minimum remediation standards for soil, groundwater, and surface water quality necessary for the remediation of contamination of immovable property. The standards shall be developed with input at all major points from an advisory group or task force appointed by the governor, balanced for thoroughness and fairness, composed of representatives of industry, business, state and local agencies with related jurisdiction, universities, environmental organizations, and other citizens. The remediation standards shall be developed to ensure that the potential for harm to public health and safety and to the environment is minimized to acceptable levels, taking into consideration the location, the surroundings, the intended use of the property, the potential exposure to the discharge, and the surrounding ambient conditions, whether naturally occurring or man-made. The standards shall be adopted as a rule in accordance with the Administrative Procedure Act.

(2) Until the minimum remediation standards for the protection of public health and safety as described herein are adopted, the department shall not approve any voluntary remedial action plan under Part II of this Chapter.

B. In developing minimum remediation standards the department shall:

(1) Base the standards on generally accepted and peer reviewed scientific evidence or methodologies to the extent practical.

(2) Base the standards upon reasonable assumptions of exposure scenarios as to amounts of contaminants to which humans or other receptors will be exposed, when and where those exposures will occur, and the amount of that exposure.

(3) Avoid the use of redundant conservative assumptions. The department shall avoid to the maximum extent reasonable the use of redundant conservative assumptions by the use of parameters that provide an adequate margin of safety and which avoid the use of unrealistic conservative exposure parameters and which guidelines make use of the guidance and regulations for exposure assessment developed by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", 42 U.S.C. 9601 et seq. and other statutory authorities as applicable.

(4) Where feasible, establish the remediation standards as numeric or narrative standards setting forth acceptable levels or concentrations for particular contaminants.

Acts 1995, No. 1092, §1, eff. July 1, 1996.

§2273. Persons who must comply with requirements of this Chapter

The following persons or entities must comply with and are subject to the provisions of this Chapter:

(1) The owner, operator, or lessee of any pollution source or facility.

(2) Any person who has directly transported or directly contracted for the transportation of a hazardous substance or hazardous waste to a pollution source or facility.

(3) Any person who generated a hazardous waste which was eventually transported, stored, disposed of or discharged at a pollution source or facility.

(4) Any other person who disposed of or discharged a hazardous substance at a pollution source or facility.

Acts 1984, No. 791, §1; Acts 1990, No. 681, §1, eff. July 20, 1990; Acts 1991, No. 773, §1.

§2274. Notification and demand of secretary

A. After the secretary has determined that a discharge or disposal has occurred which may present an imminent and substantial endangerment to health or the environment, he shall attempt to notify each person known to have disposed of, transported to, or allowed the discharge or disposal at a pollution source or facility that they are to provide him with all information on hazardous substances disposed of or discharged at the site including:

(1) The types of substances and their chemical name or makeup if known.

(2) The volumes of such substances disposed of or discharged.

(3) The locations of disposal or discharge of any known pollution source or facility.

(4) Dates of disposal and amounts on each date.

(5) Person providing transportation of hazardous substances.

(6) Name of owner or operator at the site at the time of disposal or discharge.

B. Any person who willfully fails to provide the information to the secretary as required by this Section shall be liable for a penalty of up to twenty-five thousand dollars for each day that the required information is not received after the date on which it is due and shall not be allowed to avail himself of the defenses provided in R.S. 30:2277.

C. The secretary shall promulgate rules and regulations no later than January 1, 1989, for requiring from all persons who have or may have generated, transported, disposed of or discharged, or contracted for the transportation, disposal, or discharge of a hazardous substance which was discharged or disposed of at any pollution source or facility the types of information in accordance with Subsection A of this Section and any other such information as the secretary deems necessary. The secretary is authorized to do a general survey of all generators of hazardous waste in the state with regard to their past or present methods of disposal of hazardous wastes in accordance with Subsection A of this Section.

D. Notwithstanding the provisions of Subsection A of this Section, if the secretary, pursuant to his investigation, determines that it is not feasible for him to notify every potentially responsible person at the site of a pollution source or facility, he may limit his notice to those persons he deems most responsible based on the volume of hazardous substances disposed of or discharged, the toxicity of substances disposed of or discharged, failure to exercise due diligence in the handling, maintenance, or disposal at the site, knowledge of the risk associated with the discharge or disposal at the site, and other such criteria as the secretary may deem necessary.

Acts 1984, No. 791, §1; Acts 1988, No. 624, §1; Acts 1988, No. 965, §1, eff. July 27, 1988.

§2275. Demand by secretary; remedial action

A. When the secretary determines that a discharge or disposal of a hazardous substance has occurred or is about to occur which may present an imminent and substantial endangerment to health or the environment, he shall make a written demand on every owner, generator, transporter, disposer, operator, or other responsible person who has participated in the disposal or discharge of a hazardous substance at the site to undertake remedial actions at the site in accordance with a plan approved by the secretary or pay to the secretary the cost of the remedial action to be taken by the secretary.

B. The order for remedial action shall prescribe a reasonable time for reply. If, after the time limit provided in the written demand, the secretary has received no reply or has received a refusal to comply with the demand, he shall institute a suit in the district court of proper venue demanding that the defendants bear the remedial costs at the site or asking the court to issue an order that the site be closed or any other order necessary to abate, contain, or remove the hazard.

C. If a person fails to respond to a demand to undertake remedial action, the secretary may take all actions authorized by this Subtitle prior to filing suit for recovery.

D. Notwithstanding the provisions of Subsection A of this Section, if the secretary, pursuant to his investigation, determines that it is not feasible for him to make demand on every potentially responsible person at the site of a pollution source or facility, he may limit his demand to those persons he deems most responsible based on the volume of hazardous substances disposed of or discharged, the toxicity of substances disposed of or discharged, failure to exercise due diligence in the handling, maintenance, or disposal at the site, knowledge of the risk associated with the discharge or disposal at the site, and other such criteria as the secretary may deem necessary.

E. Notwithstanding any other provision of law in this Subtitle, in any order pursuant to this Section requiring an owner, operator, or responsible person to test, monitor, and analyze to ascertain the nature and extent of any pollution source or requiring any owner, operator, or responsible person to contain, abate, or clean up the site, the secretary may waive any permits which might otherwise be required under this Subtitle. No such waiver shall be deemed to authorize any discharge or emission which would endanger the environment or public health.

Acts 1984, No. 791, §1; Acts 1986, No. 306, §1, eff. June 30, 1986; Acts 1988, No. 253, §1, eff. July 6, 1988; Acts 1988, No. 624, §1.

§2276. Finding of liability by the court

A. The court shall find the defendant liable to the state for the costs of remedial action taken because of an actual or potential discharge or disposal which may present an imminent and substantial endangerment to health or the environment at a pollution source or facility, if the court finds that the defendant performed any of the following:

(1) Was a generator who generated a hazardous substance which was disposed of or discharged at the pollution source or facility.

(2) Was a transporter who transported a hazardous substance which was disposed of or discharged at the pollution source or facility.

(3) Was a disposer who disposed of or discharged a hazardous substance or hazardous waste at the pollution source or facility.

(4) Contracted with a person for transportation or disposal at the pollution source or facility.

(5) Is or was the owner or operator of the pollution source or facility subsequent to the disposal of hazardous waste.

B. The court does not have to find that the defendant was negligent, knew that the hazardous substance was being improperly disposed of, or that the activity was illegal at the time of disposal.

C. The defendant shall be responsible for his proportionate contribution to the remedial costs as defined in this Chapter.

D. The liability of the defendants shall be limited to those costs which can be calculated by the court upon presentation of evidence.

E. After an administrative determination of the cleanup cost, legal interest shall run on such amount. In addition thereto the court shall hold a nonparticipating party liable for a penalty of three times that party's share of the remedial cost if the court determines that the failure of the nonparticipating party to respond to the administrative determination or court proceeding was without sufficient cause. Nothing in this Section shall be construed to relieve the imposition of solidary liability otherwise provided for in this Chapter. The court may order any penalties provided by this Subtitle or as provided in this Chapter.

F. All persons who have generated a hazardous substance disposed of at the site, transported a hazardous substance to the pollution source or facility, contracted to have a hazardous substance transported to the pollution source or facility, or disposed of a hazardous substance at the pollution source or facility shall be presumed to be liable in solido by the court for the cleanup of the site unless a party shows by a preponderance of the evidence that the costs of remediation should be apportioned and there is a reasonable basis for determining the amount of the contribution of each party to the discharge or disposal, however, any party shall have the right to establish his proportionate contribution to the site and his liability shall be limited to his degree of contribution.

G.(1) In furtherance of the purpose of R.S. 30:2275, those participating parties who, after an initial demand is made by the secretary under R.S. 30:2275, agree to clean up the pollution source or facility may, without the institution of a suit by the secretary under R.S. 30:2275, sue and recover from any other nonparticipating party who shall be liable for twice their portion of the remedial costs. The plan for remedial action of the pollution source or facility shall be subject to approval by the secretary upon request by the participating parties. The secretary shall act as expeditiously as possible in approving the plan proposed by the participating parties. Prior to any suit by a participating party for recovery of their portion of the remedial costs, the participating party shall make a written demand on any nonparticipating party they intend to sue requesting payment of that portion the nonparticipating party would be liable for if he participated.

(2) In the event the United States Environmental Protection Agency is the lead governmental agency with regard to a remedial action at a pollution source or facility containing a hazardous substance as defined by R.S. 30:2272(4), and an initial demand for remediation is made to a party, then if said party agrees to clean up the pollution source or facility he may, without the institution of a suit by the secretary or the United States Environmental Protection Agency, sue and recover from any other responsible party who has received a demand but refused to participate, which responsible party shall be liable for twice their portion of the remedial costs. Prior to any suit by a party who has agreed to participate in the remedial action for recovery of their portion of the remedial costs, said party shall make a written demand on any responsible party, who has refused to participate, that they intend to sue requesting payment of that portion of the remedial costs that the party would be liable for if he had participated.

(3) In furtherance of the purpose of this Chapter, a person who has incurred remedial costs in responding to a discharge or disposal of a substance covered by this Chapter, without the need for an initial demand by the secretary, may sue and recover such remedial costs as defined in R.S. 30:2272(9) from any person found by a court to have performed any of the activities listed in Subsection A if the plan for remedial action was approved by the secretary in advance or, if an emergency, the secretary was notified without unreasonable delay and the secretary accepts the plan thereafter. An action by a person other than the secretary shall not be barred by the failure of the secretary to demand participation in the remediation. Such action shall be barred if the plaintiff does not make written demand on the defendant by certified mail, return receipt requested, at least sixty days prior to initiation of suit based on the cause of action provided in this Subsection.

H.(1) No action shall be commenced under this Chapter unless it is commenced within ten years from the date of the discovery of the disposal or discharge for which remedial action must be undertaken or three

years from the date the secretary issues an order requiring remedial action to be undertaken, whichever comes later.

(2) Notwithstanding any other provision of the law to the contrary, however, any action arising under this Chapter which is not prescribed on September 1, 1991, may be commenced within ten years from September 1, 1991.

I. Nothing in this Chapter shall bar a cause of action that an owner or operator or any other person subject to liability under this Section or a guarantor has or would have by reason of indemnification, subrogation, or otherwise against any person.

Acts 1984, No. 791, §1; Acts 1986, No. 306, §1, eff. June 30, 1986; Acts 1988, No. 624, §1; Acts 1990, No. 1020, §1; Acts 1991, No. 249, §1, eff. Sept. 1, 1991; Acts 1993, No. 986, §1, eff. June 25, 1993.

§2277. Defenses

Any of the following shall be a defense to an action prosecuted by the state under the provisions of this Chapter:

(1) The discharge or disposal was caused by an act of God.

(2) The discharge or disposal was caused by an act of war.

(3) The discharge or disposal was caused by an act or omission of a third person other than an employee or agent of the defendant or one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant, except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail, and if the defendant establishes that he:

(a) Exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such substance, in light of all relevant facts and circumstances.

(b) Took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions.

(4) The owner or operator of the pollution source or facility acquired ownership or control of such property through a dation en paiement or through a foreclosure proceeding of a security interest held by the person on that property or holds legal title to or otherwise manages any such property for purposes of administering an estate or trust of which such property is a part, except where such owner or operator:

(a) Has caused a discharge or disposed of a hazardous substance covered by this Chapter; or

(b) Knows at the time the security interest is perfected that the property contains a hazardous substance covered by this Chapter.

(5) The potential liability for a release or threatened release is based solely on a bona fide prospective purchaser's being considered to be an owner or operator of a facility, as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration. However, the relevant property may be otherwise subject to a lien pursuant to R.S. 30:2281 or 2225(F).

Acts 1984, No. 791, §1; Acts 1991, No. 773, §1; Acts 2003, No. 1127, §1, eff. July 2, 2003.

§2278. Indemnification agreements

No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any facility or from any person who may be liable for a discharge or disposal to any other person the liability imposed under this Chapter. Nothing in this Chapter shall bar any agreement to insure a party to such agreement for any liability under this Section.

Acts 1984, No. 791, §1.

§2279. Other laws

The provisions of this Chapter shall apply to all persons defined herein regardless of whether or not that person is liable for payment of any taxes, cleanup costs, or other costs under any federal statute or enactment which purports to require a party to clean up a hazardous waste site including the Comprehensive Environmental Response, Compensation, and Liability Act.

Acts 1984, No. 791, §1.

§2280. Rules and regulations

The secretary shall implement the provisions of this Chapter through appropriate rules and regulations including a general requirement providing an opportunity for a public meeting and if requested a public comment period of no more than sixty days duration prior to the approval of a plan for remedial investigation and selection of a remedy, and a requirement as to the records which must be kept and disclosed to the

department and the intervals and times at which additional notifications regarding continuous or regular disposal must be made.

Acts 1984, No. 791, §1; Acts 1991, No. 224, §1; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2281. Privilege; cost of remediation

Consistent with the findings of R.S. 30:2271, the legislature hereby finds that it is in the best interest of this state and a part of the exercise of its police powers that this state have a lien or privilege against immovable property for the recovery of remedial cost incurred in discharging its responsibility pursuant to this Chapter. Following the expenditure of funds by the state of Louisiana through the department, such lien or privilege may be perfected against such property by filing a notice of lien containing the name of the current record owner and the legal description of the immovable property in the mortgage records of the parish in which the immovable property is located. Except as provided below, the lien of the state of Louisiana through the Department of Environmental Quality shall have priority in rank over all other privileges, liens, encumbrances, or other security interests affecting the property. As to all privileges, liens, encumbrances, or other security interests affecting the property that are filed or otherwise perfected before the filing of the notice of lien of the state authorized by this Section, such prior recorded security interests shall have priority over the state lien but only to the extent of the fair market value that the property had prior to remedial action by the state, and prior recorded security interests shall be subordinate to the state lien for any amount in excess of such pre-remediation fair market value.

Acts 1990, No. 681, §1, eff. July 20, 1990; Acts 1991, No. 773, §1; Acts 2001, No. 1047, §1.

{{NOTE: SEE ACTS 1990, NO. 681, §2.}}

§2282. Capitol lakes

A. The legislature recognizes that the lakes, which may be* located in the state capital city adjacent to the capitol building and the governor's mansion, are classified as an inactive and abandoned hazardous waste site by the Department of Environmental Quality. The legislature finds and declares that it is inappropriate for such a waste site to be located at the center of state government and that it is desirable to have the lakes cleaned up and made into an attractive area where families can engage in recreational activities. Further, the legislature finds that allowing the sediments in the lakes to remain contaminated with hazardous waste will make it prohibitive to perform any works in the lakes such as dredging for drainage purposes and adding enhancements such as fishing piers. The legislature declares that the cleanup and removal of the contaminants in the sediments in the lakes is a priority of the state and that the Department of Environmental Quality should move expeditiously to require the cleanup to commence immediately.

B. Any remediation agreement, order, or judgment by any authority to clean up or remediate any lakes that are classified as hazardous waste sites and are located in the state capital city adjacent to the governor's mansion or the grounds of the state capitol building, hereinafter referred to as "the lakes", shall provide for the cleanup or remediation of the hazardous substances in the sediments of the lakes to the extent that human health and the environment is protected, taking into consideration all reasonably anticipated future uses of the lakes, including but not limited to dredging and recreational use.

C. Not later than January 1, 1998, the department shall complete phase 1 remedial investigation to characterize the water and sediment depths and aquatic species and identify and delineate the contaminate concentrations in the sediment and the selected biota. The department shall negotiate with any and all parties that are responsible pursuant to this Subtitle to conduct further remedial action as appropriate or to pay the costs of any remedial action to be taken by the department. Should the department not enter into an agreement with any responsible party to conduct further remedial action, if required, it shall institute such legal proceedings authorized pursuant to this Subtitle by June 1, 1999, to require the responsible parties to bear the remedial costs incurred or to be incurred by the department. Nothing herein shall be construed to limit or restrict any remedy or cause of action the department may have against any person.

D. Each month the department shall deliver a status report of the activities of the department regarding actions related to the remediation of the lakes to the office of the governor, the House and Senate environment committees, the speaker of the House, the president of the Senate, and to the senator and representative in whose district the lakes lie.

Acts 1997, No. 1337, §1, eff. July 15, 1997.

*As appears in enrolled bill.

§2283. Reporting requirements

A. Whenever any owner, operator, or responsible person of any site obtains information that indicates hazardous waste, hazardous waste constituents, or hazardous substances as defined in R.S. 30:2272 are leaching, spilling, discharging, or otherwise moving in, into, within, or on any land, subsurface strata, water, or

air, such person shall report this information to the department in accordance with regulations to be adopted. This reporting requirement shall apply to leaching, spilling, discharging, or moving of hazardous waste or hazardous waste constituents occurring hereafter although the hazardous waste or hazardous waste constituents were heretofore present at the site, and shall also apply to hazardous substances.

B. When any incident giving rise to an obligation to report to the department has previously been reported pursuant to other provisions of law, there is no duty by any additional persons to report such incident pursuant to this Section.

Acts 1999, No. 383, §1, eff. June 16, 1999.

PART II. VOLUNTARY INVESTIGATION AND REMEDIAL ACTION

§2285. Findings and purpose

A. The legislature hereby finds that there are numerous former commercial and industrial sites that are contaminated with hazardous pollutants and that these sites are idle and unproductive because they have not been remediated. It is found that the owners of land with hazardous waste sites are reluctant to initiate or be involved in the remediation of these sites because of their potential present and future liability. Further, it is found that many such sites would be remediated and returned to productive use if those landowners who voluntarily clean up such sites were granted certain limitations on their liability as a result of such remediation activities.

B. It is the purpose of this Part to implement the policy of Article IX, Section 1 of the Constitution of Louisiana to protect, conserve, and replenish the environment by affording limitations of liability for the voluntary cleanup of contaminated sites.

Acts 1995, No. 1092, §1, eff. July 1, 1996.

§2285.1. Voluntary remedial actions; liability exemption

A.(1) Subject to the provisions of this Part, any person who is not otherwise a responsible person under Part I of this Chapter shall not be liable under Part I for the discharge or disposal or threatened discharge or disposal of the hazardous substance or waste if the person undertakes and completes a remedial action to remove or remedy discharges or disposals and threatened discharges or disposals of hazardous substances and wastes at an identified area of immovable property in accordance with a voluntary remedial action plan approved in advance by the secretary following public notice and the opportunity for a public hearing in the affected community to inform the residents about the plan. The public notice shall appear in the local newspaper of general circulation in the parish where the property is located. The notice shall be at least four by six inches in size.

(2) In addition, persons owning immovable property contiguous to the property subject to the voluntary remedial action plan shall receive notice of the plan prior to approval by the secretary, by means of certified mail to the person or persons listed as the owner on the assessor's rolls for the parish in which the property is located and as of the date that the remediation plan is submitted.

B. The exemption from liability provided under this Section also applies to discharges or disposals or threatened discharges or disposals of hazardous substances and hazardous wastes at the identified property that are not required to be removed or remedied by the approved voluntary remedial action plan if the requirements of R.S. 30:2286 are met.

C. No provision of this Part shall exempt any person who undertakes or completes a voluntary remedial action plan from any liability which he would otherwise have under any federal rule or regulation.

D. Nothing in this Part shall affect the liability of any person with respect to damage caused to third parties.

Acts 1995, No. 1092, §1, eff. July 1, 1996; Acts 1999, No. 352, §1, eff. June 16, 1999.

§2285.2. Responsible landowner

A "responsible person" or "responsible landowner" is a person who is responsible under the provisions of this Chapter for the discharge or disposal or the threatened discharge or disposal of a hazardous substance or hazardous waste on or in immovable property. However, an owner of immovable property or a person who has an interest therein is not a responsible person for the purposes of this Part only, unless that person:

(1) Was engaged in the business of generating, transporting, storing, treating, or disposing of a hazardous substance or hazardous waste on or in the property, or knowingly permitted others to engage in such a business on the property;

(2) Knowingly permitted any person to make regular use of the property for disposal of waste;

(3) Knowingly permitted any person to use the property for disposal of a hazardous substance;

(4) Knew or reasonably should have known that a hazardous substance was located in or on the property at the time right, title, or interest in the property was first acquired by the person and engaged in conduct associating that person with the discharge or disposal; or

(5) Took action which significantly contributed to the discharge or disposal after that person knew or reasonably should have known that a hazardous substance was located in or on the property.

Acts 1995, No. 1092, §1, eff. July 1, 1996.

§2286. Partial remedial action plans

A. The secretary may approve a voluntary remedial action plan submitted under this Part that does not require removal or remedy of all discharges or disposals and threatened discharges or disposals of hazardous substances and hazardous wastes at an identified area of immovable property if the secretary determines that all of the following criteria have been met:

(1) If reuse or development of the property is proposed, the voluntary remedial action plan provides for all remedial actions necessary to allow for the proposed reuse or development of the immovable property in a manner that does not pose a significant threat to public health, safety, and welfare and the environment.

(2) The remedial actions and the activities associated with any reuse or development proposed for the property will not aggravate or contribute to discharges or disposals or threatened discharges or disposals that are not required to be removed or remedied under the voluntary remedial action plan, and will not interfere with or substantially increase the cost of future remedial actions to address the remaining discharges or disposals or threatened discharges or disposals.

(3) The owner of the property agrees to cooperate with the secretary or other persons acting at the direction of the secretary in taking remedial actions necessary to investigate or address remaining discharges or disposals or threatened discharges or disposals, and to avoid any action that interferes with the remedial actions.

B. Under Paragraph A(3) of this Section, an owner shall be required to agree to any or all of the following terms necessary to carry out remedial actions to address remaining discharges or disposals or threatened discharges or disposals:

(1) To provide access to the property to the secretary and the secretary's authorized representatives.

(2) To allow the secretary, or persons acting at the direction of the secretary, to undertake activities at the property including placement of borings, wells, equipment, and structures on the property.

(3) To grant rights-of-way, servitudes, or other interests in the property to the agency for any of the purposes provided in Paragraph (1) or (2) of this Subsection.

C. An agreement under Paragraph A(3) of this Section shall be binding upon the successors and assigns of the owner. The owner shall record the agreement, or a memorandum approved by the secretary that summarizes the agreement, with the clerk of court of the parish where the property is located.

D.(1) The owners of land subject to a partial remediation pursuant to this Section shall impose use restrictions on the future use of the property as may be determined by the secretary to be necessary to prevent a significant threat to public health, safety, and welfare and to the environment. No land may be partially remediated under this Section unless such restrictions are imposed and recorded as provided herein.

(2) The secretary shall determine the use restrictions required by this Subsection and may conduct public hearings for the purpose of determining the reasonableness and appropriateness of such restrictions in the parish where the land is located. The use restrictions or a notice thereof shall be recorded with the clerk of court in the official records of each parish in which the land is located. The use restrictions may not be modified or cancelled or removed from the official records unless so authorized by the secretary.

(3) The secretary shall not authorize such modification, cancellation, or removal unless the land is further remediated to remove or remedy the remaining discharges or disposals and the remaining threatened discharges or disposals of hazardous substances and wastes in accordance with the requirements of the secretary. In order to determine whether to authorize such modification, cancellation, or removal, the secretary shall conduct at least one public hearing in the parish in which the property is located at least thirty and not more than sixty days prior to making the determination.

Acts 1995, No. 1092, §1, eff. July 1, 1996.

§2286.1. Submission and approval of voluntary remedial action plans

A. Remedial Investigation Work Plan

(1) A person shall submit a plan for voluntary remedial investigation. The voluntary remedial investigation plan shall include a work plan that shall conform to the site investigation requirements of the department's Risk Evaluation/Corrective Action Program (RECAP) established pursuant to R.S. 30:2272.1,

and such other requirements as established by rule. Any site investigation must be performed pursuant to a work plan reviewed and approved by the department.

(2) Within ninety days of receipt of the remedial investigation work plan, the department shall review the plan and either approve such plan or provide written notices of deficiencies in the investigation work plan.

(3) The secretary may waive the requirements for a separate remedial investigation work plan if the applicant incorporates a satisfactory investigative report with the voluntary remedial action plan submitted pursuant to department regulations.

B. In order to receive immunity from liability pursuant to R.S. 30:2285.1, after approval of the voluntary investigation report by the department, unless waived by the secretary pursuant to Paragraph (3) of Subsection A of this Section, an applicant shall submit a voluntary remedial action plan for approval by the secretary. The voluntary remedial action plan shall include an investigative report that describes the methods and results of the investigation of the discharges or disposals and threatened discharges or disposals at the identified area of immovable property. The secretary shall not approve the voluntary remedial action plan unless the secretary determines in writing that the nature and extent of the discharges or disposals and threatened discharges or disposals at the identified area of immovable property have been adequately identified and evaluated in the investigative report.

C. Remedial actions required in a voluntary remedial action plan under this Part shall meet the same standards for protection of public health, safety, and welfare and the environment that apply to remedial actions taken pursuant to Part I of this Chapter.

D. When the secretary approves a voluntary remedial action plan, the secretary may include in the approval an acknowledgment that, upon certification of completion of the remedial actions, the person submitting the plan will receive the exemption from liability provided under this Part.

Acts 1995, No. 1092, §1, eff. July 1, 1996; Acts 2006, No. 645, §1.

§2287. Performance liability

Persons specified in R.S. 30:2288 or R.S. 30:2288.1(C) shall not be liable for aggravating or contributing to any discharge or disposal or threatened discharge or disposal identified in an approved voluntary remedial action plan for the purpose of R.S. 30:2289(1) as a result of their performance of the remedial actions required in accordance with the plan and the direction of the secretary. Nothing in this Part relieves a person of any liability for failure to perform the work required by the voluntary remedial action plan in a workman-like manner and in accordance with generally accepted standards of performance and operation applicable to such remedial work.

Acts 1995, No. 1092, §1, eff. July 1, 1996.

§2287.1. Certification of completion

A. Remedial actions taken under an approved voluntary remedial action plan are not completed until the secretary certifies completion in writing.

B. Certification of completion of remedial actions taken under a voluntary remedial action plan that does not require removal or remedy of all discharges or disposals and threatened discharges or disposals is subject to compliance by the owner, and the owner's successors and assigns, with the terms of the agreement and the use restrictions established under R.S. 30:2286.

Acts 1995, No. 1092, §1, eff. July 1, 1996.

§2288. Persons exempt from liability

A. In addition to the person who undertakes and completes remedial actions, and subject to the provisions of R.S. 30:2289, the exemption from liability provided by this Part applies to the following persons when the secretary issues the certificate of completion of remedial actions:

(1) The owner of the identified property, if the owner is not responsible for any discharge or disposal or threatened discharge or disposal identified in the approved voluntary remedial action plan.

(2) A person who acquires or develops the identified property.

(3) A successor or assign of any person to whom the liability exemption applies.

B. Any person who provides financing for the implementation of a remedial action plan or for the development of the identified immovable property in accordance with the applicable use restrictions after completion and acceptance of said plan, shall not be liable for any damages, costs, or penalties under this Chapter unless such person is considered to be a responsible person under the provisions of Part I of this Chapter.

Acts 1995, No. 1092, §1, eff. July 1, 1996.

§2288.1. Voluntary remedial actions by responsible persons

A. Notwithstanding R.S. 30:2286.1(A), a responsible person who undertakes and completes an approved remedial action plan shall be exempt from liability under Part I of this Chapter if the remedial actions are undertaken and completed in accordance with this Section.

B. The remedial actions shall be undertaken and completed in accordance with a voluntary remedial action plan approved as provided in R.S. 30:2286.1. Notwithstanding R.S. 30:2286, a voluntary remedial action plan submitted by a responsible person shall require the remedy or removal of all discharges or disposals and threatened discharges or disposals at the identified area of immovable property. The identified area of immovable property must correspond to the boundaries of a parcel that is either separately platted or is the entire parcel.

C. Subject to the provisions of R.S. 30:2289, when the secretary issues a certificate of completion for remedial actions completed at an identified area of immovable property in accordance with this Section, the exemption from liability under this Part applies to:

(1) A person who acquires the identified immovable property after approval of the voluntary remedial action plan.

(2) A successor or assign of a person to whom the liability exemption applies under this Subsection.

D. Any person who provides financing for the implementation of a remedial action plan or for the development of the identified immovable property in accordance with the applicable use restrictions after completion and acceptance of said plan, shall not be liable for any damages, costs, or penalties under this Chapter unless such person is considered to be a responsible person under the provisions of Part I of this Chapter.

Acts 1995, No. 1092, §1, eff. July 1, 1996.

§2289. Persons not exempt from liability

The exemption from liability provided by this Part does not apply to:

(1) A person who aggravates or contributes to a discharge or disposal or threatened discharge or disposal that was not remedied under an approved voluntary remedial action plan.

(2) A person who was a responsible person under Part I of this Chapter for a discharge or disposal or threatened discharge or disposal identified in the approved voluntary remedial action plan before taking an action that would have made the person subject to the exemptions under R.S. 30:2288 or R.S. 30:2288.1.

(3) A person who obtains approval of a voluntary remedial action plan for purposes of this Part by fraud or misrepresentation, or by knowingly failing to disclose material information, or who knows that approval was so obtained before taking an action that would have made the person subject to the exemptions from liability under R.S. 30:2288 or R.S. 30:2288.1.

Acts 1995, No. 1092, §1, eff. July 1, 1996.

§2289.1. Requests for review, investigation, and oversight; fees

A. The secretary may, upon request, assist a person in determining whether immovable property has been the site of a discharge or disposal or a threatened discharge or disposal of a hazardous substance or hazardous waste. The secretary may also assist in, or supervise, the development and implementation of reasonable and necessary remedial actions. Assistance may include review of department records and files, and review and approval of a requestor's investigation plans and reports and remedial action plans and implementation.

B. The person requesting assistance under this Section shall pay the department for the department's cost, as determined by the secretary, of providing assistance. Money received by the department for assistance under this Section shall be deposited into the site cleanup fund and used solely to implement the provisions of this Part.

C. A person who investigates a discharge or disposal or a threatened discharge or disposal in accordance with an investigation plan approved by the secretary under this Section, does not become a responsible person for the purposes of R.S. 30:2285.2(4) by reason of undertaking or completing such investigation.

D. The department is hereby authorized to charge and collect a participation fee not to exceed six hundred sixty dollars per application for approval of an investigation plan, and a fee not to exceed six hundred sixty dollars per application for approval of a remedial action plan. The department shall promulgate rules and regulations to provide for reimbursement to the state of the actual direct costs associated with oversight of activities conducted pursuant to this Part, such as review, supervision, investigation, and monitoring. The

department may charge and collect only for reasonable and appropriate oversight of activities conducted pursuant to this Part. When the department holds a public hearing, the applicant shall be responsible for the actual costs of the public hearing, including but not limited to building rental, security, court reporter, and hearing officer.

Acts 1995, No. 1092, §1, eff. July 1, 1996; Acts 1999, No. 1296, §1, eff. July 12, 1999 ; Acts 2002, 1st Ex. Sess., No. 134, §1, eff. July 1, 2002 and §2, eff. July 1, 2003.

§2290. Other rights and authorities; rules

A. Nothing in this Part affects the authority of the department or the secretary to exercise any powers or duties under this Chapter or other law with respect to any discharge or disposal or threatened discharge or disposal, or affects the right of the department, the secretary, or any other person to seek any relief available under this Chapter against any party who is not subject to the liability exemption provided under this Part.

B. The secretary is authorized to adopt rules and regulations in accordance with the Administrative Procedure Act to implement the provisions of this Part. However, the secretary shall not be authorized to adopt any rules or regulations that may subject any person to any additional violations under this Chapter.

Acts 1995, No. 1092, §1, eff. July 1, 1996.

CHAPTER 13. LOUISIANA WASTE REDUCTION LAW

§2291. Citation

This Chapter shall be known and may be cited as the "Louisiana Waste Reduction Law".

Acts 1987, No. 657, §2.

§2292. Policy; purpose; primacy of waste reduction

A. The legislature finds and declares that the handling, storage, and disposal of hazardous and solid waste is posing an ever increasing economic burden and environmental risk to the citizens of this state; that the past efforts taken by the state and federal government to control pollution from waste after such waste has been generated have often resulted in wastes being transferred from one medium to another; that generation of certain amounts of waste can accumulate to environmentally unacceptable levels when postpollution controlled discharges from many generators enter the environment; that waste management and treatment activities are and can be beneficial, but that all waste treatment and recycling facilities pose some environmental risk and thus require effective regulation, and that the most certain means of preventing environmental risk is through waste reduction; that waste reduction may be used as a tool to improve industrial efficiency, growth, and international competitiveness; and that establishing a comprehensive, omnimedia approach to reducing wastes going into the air, land, and water is essential.

B. To insure that proper emphasis is given to waste reduction as a policy of this state and as a primary goal of the Department of Environmental Quality, the legislature does hereby direct the secretary of the Department of Environmental Quality to establish waste reduction as an issue of primacy for the department. The secretary shall assert and reflect the primacy of waste reduction in policies and determinations made pursuant to fulfilling his authority and duty under the Louisiana Environmental Quality Act.

Acts 1987, No. 657, §2.

§2293. Definitions

As used in this Chapter, the following terms shall have the meanings ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) "Omnimedia" refers to all manners in which and all sources from which a pollutant escapes into the environment, and for the purposes of this Chapter shall encompass any emission, effluent, or discharge which escapes into the air, water, or land, whether permitted or not.

(2) "Waste" means all nonproduct outputs from all environmental media, even though they may be within permitted or licensed limits.

(3) "Waste management" means any of the various methods or means of reducing waste which are applied after the waste is generated or is outside of the location where waste is generated.

(4) "Waste reduction" means in-plant practices that reduce, avoid, or eliminate the generation of hazardous or solid waste so as to reduce the risks to human health and the environment.

(a) When recycling is environmentally acceptable and is an integral part of the waste generating industrial process or operation, such as a closed-loop application which returns potential waste as it is generated for reuse within the process, it shall be considered waste reduction. Recycling is not considered

waste reduction if waste exits a process, exists as a separate identity, undergoes significant handling, or is transported from the waste generating location.

(b) Actions that reduce waste volume by concentrating the hazardous content of a waste or that reduce hazard level by diluting the hazardous content are not considered waste reduction.

(c) Actions that change the chemical composition and the concentrations of the components of the waste, but do not change the degree of hazard of the waste are not considered waste reduction.

Acts 1987, No. 657, §2.

§2294. Secretary of environmental quality; powers and duties

The secretary shall have the following powers and duties:

(1) To prepare and develop a general plan for the comprehensive, omnimedia, reduction of hazardous and nonhazardous waste generation in Louisiana.

(2) To develop disaggregated percent waste reduction data, derived from production-based waste generation data pursuant to R.S. 30:2295, that accurately measure and depict reduction of waste. The data herein developed shall be compiled and maintained within the department as a source library and bibliography.

(3) To redevelop the existing department fee schedule to encourage the reduction of waste generation in Louisiana.

(4) To provide technical assistance to generators of waste, to act as a clearinghouse for information concerning waste reduction, and to identify sources of outside assistance including other state programs, universities, and professional consultants.

(5) To consider, analyze, and determine the advisability and manner of granting regulatory and fee concessions that reward actual and significant waste reduction. Any concession granted pursuant to this Paragraph shall result in an overall net improvement in environmental protection.

(6) To adopt and promulgate rules and regulations consistent with applicable state and federal law and the general intent and purposes of this Chapter for the reduction of the amount of waste generation in Louisiana, or for any programs or activities authorized by this Chapter.

(7) To develop any necessary procedures and regulations conforming to applicable state and federal laws to amend existing permits, licenses, variances, or compliance schedules necessary for the proper administration and control of programs authorized under the provisions of this Chapter.

(8) To apply for and accept grants of money from the United States Environmental Protection Agency or other federal agencies for the purpose of obtaining funds for implementation, administration, and documentation of activities conducted under the authority of the Louisiana Waste Reduction Law, R.S. 30:2291 et seq.

(9) To make grants from the Alternative Technologies Research and Development Trust Fund to colleges and universities within Louisiana for generic research relative to waste reduction technologies, processes, or materials that can be transferred to and shared with other waste generators in the state.

Acts 1987, No. 657, §2.

§2295. Waste reduction history; planning report

A. Each year, every generator of waste in Louisiana subject to the laws under the Louisiana Environmental Quality Act or any rules or regulations promulgated pursuant thereto shall provide a report to the Department of Environmental Quality relative to the history and progress of such generator in waste reduction efforts.

B. Any report required herein shall use data sufficient in substance and form to convey an accurate analysis of any waste reduction heretofore accomplished or to be accomplished at some time in the future. The data shall be given on a production output basis as necessary to give the final waste reduction percentage based on waste generation and production data, not based solely on changes in the absolute amounts of waste generated.

C. Any data or information provided by generators for the purposes provided herein shall be subject to confidentiality as provided in R.S. 30:2030.

Acts 1987, No. 657, §2; Acts 1990, No. 588, §1.

CHAPTER 14. LOUISIANA RESOURCES RECOVERY AND DEVELOPMENT AUTHORITY

§2301. Repealed by Acts 2001, No. 524, §2.

§2302. Repealed by Acts 2001, No. 524, §2.
§2303. Repealed by Acts 2001, No. 524, §2.
§2304. Repealed by Acts 2001, No. 524, §2.
§2305. Repealed by Acts 2001, No. 524, §2.
§2306. Repealed by Acts 2001, No. 524, §2.
§2307. Repealed by Acts 2001, No. 524, §2.
§2308. Repealed by Acts 2001, No. 524, §2.
§2309. Repealed by Acts 2001, No. 524, §2.
§2310. Repealed by Acts 2001, No. 524, §2.
§2311. Repealed by Acts 2001, No. 524, §2.
§2312. Repealed by Acts 2001, No. 524, §2.
§2313. Repealed by Acts 2001, No. 524, §2.
§2314. Repealed by Acts 2001, No. 524, §2.
§2315. Repealed by Acts 2001, No. 524, §2.
§2316. Repealed by Acts 2001, No. 524, §2.
§2317. Repealed by Acts 2001, No. 524, §2.
§2318. Repealed by Acts 2001, No. 524, §2.
§2319. Repealed by Acts 2001, No. 524, §2.
§2320. Repealed by Acts 2001, No. 524, §2.
§2321. Repealed by Acts 2001, No. 524, §2.
§2322. Repealed by Acts 2001, No. 524, §2.
§2323. Repealed by Acts 2001, No. 524, §2.
§2324. Repealed by Acts 2001, No. 524, §2.
§2325. Repealed by Acts 2001, No. 524, §2.
§2326. Repealed by Acts 2001, No. 524, §2.
§2331. Repealed by Acts 1997, No. 1116, §2.
§2331.1. Repealed by Acts 1997, No. 1116, §2.
§2331.2. Repealed by Acts 1997, No. 1116, §2.
§2331.3. Repealed by Acts 1997, No. 1116, §2.
§2331.4. Repealed by Acts 1997, No. 1116, §2.
§2331.5. Repealed by Acts 1997, No. 1116, §2.
§2331.6. Repealed by Acts 1997, No. 1116, §2.
§2331.7. Repealed by Acts 1997, No. 1116, §2.
§2331.8. Repealed by Acts 1997, No. 1116, §2.
§2331.9. Repealed by Acts 1997, No. 1116, §2.
§2331.10. Repealed by Acts 1997, No. 1116, §2.
§2331.11. Repealed by Acts 1997, No. 1116, §2.
§2331.12. Repealed by Acts 1997, No. 1116, §2.
§2331.13. Repealed by Acts 1997, No. 1116, §2.
§2331.14. Repealed by Acts 1997, No. 1116, §2.
§2331.15. Repealed by Acts 1997, No. 1116, §2.
§2331.16. Repealed by Acts 1997, No. 1116, §2.
§2331.17. Repealed by Acts 1997, No. 1116, §2.

CHAPTER 15. LOUISIANA SCHOOL ASBESTOS ABATEMENT ACT

§2341. Short title

This Chapter shall be known and may be cited as the "Louisiana School Asbestos Abatement Act".

Acts 1985, No. 394, §1, eff. July 10, 1985.

§2342. Findings and declaration of policy

A. The legislature finds and declares that:

(1) Asbestos-containing materials were used in elementary and secondary schools within the state for fireproofing, soundproofing, thermal insulation, decorative, and other purposes.

(2) Asbestos and asbestiform materials are potentially hazardous to the public health.

(3) Asbestos-containing materials in a friable condition can cause building airborne exposures to far exceed background ambient levels and then pose a potential health hazard.

(4) In view of the fact that the state of Louisiana has compulsory attendance laws for children of school age and these children must be educated in a safe and healthy environment, the presence and condition of friable asbestos-containing materials is of concern to the legislature.

B. Therefore, the legislature enacts this Chapter to provide for the identification and abatement of those friable-containing materials in schools that may pose an unreasonable risk to students and school personnel.

Acts 1985, No. 394, §1, eff. July 10, 1985.

§2343. Definitions

As used in this Chapter:

(1) "Abatement" means maintenance and repair, encapsulation, enclosure, or removal of friable asbestos-containing materials in school buildings.

(2) "Asbestos" means the asbestiform varieties of: chyrsotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite.

(3) "Asbestos-containing material" means any material which contains more than one percent asbestos by weight.

(4) "Department" means the Department of Environmental Quality.

(5) "Encapsulation" means coating, binding, or resurfacing asbestos-containing materials with a sealant to prevent the release of asbestos fibers.

(6) "Friable material" means any material applied onto ceilings, walls, structural members, piping, ductwork, or any other part of a building structure which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure.

(7) "Enclosure" means the erection of airtight and impact-resistant barriers to prevent the release of asbestos fibers into the air circulating in a building.

(8) "Removal" means the removal or stripping of friable asbestos-containing materials in a building.

(9) "Repair" means patching or other work on asbestos-containing materials to eliminate damaged conditions that make fiber release more likely.

(10) "School" means any public or private day or residential school that provides elementary, secondary, college, or post graduate education as determined under state law, or any school of any agency of the United States.

(11) "School building" means:

(a) Structures used for instruction, including classrooms, laboratories, libraries, research facilities, and administrative facilities.

(b) School eating facilities and kitchens.

(c) Gymnasiums or other facilities used for athletic or recreational activities, or for courses in physical education.

(d) Dormitories or other living areas or residential schools.

(e) Maintenance, storage, or utility facilities essential to the operation of the facilities described in this Paragraph.

Acts 1985, No. 394, §1, eff. July 10, 1985.

§2344. Rules and regulations

A. The secretary shall promulgate all rules and regulations necessary for the implementation of the provisions of this Chapter no later than December 31, 1985. The secretary shall seek the input of local educational agencies in the development of the rules and regulations.

B. The department shall promulgate specific rules and regulations governing:

(1) Procedures and requirements for certification of contractors involved in asbestos abatement activities.

(2) Objective standards to determine levels of airborne asbestos fiber concentration in school buildings above which requirements for priority abatement will be triggered.

(3) Air monitoring requirements for asbestos concentrations due to friable asbestos-containing materials in schools.

(4) Any other activities authorized by this Chapter.

(5) With respect to local education agencies, any rules or regulations by the department regarding the training of maintenance and custodial staff who may work in a building that contains asbestos-containing building material shall not exceed or be more stringent than regulations promulgated by the United States Environmental Protection Agency.

C. In acting on rules and regulations, the department shall take into consideration the following:

(1) The department shall set exposure levels taking into account technologically and economically feasible monitoring methods and control procedures.

(2) The department shall base rules and regulations upon the best and most current scientific and medical data.

(3) Without endangering the public health, the department shall give due consideration to uniform rules and definitions of other states and of the United States.

D. Abatement activities shall be commenced as soon as rules and regulations concerning abatement are approved by the commission provided for by this Chapter, and finalized by the Department of Environmental Quality, in accordance with the Administrative Procedure Act.

Acts 1985, No. 394, §1, eff. July 10, 1985; Acts 1986, No. 1069, §1; Acts 1992, No. 608, §1.

§2345. Louisiana School Asbestos Abatement Commission

A. The Louisiana School Asbestos Abatement Commission is hereby created and shall consist of twelve members, one representative to be selected by each of the following:

(1) Attorney General.

(2) Department of Education.

(3) Division of Administration.

(4) Board of Regents.

(5) Louisiana School Boards Association.

(6) Safe Building Alliance.

(7) Louisiana Association of Educators.

(8) Louisiana AFL-CIO.

(9) Association of School Superintendents.

(10) Louisiana Catholic Conference.

(11) A parish school board selected by the Louisiana School Board Association.

(12) The secretary of the Department of Environmental Quality.

B. The commission shall recommend rules and regulations concerning asbestos abatement to the Department of Environmental Quality. The department shall promulgate school asbestos abatement rules and regulations in accordance with the Administrative Procedure Act.

C. The secretary of the Department of Environmental Quality shall call the commission into session within thirty days after the effective date of this Chapter. The commission shall elect its officers from among its membership.

D. If, by January 1, 1986, the commission has not recommended asbestos abatement rules and regulations, then the secretary shall promulgate such rules no later than March 1, 1986. The commission shall dissolve no later than January 1, 1986.

E. The building owner shall select the method of abatement to be used from those set forth in the definition of abatement contained in Section 2342 or from such other methods as may be approved by the regulations adopted pursuant hereto, provided that any method selected must be used in the manner that regulations adopted pursuant hereto may require.

F. No school, which has commenced abatement work at a particular site prior to the effective date of regulations or standards adopted or imposed hereunder, shall be required by this Chapter, or by regulations or standards adopted or imposed hereunder, to conduct a different type of abatement at the same site unless levels of airborne asbestos fibers at that site exceed an abatement action level established by the regulations adopted pursuant to this Chapter which are applicable to all school buildings.

Acts 1985, No. 394, §1, eff. July 10, 1985.

§2346. Prohibitions

No person shall violate any rule or regulation adopted under this Chapter.

Acts 1989, No. 750, §1.

CHAPTER 15-A. LEAD HAZARD REDUCTION, LICENSURE AND CERTIFICATION

PART I. GENERAL PROVISIONS

§2351. Findings and purpose

A. The legislature finds that lead poisoning is a significant health hazard to the citizens of the state. Lead poisoning particularly is a hazard to children, who typically are exposed to lead through environmental sources such as lead-based paint in housing and lead-contaminated dust and soil. It is the policy of the state to protect the health and welfare of its citizens through reduction of lead in the environment.

B. The legislature further finds that improper abatement of lead hazards within the state constitutes a serious threat to the public health and safety and to the environment.

C. The legislature further finds that the handling of lead-containing substances by inadequately trained employers, employees, and other persons subjects the citizens of the state to the risk of further release of lead into the environment.

D. The legislature therefore finds that the public health and safety, as well as the environmental concerns of the state, best will be protected when all employers and employees who handle lead-containing substances are thoroughly trained and knowledgeable with regard to safe methods of handling and disposing of such materials.

E. The legislature further finds that it is the policy of this state to encourage public awareness of the hazards associated with lead in the environment and to increase public awareness of state and federal regulations designed to correct hazardous conditions caused by lead.

F. The legislature further finds that the health and safety of the citizens of this state are promoted by encouraging citizens and employees engaged in lead-abatement activities to notify appropriate state authorities of any violations of laws, regulations, guidelines, or generally accepted procedures relating to safe handling of lead-containing substances.

G. The legislature therefore finds that it is the policy of this state to facilitate the confidential reporting to the government of hazards involving improper handling of lead-containing substances, and further to protect from reprisals those employees who report such hazards to state officials.

Acts 1993, No. 224, §1.

§2351.1. Definitions

As used in this Chapter, unless the context indicates otherwise, the following terms have the following meanings:

(1) "Abatement" means any set of measures as determined by the secretary designed to permanently eliminate lead hazards including:

(a) The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil.

(b) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(2) "Accredited training provider" means a person certified by the secretary pursuant to this Chapter to provide training in lead hazard reduction activities.

(3) "Business entity" means a partnership, firm, association, corporation, sole proprietorship, or other business concern.

(4) "Certificate" means:

(a) With regard to a person engaged in a lead hazard reduction activity, a document issued by the secretary, or under the authority of the secretary, affirming that the person successfully has completed the training and other requirements for lead hazard reduction activities.

(b) With regard to a training provider, a document issued by the secretary affirming that the training provider meets the standards for accreditation under this Chapter.

(5) "Certified" means, with regard to a person engaged in a lead hazard reduction activity, that the person successfully has completed the training and other requirements for engaging in lead hazard reduction activities established by the secretary.

(6) Repealed by Acts 1995, No. 1085, §2.

(7) "Department" means the Department of Environmental Quality.

(8) "Discriminatory action" means an action taken by an employer that adversely affects an employee with respect to any terms or conditions of employment or opportunity for promotion. The term includes but is not limited to dismissal, layoff, suspension, demotion, transfer of job or location, reduction in wages, change in hours of work, or reprimand.

(9) "Employee" means a person currently employed, laid off, terminated with reemployment rights, or on leave of absence who is permitted, required, or directed to engage in any employment by an employer in consideration of direct or indirect gain or profit.

(10) "Fund" means the "Lead Hazard Reduction Fund" created pursuant to this Chapter.

(11) "Inspection" means:

(a) A surface-by-surface investigation to determine the presence of lead hazards.

(b) The provision of a report explaining the results of the investigation.

(12) "Inspector" means a person certified pursuant to the provisions of this Chapter who conducts inspections.

(13) "Lead-contaminated waste" means any discarded material resulting from an abatement activity that fails the toxicity characteristic determined by the secretary due to the presence of lead or any material that is a mixture of discarded material resulting from an abatement activity and some other material.

(14) "Lead contractor" means any person employing workers engaged in lead hazard reduction activities and a self-employed individual who engages in lead hazard reduction activities.

(15) "Lead hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the secretary; and shall include lead-based paint as defined by the Residential Lead-Based Paint Hazard Reduction Act of 1992.

(16) "Lead hazard reduction activities" means the assessment of lead hazards, and the planning, implementation, and inspection of abatement activities, as determined by the secretary; and shall include lead-based paint activities as defined by the Residential Lead-Based Paint Hazard Reduction Act of 1992.

(17) "Lead hazard reduction planner" means a person certified pursuant to this Chapter who plans abatement activities.

(18) "Lead project supervisor" means a person employed by a lead contractor to supervise workers engaged in abatement activities.

(19) "License" means an authorization issued by the State Licensing Board for Contractors that allows a person to engage in certain lead hazard reduction activities.

(20) "Person" means any individual, business entity, governmental body, or other public or private entity including, to the extent not preempted by state or federal law or regulation, the federal government and its agencies.

(21) "Public entity" means the state, any of its political subdivisions, or any agency or instrumentality of either.

(22) "Secretary" means the secretary of the Department of Environmental Quality.

(23) "Worker" means a person who conducts lead hazard reduction activities pursuant to the provisions of this Chapter.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §§1, 2.

§2351.2. Requirement of licensure or certification

No person may perform any lead hazard reduction activities in the state, unless licensed pursuant to R.S. 30:2351.4 or certified pursuant to R.S. 30:2351.6.

Acts 1993, No. 224, §1.

§2351.3. Licensing and certification categories

A. The secretary shall develop criteria and procedures for licensing or certifying persons engaged in any lead hazard reduction activities covered by this Chapter.

B. Categories of certification shall include:

(1) Lead hazard reduction planner.

(2) Inspector.

(3) Lead project supervisor.

(4) Worker.

C. The secretary may determine additional categories or subcategories of certification as deemed appropriate.

D. Lead contractors shall be licensed pursuant to the provisions of R.S. 30:2351.4.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §1.

§2351.4. Standards for licensure

A. Licenses shall be issued by the State Licensing Board for Contractors to applicants meeting standards established by the department and by the board. The criteria established for licensure shall include at a minimum the requirements established by this Section.

B. To qualify for a license as a lead contractor, an applicant shall certify to the secretary that:

(1) Each employee or agent within its employ who will handle lead-contaminated waste or will be responsible for a lead hazard reduction activity:

(a) Is familiar with all applicable state and federal standards for lead hazard reduction activities.

(b) Has successfully completed a course of instruction for his particular category, which has been certified pursuant to R.S. 30:2351.9, and is capable of complying with all applicable standards of the state, the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and other federal agencies that regulate lead hazard reduction activities.

(c) Is certified pursuant to this Chapter.

(2) It has access to at least one disposal site approved by the department that is sufficient for the deposit of all lead-contaminated waste that it will generate during the term of the license.

(3) It possesses a work plan that prevents the contamination or recontamination of the environment and protects the public health from the hazards of exposure to lead.

(4) It possesses evidence of certification under R.S. 30:2351.6 of all workers who will engage in abatement activities, and all lead project supervisors.

(5) It possesses a worker protection and medical surveillance program consistent with this Chapter, and with requirements established by the division of administration if the contractor is a public entity, or a worker protection program consistent with the requirements of the United States Occupational Safety and Health Administration if the contractor is a business entity.

C-E. Repealed by Acts 1995, No. 1085, §2.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §§1, 2.

§2351.5. License renewal

A. Each license issued pursuant to R.S. 30:2351.4 shall expire December thirty-first of the year in which it is issued in accordance with R.S. 37:2156. Licensees may apply to the State Licensing Board for Contractors for the renewal of a license. No renewal may be granted if the application is received more than two years following expiration of the previously issued license.

B. To qualify for renewal of a license, the applicant shall submit to the secretary:

(1) The appropriate fee as prescribed in R.S. 30:2351.59.

(2) Evidence of completion of any continuing education or training that may be required by rules promulgated by the secretary.

(3) A signed statement disclosing any violations of standards governing lead hazard reduction activities for which the applicant may have been cited by a state or federal regulatory agency. If no citations were received during the previous year, that fact shall be stated. The disclosure shall include evidence that all penalties and fees assessed to the applicant are paid in full.

(4) Any other documentation deemed necessary by the secretary.

C. To qualify for renewal of a license, the applicant shall submit to the State Licensing Board for Contractors those fees or documentation required by the board.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §1.

§2351.6. Standards for certification

A. Workers and lead project supervisors shall be certified. To qualify for certification, an applicant shall have completed a training course for the respective classification, conducted by an accredited training provider, that has been approved by the secretary as appropriate. In addition to completing an approved training course, lead project supervisors shall have participated or observed at least one abatement project as a requirement for initial certification.

B. Workers and lead project supervisors who successfully complete an approved training course shall be certified, with a certificate issued either by the secretary, or the accredited training provider, as authorized by the secretary.

C. Certified workers and lead project supervisors who successfully complete annual refresher training pursuant to R.S. 30:2351.7 shall be recertified, with a certificate issued either by the secretary, or the accredited training provider, as authorized by the secretary.

D. All persons engaged in the design and planning of abatement projects shall be certified as lead hazard reduction planners. To qualify for certification, an applicant must show to the department satisfactory evidence of the following:

(1) The applicant successfully has completed a training course approved by the secretary as appropriate for a person responsible for planning abatement activities.

(2) The applicant has passed an examination administered by the secretary for this category.

(3) The applicant has participated in or observed at least one abatement activity in addition to the training required in this Section.

(4) The applicant has met any additional requirements deemed necessary by the secretary.

E. All persons engaged in inspection activities shall be certified as inspectors. To qualify for certification, an applicant shall show to the secretary satisfactory evidence of the following:

(1) The applicant has satisfactorily completed a training course approved by the secretary as appropriate for an inspector.

(2) The applicant has passed an examination administered by the secretary for this category.

(3) The applicant has participated in or observed at least one abatement activity in addition to the training required in this Section.

(4) The applicant has met any additional requirements deemed necessary by the secretary.

F. The secretary shall determine appropriate standards for certification for additional categories or subcategories of certification established pursuant to R.S. 30:2351.3 and shall issue certificates to persons meeting those standards.

G. To qualify for certification and for the renewal of certification, applicants shall submit the appropriate fee as prescribed in R.S. 30:2351.59.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §1.

§2351.7. Refresher training

A. In order to qualify for annual renewal of a license or certificate, an applicant shall successfully complete a refresher training course approved by the secretary for the particular category of license or certificate, and provided by an accredited training provider.

B. Refresher courses approved by the secretary shall be of a length determined by the secretary which is no less stringent than any minimum standards established under federal law or regulation and shall include instruction in current federal and state regulatory developments, as well as state-of-the-art procedures for conducting lead hazard reduction activities.

C. The date for completing the required refresher training shall be the anniversary of the completion of the initial training for the license or certification category.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §1.

§2351.8. Accreditation of training providers

A. The secretary shall establish standards for accreditation of training providers under this Chapter, including provisions for training program quality control. The secretary shall issue a certificate of accreditation to training providers that meet the secretary's accreditation standard and pay the accreditation fee provided in R.S. 30:2351.59. The certificate of accreditation shall identify specifically the categories for which the training provider is accredited.

B. Training providers shall be accredited for all categories for which they qualify.

Acts 1993, No. 224, §1.

§2351.9. Approval of training courses

A. The secretary shall develop rules establishing criteria and procedures for the approval of training course curricula, and examinations that shall ensure the qualifications of applicants for licensure or certification as required in this Chapter.

B. To facilitate overall development of work force skills and career paths in the lead hazard reduction industry, and to promote efficiency in training, the training criteria developed by the secretary shall utilize, to the maximum extent possible, a "tiered" approach under which training criteria for higher-skilled licensure or certification categories, such as lead project supervisors, and expand upon the criteria established for lower-skilled categories, such as workers.

C. To qualify for approval, a training course shall contain a combination of class instruction, practical application, and public health procedures of a length and content that, to the satisfaction of the secretary, shall ensure adequate training for the level and type of responsibility for each named certification category.

D. All courses certified under this Section shall be conducted by instructors whose training and experience is determined by the secretary to be appropriate for the subject matter being taught and the level of licensure category for which the course is designed.

E. An approved initial course for any category of person engaged in lead hazard reduction activities shall include all of the following, but not be limited to:

(1) Worker health and safety instruction no less stringent than that required under applicable federal regulations.

(2) Instruction in the importance of safe work practices in promoting public health, and the importance of proper decontamination procedures in eliminating the risk of contaminating the workers' home environment.

(3) Instruction in the workers' rights and obligations under federal and state law.

F. In addition to developing criteria for classroom instruction pursuant to this Section, the secretary shall develop minimum criteria for hands-on training or on-site instruction.

G. Minimum criteria for the length of initial classroom, hands-on or on-site instruction, which is no less stringent than any minimum standards established under federal law or regulation, shall be determined by the secretary.

H. The criteria for approval of training courses shall include minimum trainee competency and proficiency requirements, evidenced through both written examinations and minimum skills demonstration examinations.

I. Upon successful completion of an approved initial training course or approved refresher training course, the trainee shall be issued a certificate by the secretary, or the accredited training provider under the authority of the secretary.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §1.

§2351.10. Renewal of training provider accreditation

A. Each certificate of accreditation issued to a training provider under this Part shall expire one year after the date of issue. Certificate holders may apply to the secretary for the renewal of a certificate. No renewal may be granted if the application is received more than two years following expiration of the previously issued certificate.

B. To qualify for renewal of a certificate, the applicant shall submit all of the following:

(1) The appropriate fee as prescribed in R.S. 30:2351.59.

(2) A signed statement disclosing any violations of standards governing training programs for lead hazard reduction activities for which the applicant may have been cited by a state or federal regulatory agency.

If no citations were received during the previous year, that fact shall be stated. The disclosure shall include evidence that all penalties and fees assessed to the applicant are paid in full.

(3) Any other documentation deemed necessary by the secretary.

Acts 1993, No. 224, §1.

§2351.11. Reciprocity agreements

The secretary shall develop reciprocity agreements with other states when those states have established licensing and certification requirements that are at least as stringent as those set forth in this Chapter.

Acts 1993, No. 224, §1.

§2351.12. Applicability to public entities, homeowners, and industrial facilities

A. The provisions of this Chapter shall apply to public entities when performing lead hazard reduction activities with employees. A public entity will not be required to be licensed as a lead contractor. However, employees participating in lead abatement activities shall be certified in the appropriate categories. A public entity shall not be required to pay permit fees as established in R.S. 30:2351.23. Employees shall comply with all other requirements of R.S. 30:2351.21 through 2351.23. Public entities shall not be exempt from fees charged for the disposal of lead-contaminated debris.

B. The provisions of this Chapter shall not apply to individual homeowners who perform lead hazard reduction activities in or on a residential property owned and occupied by the homeowner at the time the activity is performed.

C. The provisions of this Chapter shall not apply to lead hazard reduction activities or to persons performing such activities when such activities are performed wholly within an industrial facility and are performed by persons who are subject to the training requirements of the Occupational Safety and Health Administration's Hazard Communication Standard. The secretary may establish, by regulation, exemptions from or alternatives to the lead certification and licensure requirements of this Chapter.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §1.

PART II. CONDUCT OF LEAD HAZARD REDUCTION ACTIVITIES

§2351.21. Standards of conduct

The secretary shall promulgate rules that establish standards of acceptable professional conduct for licensees and certificate holders engaged in lead hazard reduction activities, as well as specific acts and omissions that constitute grounds for the reprimand of any licensee or certificate holder, the suspension or revocation of a license or certificate, or the denial of the renewal of a license or certificate.

Acts 1993, No. 224, §1.

§2351.22. Conformance with building codes

All modifications to facilities or structures and to their component systems that may occur in conjunction with an abatement activity shall be designed in accordance with applicable state and municipal building codes.

Acts 1993, No. 224, §1.

§2351.23. Permits and notifications

A. A lead contractor may commence an abatement activity only after obtaining a permit for the project from the secretary.

B. Contractors with ongoing abatement activities involving continuous or intermittent actions at a single site may apply for an annual permit rather than for a project permit each time an abatement activity commences.

C. The secretary shall establish, by regulation, the requirements for obtaining a permit. The requirements shall include all of the following, but not be limited to:

(1) Use of certified workers.

(2) Use of certified lead project supervisors.

(3) Use of appropriate equipment and materials.

D. Permit applications shall include but not be limited to all of the following information:

(1) Name and address of the contractor responsible for the abatement activity.

(2) Name and address of the lead-contaminated waste transporter.

(3) Name and address of the lead-contaminated waste disposal facility.

(4) Name and address of the property owner.

(5) Location of the abatement activity.

(6) Description of the abatement activity, including the amount and location of lead-contaminated waste materials.

(7) Description of the procedures and equipment that will be used to perform the abatement activity.

(8) Repealed by Acts 1995, No. 1085, §2.

(9) Scheduled starting and completion dates.

E. The secretary may issue a permit after determining that the applicant has met the requirements established by the secretary. In addition, the secretary may impose upon a permit any additional terms and conditions deemed necessary to ensure compliance with the provisions of this Chapter or regulations promulgated under it.

F. After a permit has been issued, the applicant shall notify the secretary, in advance, of any material changes in the abatement activity not accounted for in the permit application and shall submit an amended permit application before project completion.

G. The secretary, upon finding that a person has failed to comply with the provisions of this Chapter or regulations promulgated under it, shall deny, suspend, or revoke a permit until the applicant is found to be in compliance with this Chapter.

H. The secretary shall establish a schedule of fees for obtaining permits pursuant to this Part. Fees collected pursuant to this Chapter shall be deposited into the Lead Hazard Reduction Fund provided for in R.S. 30:2351.41.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §§1, 2.

§2351.25. Enforcement

A. No person shall cause, suffer, permit, or allow a lead hazard reduction activity to be performed in violation of a provision of this Chapter or regulations promulgated under it. In addition, no person shall cause, suffer, permit, or allow the performance of any acts or operations in violation of any orders issued by the secretary pursuant to this Chapter and regulations promulgated under it.

B. The secretary shall have the power to issue an order requiring compliance with this Chapter or regulations promulgated under it. An order shall be served personally or by certified mail at the last known address of the persons violating the provisions of this Chapter or regulations promulgated pursuant thereto. In cases of a violation of lead hazard reduction activity standards, a copy of the order shall also be served personally or by certified mail at the last known address upon the registered property owner and shall be posted on the premises.

C. Where the secretary determines that a hazardous condition exists due to the failure to comply with the provisions of this Chapter and regulations promulgated under it, the secretary, in addition to invoking other sanctions available, may invoke any of the following remedies:

(1) Issue an order to immediately correct the hazardous condition and to cease any other abatement activities until the condition is corrected.

(2) Remove any workers, except those needed to abate the hazard, from the project work area until the condition is corrected in order to prevent further project activity.

(3) Evacuate appropriate portions of the site and vicinity until the condition is corrected.

(4) Certify the existence of a nuisance per se, and abate and remove the violation or contract for its cleanup and removal, charge the cost of the cleanup and removal to the person responsible for the hazardous condition, and collect the cost by lien or any other means as may be authorized by law.

(5) Apply to an appropriate court for relief by injunction or restraining order against any person responsible for the hazardous condition.

D. In addition to the sanctions or remedial orders provided in this Section, a person who either fails to comply with the requirements of this Chapter and regulations promulgated under it, or fails to obey an order issued by the secretary, may be subject to any of the following penalties:

(1) Suspension or revocation, or both, of permits issued under the provisions of this Chapter.

(2) Imposition of a civil administrative penalty of not more than one thousand dollars for the first offense, not more than five thousand dollars for the second offense, and not more than ten thousand dollars for the third and each subsequent offense.

(3) Imprisonment for a period of up to ninety days.

(4) Suspension or revocation of licenses issued under the provisions of this Chapter.

(5) Issuance of an order to cease any lead-contaminated waste project activity immediately.

(6) Initiation of legal action or proceedings in a court of competent jurisdiction.

E. Each day a violation continues to exist shall constitute an additional, separate, and distinct violation for which a separate penalty shall be imposed.

Acts 1993, No. 224, §1.

§2351.26. Appeals and hearings

A. Any person aggrieved by an order, decision, or other sanction imposed by the secretary may file an appeal with the secretary within five days after receipt of notice of the order, decision, or sanction. A hearing shall be held promptly on each appeal filed.

B. While an appeal is pending, compliance with a decision, order, or sanction shall not be required unless the secretary has determined and certified in writing that the violation was intentional or that there exists a hazardous condition that requires immediate compliance with the secretary's order so as to eliminate a public health hazard.

Acts 1993, No. 224, §1.

§2351.27. Use of accredited sampling laboratories

A. When analyzing lead in paint films, persons engaged in lead hazard reduction activities may use nondestructive testing procedures utilizing lead detection instruments approved by the appropriate federal agency or agencies. When laboratory testing is used to analyze lead paint films, soils, or dust, the laboratory must be an environmental testing laboratory that is part of an accreditation program recognized by the United States Environmental Protection Agency, or approved pursuant to rules promulgated by the secretary.

B. The secretary may enter into cooperative agreements with the U.S. Environmental Protection Agency to provide joint oversight for laboratories that offer lead analysis services.

C. The analysis of lead in human specimens may only be performed by laboratories accredited to analyze the levels of lead in blood under the provisions of the Clinical Laboratory Improvement Amendments of 1988, PL 100-578 and the Clinical Laboratory Personnel Law, R.S. 37:1311 et seq.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §1.

§2351.28. Data collection program

A. The secretary may establish a program for the collection and analysis of data on lead hazard detection and lead hazard reduction activities in the state, and on the certification, accreditation, and enforcement activities of the department.

B. The secretary may enter into agreements with the Department of Health and Hospitals to implement this Section.

Acts 1993, No. 224, §1.

§2351.29. Medical surveillance; preservation of records

A. The state health officer shall develop standards for a medical surveillance program for all individuals engaged in lead hazard reduction activities, which shall be consistent with those required under applicable federal law and regulations.

B. Lead contractors shall institute a medical surveillance program for all employees who are or will be exposed to lead-containing substances. All medical surveillance records shall be maintained for the duration of employment plus thirty years. Lead contractors may utilize the services of competent organizations such as industry trade associations and employee associations to maintain the records as required by this Section.

C. Whenever a lead contractor ceases to operate and there is no successor entity to receive and retain the records for the prescribed period, the lead contractor shall notify the secretary at least ninety days prior to disposal and, upon request, transmit the records to the secretary.

D. Repealed by Acts 1995, No. 1085, §2.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §§1, 2.

PART III. LEAD HAZARD REDUCTION FUND

§2351.41. Lead Hazard Reduction Fund

A. There is hereby created within the state treasury the Lead Hazard Reduction Fund. Funds received under this Part shall be deposited into the state treasury.

B. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana, relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, an amount equal to that deposited as required by Subsection A of this Section shall be credited to a special fund hereby created in the state treasury to be known as the "Lead Hazard Reduction Fund". The

monies in this fund shall be used solely as provided in Subsection C of this Section. All unexpended and unencumbered monies in this fund at the end of the fiscal year shall remain in the fund. The monies in this fund shall be invested by the state treasurer in the same manner as monies in the state general fund, and interest earned on the investment of these monies shall be credited to the fund.

C. The monies in the Lead Hazard Reduction Fund shall be used solely for the purpose of funding the programs and activities provided for in this Chapter, as determined by the secretary.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §1.

PART IV. MISCELLANEOUS PROVISIONS

§2351.51. Public education

A. The secretary shall in connection with other state agencies conduct a program of public education on lead hazards. This program shall include but not be limited to the distribution of educational materials to the general public and to persons living in the vicinity of sites known to pose a lead exposure hazard.

B. Educational programs and materials developed or authorized by the secretary, the state health officer, or other agencies may include but not be limited to the types of lead containing materials, the health effects of lead exposure, the recognition of lead hazards, proper lead control methods, procedures for reporting hazardous conditions pursuant to R.S. 30:2351.54, and the requirements of this Chapter.

C. The secretary also shall make available lists of all licensed contractors and accredited training programs.

D. The secretary shall also make available technical information regarding proper lead control methods, standards for conducting lead hazard reduction activities, and other requirements of this Chapter to property owners and contractors, supervisors, and workers.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §1.

§2351.52. Reporting of lead exposure

A. Any health care provider, as defined by the state health officer, shall report to the state health officer the identity of persons whose blood test results are positive for the presence of lead and who are engaged in lead hazard reduction activities. The results of those tests shall also be reported. The state health officer shall define results which are positive for the presence of lead. Reports required under this Section shall be submitted within five business days of the receipt of the test results, in a format approved by the state health officer.

B. A lead contractor shall report immediately to the state health officer, with a copy to the secretary of the Department of Environmental Quality, those employees of his firm having positive blood test results for the presence of lead, as defined by the state health officer, and who are engaged in lead hazard reduction activities.

C. In implementing this Section, the state health officer may enter into agreements with other departments of the state to receive, compile, analyze, or retain reports of lead exposure.

D, E. Repealed by Acts 1995, No. 1085, §2.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §§1, 2.

§2351.53. Repealed by Acts 1995, No. 1085, §2.

§2351.54. Reporting of hazardous conditions

A. The secretary shall receive reports of hazardous conditions relating to lead from the public or employees. All such reports shall be recorded. The secretary shall investigate all reports that are reasonably based in fact. Reports shall be received whether submitted in writing, by telephone call, or through other means.

B. In implementing this Section, the secretary shall make appropriate arrangements to insure that the public or employees may report hazardous conditions by telephone without incurring long-distance telephone charges.

C. The identity of any person making a report or statement as part of an investigation by the department shall be confidential and shall not be disclosed in any manner to anyone other than state officials without the prior consent of the person making the report or statement.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §1.

§2351.55. Discriminatory and retaliatory actions

A. A person may not discriminate or take retaliatory action against a person who exercises in good faith a right established by this Chapter or a regulation promulgated under it.

B. A person claiming to be aggrieved by a discriminatory or retaliatory action may commence an action under the terms and provisions of R.S. 30:2027.

C-E. Repealed by Acts 1995, No. 1085, §2.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §§1, 2.

§2351.56. Relationship to federal law

A. Regulations promulgated pursuant to this Chapter shall be no less stringent than any minimum standards established under federal law or regulations.

B. If a provision of this Chapter conflicts with a federal law pertaining to lead hazard reduction activities, the provision shall not apply to the extent that it is preempted by the federal law.

Acts 1993, No. 224, §1.

§2351.57. Promulgation of regulations

The secretaries of the Departments of Environmental Quality, and Health and Hospitals shall promulgate all regulations necessary to implement their respective responsibilities under this Chapter.

Acts 1993, No. 224, §1.

§2351.58. Interim procedures

In developing a program to implement this Chapter, the secretary may provide for interim licensing and certification procedures to ensure a transition period of not less than one hundred eighty days before the application of the requirements established in this Chapter.

Acts 1993, No. 224, §1.

§2351.59. Fees

A. In accordance with the provisions of Article VII, Section 2.1 of the Constitution of Louisiana and R.S. 30:2014, the department is authorized to adopt and promulgate rules to establish the fees for licensure, certification, and training organization accreditation categories and notifications as provided for in this Section.

B. Licensure, certification, and accreditation fees shall be paid annually. Notification fees are assessed for each lead abatement project. Fees shall be paid upon application to the secretary and deposited into the Lead Hazard Reduction Fund, R.S. 30:2351.41.

C.(1) License and certification fees shall be paid as follows:

(a) License evaluation fee of five hundred dollars shall be paid by lead contractors.

(b) Certification fees shall be paid for the following disciplines:

(i) Lead project supervisor	$250.00
(ii) Lead project designer	$500.00
(iii) Risk assessor	$250.00
(iv) Lead inspector	$150.00
(v) Lead worker	$ 50.00

(c) Emergency processing for licensure and certification fees shall be one and one-half times the regular processing fee.

(d) The secretary is authorized to establish subcategories within any category.

(e) A person applying for licensure under more than one category shall pay only the fee for the highest category.

(f) No fees shall be assessed to public entities or employees of public entities for certification.

(2) Accreditation fees for training organizations shall be paid as follows:

(a) In-state training organizations (Louisiana domiciliaries):

(i) Application processing fee	$500.00
(ii) Processing fee per instructor	$ 50.00
(iii) Emergency processing	1.5 times the regular fees

(b) Out-of-state training organizations (non-Louisiana domiciliaries):

(i) Application processing fee	$750.00
(ii) Processing fee per instructor	$100.00
(iii) Emergency processing	1.5 times the regular fees

(3) Notification fees will be due upon application as follows:

(a) For the lead abatement of a building or other structure, the fee shall be based upon the projected lead-based painted areas to be abated in the abatement project. Areas of lead-contaminated soil associated with the abatement process will be included in the projected square footage for the building or structure as follows:

(i) 2000 square feet and under	$200.00
(ii) Each additional increment of 2000 square feet or portion thereof	$100.00
(iii) Revisions to notification fees	$ 50.00

(b) For the lead abatement of soil only, the fee shall be based upon the projected acreage of the abatement project as follows:

(i) Half acre or less	$200.00
(ii) Each additional half acre or portion thereof	$100.00
(iii) Revisions to notification fees	$ 50.00

(c) Emergency notification processing fees will be one and one- half times the regular fees.

Acts 1993, No. 224, §1; Acts 1995, No. 1085, §1; Acts 1997, No. 1253, §1.

§2351.60. Repealed by Acts 1997, No. 1253, §2.

CHAPTER 16. HAZARDOUS MATERIAL INFORMATION DEVELOPMENT, PREPAREDNESS, AND RESPONSE ACT

§2361. Citation

This Chapter shall be known and may be cited as the "Hazardous Materials Information Development, Preparedness, and Response Act" and may be referred to as the "Right-to-Know" Law.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1997, No. 1046, §1.

§2362. Declaration of policy and purpose

A. The legislature hereby adopts as a policy that the citizens of this state have the right and responsibility to know about and protect themselves from the risks and effects of hazardous materials in their environment. Inherent in the public's right to know is the public's need to know that state and local agencies have the information to both respond to their inquiries and to protect them by:

(1) Providing information to physicians for emergency medical diagnosis.

(2) Adequately preparing for disasters.

(3) Centralizing, and coordinating regional, and local long-range planning concerning the environmental hazards in various localities.

(4) Developing information on chronic health risks which may appear as the result of the presence of hazardous materials.

B. The purpose of this Chapter, therefore, is to create a comprehensive information system containing specific data regarding the presence and location of hazardous materials in Louisiana. Such information should be compiled in a way which permits the data to be shared with the public and among involved state agencies and local governing authorities.

C. The legislature recognizes that among the state agencies presently collecting, disseminating, and analyzing data there exists much of the technical capability, determination, and expertise to develop, implement, manage, and expand such an information system. The legislature therefore mandates and supports a cooperative effort of all involved agencies to work through an interagency advisory commission, and a single state supervisory agency to create a comprehensive information system, implement comprehensive state and local planning, and as soon as practical and feasible, make this crucial information available to the public through designated local repositories at a minimum of additional cost to owners or operators, the state, or local government.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1987, No. 347, §1.

§2363. Definitions

The following terms as used in this Chapter shall have the following meanings:

(1) "Commission" means the Emergency Response Commission appointed by the governor to implement the mandates of the Superfund Amendments and Reauthorization Act passed by the United States

Congress in 1986. This commission is created within the Department of Public Safety and Corrections, public safety services.

(2) "Department" means the Department of Public Safety and Corrections.

(3) "Deputy secretary" means the deputy secretary for the office of public safety services in the Department of Public Safety and Corrections.

(4) "Environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(5) "Extremely hazardous substance" (EHS) means a hazardous substance listed by the United States Environmental Protection Agency in 40 CFR Part 355, Appendix A (the list of Extremely Hazardous Substances and Their Threshold Planning Quantities) and subject to the emergency planning, release reporting, MSDS filing, and inventory filing requirements of SARA Title III.

(6) "Facility" means the physical premises used by the owner or operator in which the hazardous materials are manufactured, used, or stored. A natural gas pipeline shall not be classified as a compressed natural gas facility.

(7) "Hazardous material" means any substance deemed a hazardous material or a hazardous substance and included on a list adopted by rule by the deputy secretary to include those materials deemed hazardous under the Comprehensive Environmental Response Compensation Liability Act (CERCLA), the Superfund Amendments and Reauthorization Act (SARA, Title III U.S.C.), and certain substances included in the U.S. Department of Transportation regulations as found in 49 CFR Part 172.101. Hazardous material also means any substance designated by the deputy secretary by rule on recommendation of the commission which meets criteria established for adding other materials to the list. This term shall mean and include hazardous substances.

(8) "Immediately" means a reasonable period of time after identifying the nature, quantity, and potential off-site impact of a release considering the exigency of the circumstances.

(9) "Inventory form" means the reporting form adopted by the department, and completed by owners and operators, which contains certain requested information on hazardous materials and which is used in developing the information system mandated by this Chapter.

(10) "Local governing authority" means the police jury, parish council, the mayor's office of the city of New Orleans or the city-parish of East Baton Rouge or other primary governmental body of a parish.

(11) "Owner or operator" means any person, partnership, or corporation in the state including, unless otherwise stated, the state and local government, or any of its agencies, authorities, departments, bureaus, or instrumentalities engaged in business or research operations which use, manufacture, emit, or store a hazardous material at a facility.

(12) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous material or substance. However, the term release as used in this Paragraph shall not include federal or state permitted releases.

(13) "Reportable release" means a release of a regulated hazardous material or substance which causes any injury requiring hospitalization or any fatality, results in a fire or explosion which could reasonably be expected to affect the public safety beyond the boundaries of the facility, or exceeds the reportable quantity when that reportable quantity, as defined pursuant to rules promulgated by the deputy secretary, could be reasonably expected to escape beyond the site of the facility. A reportable release as defined herein shall be based upon the quantity of hazardous material or substance discharged continuously, intermittently, or as a one-time discharge, within any continuous twenty-four-hour period.

(14) "Repository" means the local entity designated pursuant to R.S. 30:2368 to house and record information on hazardous materials received from the department, regulated facilities, and other state agencies for public dissemination and inspection.

(15) "Retail gas station" means a retail facility engaged in selling gasoline or diesel fuel primarily to the public, for use in land-based motor vehicles.

(16) "Small business" means a single business establishment employing not more than nine full-time employees and having not more than two million dollars in average annual gross receipts. Any business employing more than nine persons shall not be considered a small business regardless of the average annual gross receipts. Any business with average annual gross receipts of over two million dollars shall not be considered a small business regardless of the number of employees.

(17) "Trade secret" means any confidential formula, pattern, process, device, information, or compilation of information, including chemical name or other unique identifier, that is used in an employer's

business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1987, No. 347, §1; Acts 1992, No. 666, §§1, 2; Acts 1997, No. 1046, §1; Acts 1999, No. 424, §1, eff. June 18, 1999; Acts 1999, No. 771, §1; Acts 1999, No. 1166, §1, eff. July 9, 1999.

§2364. Emergency Response Commission

The Hazardous Material Information Development, Preparedness, and Response Advisory Board is hereby abolished and in its place the Emergency Response Commission, which is appointed by the governor, is hereby established and will assume the advisory function of the board. The secretary of the Louisiana Department of Environmental Quality or his designee shall also serve as a member of the Emergency Response Commission. This commission shall function under the supervision and authority of the deputy secretary, Department of Public Safety and Corrections, public safety services, office of the state police, and shall also be responsible for the following:

(1) Establishing emergency planning districts.

(2) Appointing local emergency planning committees.

(3) Supervising and coordinating the activities of the local emergency planning committees.

(4) Providing the administrator of the United States Environmental Protection Agency with information concerning notification received on certain releases of hazardous materials and substances.

(5) Designating, as necessary, additional facilities to be covered under this Chapter.

(6) Recommending a standardized inventory form to be used in gathering the required information under this Chapter and providing for alternative reporting procedures to reduce duplication of reporting.

(7) Recommending, as necessary, additional substances which should be defined as hazardous materials based on location, toxicology, known short and long term health effects, and other characteristics.

(8) Acting as the centralized advisory body for coordinating the state and federal activities concerning community "Right-to-Know" legislation with regard to hazardous materials and substances.

(9) Establishing procedures for receiving and processing requests from the public for information.

(10) Reviewing local emergency planning committee (LEPC) emergency response plans and making recommendations to the LEPC on revisions of the plan that may be necessary to ensure the coordination of such plan with emergency response plans of other emergency planning districts.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1987, No. 347, §1; Acts 1997, No. 1046, §1.

§2365. Responsibilities of the department

A. The deputy secretary shall:

(1) Develop rules and regulations governing criteria for defining a substance as a hazardous material and for the development, implementation, compilation, supervision, and management of the information system for hazardous materials.

(2) Make reasonable efforts to insure that owners and operators are aware of reporting requirements under this Chapter.

(3) Develop a rule for alternative reporting requirements for businesses as provided for in R.S. 30:2370.

(4) Supervise the dissemination of data to repositories and train repository personnel to provide information to the public. If the sheriff's office is not designated as the repository, the sheriff in each parish shall have access to the data compiled under this law through the local emergency planning committee and/or local fire departments in the respective parish.

(5) Apply for, accept, and expend money through the appropriate budgetary process from federal sources for the further development, implementation, and dissemination of information to agencies, to emergency response personnel, and to the public.

(6) Develop a centralized inventory reporting and notification system allowing for the standardization of reporting on the state, parish, and local government levels. The department, working in conjunction with other state agencies and parish government planning agencies, including local emergency planning committees and local response agencies, will identify the standard content of reporting and develop a centralized state inventory reporting and notification system that can be used by all government agencies.

(7) Develop a means to assist all parishes in developing comprehensive hazardous material emergency response plans which reflect local governments' primary responsibility for the protection of local citizens.

B. The department shall, whenever practical and feasible, consult with the commission in developing rules and regulations for the implementation of this Chapter.

C. The inventory form adopted under this Chapter shall replace, to the extent feasible and practical, all other reporting presently required for reporting the manufacture, use, storage, or release of all hazardous materials to state governmental agencies.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1987, No. 347, §1; Acts 1992, No. 984, §18; Acts 1997, No. 1046, §1.

§2366. Responsibilities of cooperating departments

A. The Department of Agriculture and the Department of Environmental Quality shall consult with the deputy secretary regarding implementation of this Chapter. They shall, whenever practical and feasible, coordinate reporting efforts and requirements with the department through representation on the commission and through any established or created methods of cooperation and coordination among agencies covered by this Chapter.

B. The department shall forward information it develops or receives regarding long-term toxic effects of hazardous materials to the Department of Health and Hospitals, which shall coordinate such information with the Louisiana Regional Poison Control Center.

C. The department shall communicate these laws and regulations to all state departments. The department shall coordinate its efforts in developing a one-call notification system with all departments of state government. All departments of the state shall adjust the reporting requirements to allow for the development of the one-call state notification system for emergency release notifications.

D. Upon development of the one-call state notification system for emergency release notifications, proper notification to the department of a release shall satisfy all emergency reporting obligations of the person making the notification, including all emergency reporting obligations of such person to the Department of Environmental Quality, other state agencies, and local response agencies.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1987, No. 347, §1; Acts 1997, No. 1046, §1.

§2367. Alternative compilation of data through certain agencies

A. Repealed by Acts 1992, No. 535, §1.

B.(1) Those manufacturers, storers, and users of liquified petroleum gas who make reports, pay fees, and are permitted through the Liquified Petroleum Gas Commission of the Department of Public Safety and Corrections shall not be required to pay additional fees for reporting under this Chapter.

(2) The deputy secretary of public safety services shall consult with the chairman of the Liquefied Petroleum Gas Commission and the Louisiana Liquefied Petroleum Gas Association to develop the necessary guidelines for incorporating reporting procedures and forms into inventory reports required by this Chapter or develop alternate reporting procedures under R.S. 30:2370(A)(2). Further, the deputy secretary and the chairman of the Louisiana Liquefied Petroleum Gas Commission shall develop a mechanism for sharing and including such data in the information management system developed under this Chapter.

(3) The administrative costs, as determined by the deputy secretary, of including information regarding liquified petroleum gas shall be paid by the Liquified Petroleum Gas Commission through fees presently paid to the commission by manufacturers, users, and storers of liquified petroleum gas.

(4) Nothing in this Subsection shall be intended to nullify an owner's or operator's obligation to report in compliance with rules promulgated under this Subsection.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1987, No. 347, §1; Acts 1992, No. 535, §1; Acts 1997, No. 1046, §1.

§2368. Designated repositories

A. The Emergency Response Commission shall designate the following as repositories for information gathered under this Chapter. The repositories shall be:

(1) The local emergency planning committee, as designated by the commission.

(2) The local fire department.

(3) The Department of Public Safety and Corrections, office of state police, hazardous substance control section, acting for the Emergency Response Commission.

B.(1) Each repository designated pursuant to Subsection A of this Section shall provide information gathered under this Chapter to any person upon request during reasonable office hours and may charge such person a reasonable amount for copying charges and other administrative costs. The charges for the said costs shall be the same as the charges authorized for copies of public records as provided for in R.S. 44:32.

(2) In addition, the repository may refer public requests for information regarding specific medical, toxic, and health effects to the Louisiana Regional Poison Control Center.

C. The department shall, whenever practical and feasible, enhance the capability of local governing authorities and repositories to maintain and update public information, train personnel in repository management, and to develop other capabilities to assist in their compliance with this Chapter.

D. Each local governing authority may adopt an ordinance to impose fees or charges on owners or operators whose facilities are located within the parish and who are subject to the reporting requirements of the Superfund Amendments and Reauthorization Act of 1986, Title III, 42 U.S.C. 11022. The amount of the fee or charge imposed pursuant to this Subsection shall provide anticipated proceeds not to exceed the anticipated costs for performing the services required in this Section, and the Superfund Amendments and Reauthorization Act of 1986, Title III, 42 U.S.C. 11022, including those initial costs necessary to establish a system for storage, updating, and dissemination of the information herein required to be made available to the public. In no case shall the fees or charges imposed on any one person by the local governing authority exceed one dollar per page, fifty dollars per inventory report, or three hundred dollars per report including but not limited to reporting multiple facilities in one parish. In no case shall charges imposed on small businesses, as defined in this Chapter, exceed fifteen dollars per inventory report.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1987, No. 347, §1; Acts 1988, No. 753, §1, eff. July 15, 1988; Acts 1992, No. 541, §1; Acts 1997, No. 1046, §1.

§2369. Responsibilities of owners and operators

A. Owners or operators shall be responsible for filing inventory forms for all hazardous materials manufactured, used, or stored at their facilities and for immediately reporting releases of certain hazardous materials in certain reportable quantities to be established by rule as provided for in R.S. 30:2373(B) and (C)(2).

B.(1) Owners or operators shall have the responsibility to obtain inventory forms and submit them to the Emergency Response Commission by way of the Department of Public Safety and Corrections, office of state police, Right-to-Know unit by March 1, 1988, and by March first of each year thereafter.

(2) This does not relieve the owner or operator from having to file inventory forms or make emergency release notification to other agencies, e.g., local fire departments or local planning committees, as may be required by federal law.

C. Repealed by Acts 1992, No. 565, §2.

D. Owners or operators shall post signs at their facilities, subject to a rule adopted by the deputy secretary, indicating that a hazardous material reported pursuant to the provisions of this Chapter is present on the premises. The deputy secretary shall develop, adopt, and disseminate rules and regulations which provide for such posting.

E.(1) Owners or operators who manufacture, use, store, or release a hazardous material at their facility shall so notify their present employees and each new employee within a reasonable time of his beginning employment. Such notification shall be made by posting a notice in a place in the facility where it is easily accessible to employees.

(2) Whenever the owner or operator has information regarding the toxic effects of a hazardous material manufactured, used, stored, or released at the facility, he shall so advise his employees, and make the information available to them on request for their examination only on the premises.

(3) Louisiana manufacturers, distributors, and packagers of hazardous materials and mixtures manufactured, blended, packaged, mixed, or distributed within Louisiana for those materials listed under the Superfund Amendments Reauthorization Act (SARA) Title III, Sections 302, 304, 311, and 312, or Louisiana's Right-to-Know Law, R.S. 30:2361 et seq., shall incorporate on the hazardous material's material safety data sheet or supply a separate statement with the verbiage "This material may be regulated by Louisiana's Right-to-Know Law, R.S. 30:2361 et seq." for identifying the hazardous materials as regulated by the state of Louisiana or the Superfund Amendments Reauthorization Act (SARA) Title III, Sections 302, 304, 311, and 312, or use language of similar nature. This Paragraph shall be effective only upon the promulgation by the deputy secretary of rules and regulations setting forth the criteria for the notice required herein. The deputy secretary may exempt from this requirement materials and mixtures with generic material safety data sheets used nationally or internationally.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1987, No. 347, §1; Acts 1992, No. 565, §§1, 2; Acts 1997, No. 1046, §1; Acts 1999, No. 424, §1, eff. June 18, 1999.

§2370. Extraordinary circumstances; deputy secretary's discretion to permit alternative reporting procedures; residential and retail use; exemptions

A. The deputy secretary shall establish alternative reporting procedures for certain owners or operators. Such alternative reporting procedures shall only be established when the deputy secretary determines that the

nature of the owner's or operator's enterprise is such that the collection or compilation of data under procedures required under R.S. 30:2369 would be difficult to report by the owner or operator and of marginal informational value to agencies or persons requesting or using the data. Alternative reporting procedures shall be available under the following circumstances:

(1) The nature of the owner's or operator's business is such that any hazardous material present at a facility would be present for a short period of time. Such businesses shall include but not be limited to building construction industries or wharf and dock facilities, where an inventory of any hazardous material would be present for only short periods of time; or

(2) Emergency response personnel are likely to be able to predict the nature and volume of hazardous materials present at the facilities without recourse to the information provided by the inventory form. Such facilities may include premises whose only structures are electrical transmission and distribution equipment or clearly marked storage tanks for liquified petroleum gas.

(3) The nature of the business is related to waste disposal and reclamation, in which the hazardous materials are collected in such a manner that the identity of each substance may not be individually identified under established reporting procedures.

(4) In the determination of the secretary, alternative reporting procedures would further the purposes of this Chapter.

B. Any alternate reporting requirement adopted pursuant to Subsection A of this Section shall define each of the following as precisely as possible:

(1) The nature of the activities which may be conducted at the facility.

(2) The identity of the hazardous materials which may be present at the facility.

(3) The maximum quantity of each such hazardous material which may be present at the facility.

C. The deputy secretary shall define and provide by rule for exemptions for "small quantities" of hazardous materials which need not be reported under this Chapter by certain categories of owners or operators. The definition of small quantities shall be based on the degree of hazard such quantities might potentially present in certain situations, either to emergency response personnel, the owner or operator, his personnel or property, or to the surrounding community. Such categories of owners or operators shall include, but not be limited to:

(1) Residential users.

(2) Owners or operators of hotels, motels, restaurants, apartment buildings, or office buildings which use only small quantities of air conditioning and cleaning supplies and do not exceed the small quantities exemption for any other hazardous material.

(3) Owners or operators of retail sales establishments which sell consumer products or food stuffs packaged for distribution to, and intended for use by, the general public, and who have storage areas or storerooms in such establishments which are separated from shelf or display areas but maintained within the physical confines of such retail establishments.

D. The exemptions provided for in Subsection C shall not apply to hazardous materials placed in a separate warehouse. However, owners or operators maintaining such a warehouse facility shall be required to make only one report under this Chapter, regardless of the number of warehouses, storerooms, and storage areas retained by the owner or operator.

E. The following substances shall not be required to be reported for purposes of inventory reporting:

(1) Repealed by Acts 1997, No. 1046, §2.

(2) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(3) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(4) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(5) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual. This would not include substances stored in a separate warehouse or storage room.

(6) Any substance to the extent it is used in routine agricultural operations or is fertilizer held for sale by a retailer to the ultimate customer.

(7) Hazardous materials required to be reported to the Nuclear Regulatory Commission by utilization facilities licensed under 10 C.F.R. 50 and R.S. 40:1299.100.

(8) Gasoline, all grades combined, that has been stored in tanks having a capacity of less than seventy-five thousand gallons, entirely underground, at a retail gas station that has been in compliance at all times during the preceding calendar year with all applicable underground storage tank requirements as provided in R.S. 30:2194. This exemption shall be effective March 1, 2001, for calendar year 2000 reporting. Notwithstanding the provisions of this Section, copies of any reports submitted by retail gas stations to the Department of Environmental Quality as required by this Chapter shall be provided by the Department of Environmental Quality to any local emergency planning committee and the Department of Public Safety and Corrections, office of state police.

(9) Diesel fuel, all grades combined, that has been stored in tanks with a capacity of less than one hundred thousand gallons, entirely underground, at a retail gas station that has been in compliance at all times during the preceding calendar year with all applicable underground storage tank requirements as provided in R.S. 30:2194. This exemption shall be effective March 1, 2001, for calendar year 2000 reporting. Notwithstanding the provisions of this Section, copies of any reports submitted by retail gas stations to the Department of Environmental Quality as required by this Chapter shall be provided by the Department of Environmental Quality to any local emergency planning committee and the Department of Public Safety and Corrections, office of state police.

F. Small businesses as defined under this Chapter shall be required to report inventories or releases of hazardous substances regulated under this Chapter with the exception being that they shall pay a reduced fee in accordance with R.S. 30:2374.

G. The provisions of this Chapter shall not apply to retail establishments as defined by R.S. 47:301(4)(b) and (11), cosmetology salons, and barber salons.

H. The following nonexclusive list of facilities shall qualify, when otherwise required to report under this Chapter, for the alternate reporting procedures established under this Section:

(1) Oil and gas exploration and production facilities.

(2) Natural gas, crude oil, and hydrocarbon product pipelines.

(3) Hydrocarbon storage facilities other than at petroleum refineries.

(4) Gasoline service stations.

(5) Electrical transmission and distribution equipment.

(6) Transportation related industries.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1987, No. 347, §1; Acts 1992, No. 566, §1; Acts 1997, No. 1046, §§1, 2; Acts 1999, No. 771, §1; Acts 1999, No. 1166, §1, eff. July 9, 1999.

§2371. Trade secret protection

With regard to trade secret protection and the information disclosure requirements of this Chapter, the state of Louisiana, through the Department of Public Safety and Corrections, hereby adopts as its own the trade secret provisions as found in Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. 11042. All petitions for trade secret protection must be filed with the administrator of the United States Environmental Protection Agency.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1987, No. 347, §1; Acts 1997, No. 1046, §1.

§2372. Trade secrets; emergency treatment disclosure

A. With regard to trade secret information needed for medical diagnosis or treatment of a person exposed to a hazardous material, the state of Louisiana, through the Department of Public Safety and Corrections, hereby adopts as its own the trade secret provisions as found in Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. 11042.

B. Nothing in this Section shall be construed so as to interfere with the duty of a physician to report actual or potential public health problems to the proper authorities.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1997, No. 1046, §1.

§2373. Failure to report; penalties

A. All owners and operators shall be required to report the information required under R.S. 30:2369 of this Chapter regarding the manufacture, storage, or use of hazardous materials by no later than March 1, 1988, and by March first of each year thereafter.

B.(1) Owners and operators shall immediately notify the department of any reportable releases, other than a federally or state permitted release or application of a pesticide or fertilizer, of a hazardous material or

substance listed pursuant to this Chapter exceeding the reportable quantity when that reportable quantity could be reasonably expected to escape the site of the facility, as soon as the owner or operator has knowledge of such release. Failure to do so shall subject owners and operators to civil penalties as provided in Subsection C of this Section.

(2) Any reportable release of any hazardous material regulated by this Chapter which causes any injury requiring hospitalization or any fatality or any release which results in a fire or explosion which could reasonably be expected to affect the public safety beyond the boundaries of the facility shall be reported immediately to the department.

(3) Any incident, accident, or cleanup within a facility, which could reasonably be expected to affect public safety beyond the boundaries of the facility or where the owner or operator knows a protective action beyond the boundaries of the facility has been initiated, shall be reported immediately to the department.

(4) The secretary may develop rules and regulations to implement and clarify the reporting requirements of this Subsection and to address changes in federal regulations.

(5) The Department of Environmental Quality shall make available to the public for examination any information contained in reports required pursuant to R.S. 30:2025(J), 2060(H), and 2076(D).

C.(1) For owners and operators who knowingly fail to file an inventory form on hazardous materials as required by this Chapter by March 1, 1988, and by March first of each year thereafter, the department may levy a civil penalty which shall not exceed twenty-five thousand dollars per hazardous material not reported. Small businesses who have an omission from the inventory reporting forms shall receive a warning only for their first offense.

(2) The department may also levy a civil penalty not to exceed twenty-five thousand dollars per violation for failure to timely report nonpermitted releases pursuant to R.S. 30:2373(B).

(3) For owners and operators who knowingly fail to report a reportable release of a hazardous material regulated by this Chapter, the department may assess a civil penalty not to exceed twenty-five thousand dollars per violation per day.

(4) The department shall consider, in determining whether to assess a fine, the financial situation of owners and operators of small businesses as well as any willfulness in failing to comply with the provisions of this Chapter. Such fines shall be deposited in the Right-to-Know Fund pursuant to R.S. 30:2380.

D.(1) Any person who handles, stores, or otherwise maintains a hazardous material regulated by this Chapter in a wanton and reckless manner without regard for the hazards of the material or of the circumstances of such use, storage, or handling shall be guilty of careless handling.

(2) For any person, owner, operator, or facility that violates this Subsection, the department may levy a civil penalty not to exceed twenty-five thousand dollars per violation.

E.(1) No person shall intentionally handle, store, or otherwise maintain any hazardous material regulated by this Chapter in a manner which endangers human life.

(2) Any person, owner, operator, or facility that willfully violates this Subsection may be assessed a civil penalty by the department not to exceed twenty-five thousand dollars per violation per day or upon first conviction shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both. Upon second or subsequent conviction of a violation of R.S. 30:2373(E)(1), said person, owner, operator, or facility shall be fined not less than five hundred dollars nor more than ten thousand dollars or imprisoned with or without hard labor for not less than six months nor more than ten years.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1987, No. 347, §1; Acts 1992, No. 665, §§1, 2; Acts 1992, No. 984, §9; Acts 1995, No. 850, §1; Acts 1997, No. 1046, §1; Acts 1999, No. 355, §1, eff. June 16, 1999; Acts 2001, No. 1087, §1.

§2374. Fees

A. An annual fee shall be submitted with the inventory form by each owner or operator required to report under this Chapter. The fee shall be assessed in proportion to the number of hazardous materials manufactured, used, or stored on site.

B.(1) Until June 30, 2008, the fees for facilities not meeting the definition of "small business" in R.S. 30:2363 shall be assessed as follows:

Number of Hazardous Materials Present at Facility	Amount of Fees Charged
01 to 25	$ 65.00
26 to 75	$ 85.00
76 to 100	$170.00
Over 100	$255.00

(2) Any facility required to pay a fee pursuant to this Section and any retail gas station exempt from reporting pursuant to R.S. 30:2370 shall not be required to pay an additional fee to the local emergency planning committee other than the fees already imposed by the local emergency planning committee for the collection of information required by this Chapter.

(3) In the case of owners or operators reporting facilities with numbers of hazardous materials referenced above at multiple locations throughout the state, no owner or operator shall be assessed total fees in excess of two thousand dollars.

(4) The fee per facility for small businesses as defined in this Chapter shall not exceed twenty-five dollars.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1987, No. 347, §1; Acts 1992, No. 540, §1; Acts 1992, No. 984, §9; Acts 1997, No. 1046, §1; Acts 1999, No. 771, §1; Acts 1999, No. 1166, §1, eff. July 9, 1999; Acts 2001, No. 1087, §1; Acts 2003, No. 331, §1.

§2375. Access to facilities for emergency response

A. When there has been a release subject to the reporting requirements of R.S. 30:2373(B), the owners and operators of the facility where the release occurred shall, upon the request or demand, allow access to the facility by the designated local emergency response agency without delay; however, each representative of the designated local emergency response agency seeking access to the facility shall be certified or qualified in the handling of hazardous materials by an appropriate governmental agency and qualified in dealing with the particular emergency and the equipment and/or the facility involved. The parish governing authority shall designate one local emergency response agency which shall have access to facilities within the parish pursuant to this Section. The owner or operator of a facility where a release has occurred may delay access to the facility for a reasonable period of time, to the extent necessary in order to secure the facility, insure immediate safety, preserve property, or verify the authority of those persons seeking access to the facility pursuant to this Section.

B. An owner or operator who fails to comply with the requirements of this Section shall be subject to a civil fine of five thousand dollars.

C. The fine provided for in this Subsection shall be due, in the aggregate, to the agencies denied access in violation of this Section and may be levied by the district court of the parish in which the violations occurred.

D. Each representative of a state or local emergency response agency provided access to a facility under this Section shall be under the strict supervision of facility personnel and shall not take any direct action to respond to the release unless specifically authorized to do so by such facility personnel.

E. None of the provisions of this Section shall prohibit or hinder the Transportation and Environmental Safety Section of the Office of State Police from coordinating an emergency response as authorized in R.S. 30:2376.

Acts 1995, No. 1037, §1.

§2376. Monitoring and enforcement

A. The deputy secretary or his designees shall have the right to reasonably monitor owners or operators to ensure their compliance with this Chapter. They shall have the right to enter and inspect any facility in which they have reasonable cause to believe hazardous material, the reporting of which is required by this Chapter, is manufactured, stored, used, or released and which has not been reported, and to require the report of the presence of such hazardous material as required by this Chapter.

B. The deputy secretary may conduct investigations, make reports, conduct hearings, and conduct, directly or indirectly, the research, development, demonstration, or training activities necessary to undertake his responsibilities and exercise his authority under Subsection A of this Section. The deputy secretary,

through the office of state police, hazardous materials unit, shall act as coordinator of emergency response activities arising as a result of releases of materials regulated under this Chapter.

C. Nothing in this Chapter shall be intended to diminish any sheriff's responsibility with regard to his authority to address emergency response needs in his parish.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1987, No. 347, §1; Acts 1997, No. 1046, §1.

§2377. Reports

The Department of Public Safety and Corrections, in consultation with the commission, shall make an annual report by April first to the Senate Committee on Environmental Quality, the House Committee on the Environment, and the governor regarding:

(1) The progress made in developing, implementing, compiling, disseminating, and coordinating the information system.

(2) The level of reporting by owners and operators.

(3) Additional recommendations for legislation and other recommendations to facilitate compliance with the provisions of this Chapter.

(4) The problems experienced by owners and operators and state and local government and agencies in complying with this Chapter.

(5) Reporting forms and procedures used by governmental agencies to require the reporting of the manufacture, use, storage, or release of hazardous materials which should be replaced by the inventory form.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1987, No. 347, §1; Acts 1991, No. 21, §1, eff. June 14, 1991; Acts 1997, No. 1046, §1.

§2378. Administrative procedures

A. All proceedings conducted under this Chapter and all rules and regulations adopted pursuant to this Chapter shall be conducted or adopted in accordance with the Administrative Procedure Act and the Open Meetings Law.

B. All legislative oversight jurisdiction for the implementation of this Chapter, including the promulgation of rules and regulations, shall be placed with the Senate Committee on Environmental Quality and the House Committee on the Environment.

Acts 1985, No. 435, §1, eff. July 11, 1985; Acts 1991, No. 21, §1, eff. June 14, 1991; Acts 1997, No. 1046, §1.

§2379. Preemption

A. No local governing authority, municipality, parish, or other local governmental entity may enact, adopt, or enforce an ordinance, law, or regulation relative to hazardous materials reporting or any other provisions of this Chapter, except as otherwise specifically authorized by state law. However, if reporting requirements to agencies in the federal government under federal law conflict with reporting requirements under this Chapter, the affected entities shall file those reports. This Chapter shall have prospective effect only.

B. The commission and the department shall, where practical and feasible, incorporate local purposes into the state information system and provide local access to such information, subject to the qualifications provided for in R.S. 30:2368(B)(1).

Acts 1989, No. 505, §1; Acts 1997, No. 1046, §1.

§2380. Right-to-Know Fund

A. Subject to the exceptions contained in Article VII, Section 9 of the Constitution of Louisiana, all monies collected under R.S. 30:2373 shall be paid into the state treasury and shall be credited to the Bond Security and Redemption Fund. Out of the funds remaining in the Bond Security and Redemption Fund, after a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state which become due and payable within a fiscal year, the treasurer shall, prior to placing such remaining funds in the state general fund, pay into a special fund, which is hereby created in the state treasury and designated as the "Right-to-Know Fund", hereinafter referred to as the fund, an amount equal to all monies collected under R.S. 30:2373. The fund balance shall not exceed two million dollars. Any monies in excess of that amount shall revert to the general fund.

B. Monies in the fund shall be paid to the deputy secretary on his warrant and shall be used to develop the Louisiana Chemical Network (LCN), a statewide centralized inventory and release reporting system. This centralized reporting system is intended to eliminate duplication in reporting requirements, develop centralized data management, and provide processed data to all parishes via the local emergency planning committees (LEPCs). The department shall have the responsibility to develop a centralized data distribution system and

provide the local emergency planning committees with the necessary equipment, software, and training to support its application. The monies in the fund shall be dedicated to equipment acquisition and personnel training for LEPCs and for the department to properly staff the centralized data management functions. The deputy secretary shall adopt the necessary rules and regulations to administer this system.

Acts 1997, No. 1046, §1.

CHAPTER 17. LOUISIANA RECLAIMED WATER LAW

§2391. Short title

This Chapter shall be known and may be cited as the "Louisiana Reclaimed Water Law".

Acts 2003, No. 985, §1.

§2392. Purpose

The legislature hereby finds and declares that the use of potable water for nonpotable uses, including but not limited to cemeteries, golf courses, parks, highway landscaped areas, and industrial uses, is a waste of our most precious natural resource, which is an essential element for life. There is a need for a reliable source of water for uses that should not draw from the supply of potable water. With the proper investment and development of the necessary infrastructure, the creation of dependable reclaimed water resources will meet nonpotable needs and relieve stress on potable water resources. A drought-proof supply of water will assist industry and encourage economic development. In furtherance of the legislature's constitutional mandate to protect the natural resources of the state as provided in Article IX, Section 1 of the Constitution of Louisiana, there is hereby established the Louisiana Reclaimed Water Law.

Acts 2003, No. 985, §1.

§2393. Definitions

The following terms shall have the following meanings for the purposes of this Chapter:

(1) "Available reclaimed water source" means reclaimed water that meets all of the following requirements:

(a)(i) The source of reclaimed water is of sufficient quality for the proposed beneficial use considering all relevant factors including but not limited to safety, effects of the beneficial use based on specific constituents in the reclaimed water source, and effects on state and federal water discharge permits. The quality of the reclaimed water shall meet all applicable state and federal water quality standards and the following standards at the discharge from the producer's plant site:

$BOD_5 \leq 5$ mg/L

TSS ≤ 5 mg/L

NH_3-N ≤ 2 mg/L

TN ≤ 10 mg/L

Chlorine residual ≥ 2 mg/L

(ii) The reclaimed water producer must keep verifiable records of water quality as determined by effluent testing seven days per week. Such tests must be either flow proportional composite sampling or electronic testing with laboratory verification.

(b) The use of reclaimed water will not adversely affect downstream water quality and will not be injurious to wildlife, fish, or plant life.

(c) The reclaimed water must be furnished to the user at a cost that is equal to or less than the cost of potable water, in accordance with R.S. 30:2396.

(2) "Beneficial uses" means the technologically feasible uses of reclaimed water for domestic, municipal, industrial, agricultural, recreational, or therapeutic purposes.

(3) "Reclaimed water" means water that, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use and that is therefore considered a valuable resource.

(4) "Reclaimed water producer" means any public or private entity that produces, transmits, or distributes reclaimed water.

Acts 2003, No. 985, §1.

§2394. Use of potable groundwater; prohibition

A. No public or private entity shall use groundwater of quality suitable for potable domestic use to irrigate the grassy non-developed areas of cemeteries, golf courses built and completed on and after August 15,

2003, parks, and highway landscaped areas, if there exists an available reclaimed water source as defined in R.S. 30:2393(1).

B. Public or private entities that use a source of potable water for cooling tower applications and industrial purposes or to irrigate the grassy areas of golf courses built and completed before August 15, 2003, shall examine the use of reclaimed water, if an available reclaimed water source exists as defined in R.S. 30:2393(1), and may use the reclaimed water for those purposes and applications.

C. Public or private entities that use a source of potable water to irrigate crops not intended for human consumption are encouraged, but not mandated, to use reclaimed water.

D. Public or private entities which grow, package, or produce food for human consumption are specifically excluded from this Chapter.

Acts 2003, No. 985, §1.

§2395. Identification of uses and customers

A. Reclaimed water producers and potential customers may cooperate in joint technical, economic, and environmental studies to develop available reclaimed water sources.

B. Reclaimed water producers may identify potential customers for an available reclaimed water source. A reclaimed water producer that has identified a potential customer may, in writing, request that the customer enter into an agreement for the producer to provide reclaimed water.

C. Current users of potable groundwater for nonpotable uses may identify reclaimed water producers. Such a user that has identified a potential reclaimed water producer with an available reclaimed water source may, in writing, request that the reclaimed water producer enter into an agreement to supply reclaimed water.

Acts 2003, No. 985, §1.

§2396. Costs

The producers of reclaimed water shall not sell water to customers at a price over the following amounts which shall include the cost to the reclaimed water producer for physical facilities to produce and transport the reclaimed water:

(1) For customers currently purchasing potable water from a third party, the cost for reclaimed water shall not exceed the price per gallon, including the cost of piping or transporting the reclaimed water, that the customer paid to the third-party potable provider.

(2) For customers who currently self-produce and use water from a potable water source, the cost for reclaimed water, including any and all fees, shall not exceed the customer's cost of producing water.

Acts 2003, No. 985, §1.

§2397. Distribution of revenue

The state treasurer shall each fiscal year deposit the revenues generated under the provisions of this Chapter, from taxes applicable to the sale of reclaimed water, or other sources as provided for by law into the Bond Security and Redemption Fund. Out of the funds from such sources remaining in the Bond Security and Redemption Fund after a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall deposit an amount equal to one-quarter of the revenues generated from the reclaimed water program into the Municipal Facilities Revolving Loan Fund, enacted in R.S. 30:2078, which shall be used for making grants to local governments to finance primary waste treatment facilities; one-quarter into the Coastal Resources Trust Fund, created in R.S. 49:214.40, and the remainder shall be used by the Department of Natural Resources for the protection of groundwater resources. Use of these funds shall be subject to an appropriation by the legislature.

Acts 2003, No. 985, §1.

§2398. Capital improvements

Any capital improvements made under this Chapter shall qualify for any tax deductions as provided by law.

Acts 2003, No. 985, §1.

§2399. Design of reclaimed water system

A. Reclaimed water systems shall be designed with the goal of preventing the contamination of potable water.

B. All transmission and distribution piping for a reclaimed water system shall comply with the requirements of Part XII (Water Supply) and Part XIV (Plumbing) of the Louisiana State Sanitary Code relative to color-coding, nonpotable water identification, complete separation from potable water systems,

separation distances from potable water piping when run in parallel, separation distance requirements when crossing potable water line, and such other necessary items.

Acts 2003, No. 985, §1.

CHAPTER 18. SOLID WASTE RECYCLING AND REDUCTION LAW

§2411. Legislative findings; purpose; intent; application

A.(1) The legislature finds that removal of certain materials from the solid waste stream going into landfills currently being utilized for the disposal of solid waste in Louisiana is necessary in order to protect our environment, prevent nuisances, protect the public health, safety, and welfare, extend the usable life of the facilities, aid in the conservation and recovery of valuable resources, and to conserve energy by efficient reuse of these products, thereby benefiting all citizens of the state.

(2) The legislature further finds that the identification of markets and distribution networks for recyclable or recycled materials is a necessary prerequisite to the orderly development of statewide recycling programs.

(3) The legislature further finds that the state must demonstrate its commitment to proper solid waste management by establishing source separation and recycling programs, and by encouraging market development through the purchase of recycled products by the state government.

B. It is declared to be the purpose of this Chapter to:

(1) Establish a goal of reducing the solid waste stream through waste reduction, reuse, and recycling by thirty percent by December 31, 2006.

(2) Encourage the development of solid waste reduction and recycling as a management procedure at all solid waste facilities in the state and to promote recovery of recyclable materials so as to preserve and enhance the quality of air, water, and land resources.

(3) Encourage the development of the state's recycling industry, thereby conserving the natural resources and energy through reuse.

(4) Require state agencies to procure recycled goods to the maximum extent possible.

(5) Encourage political subdivisions to develop recycling programs allowing each subdivision flexibility to choose the type of program most advantageous to each.

(6) Develop and implement effective public education programs concerning recycling in order to encourage recycling so as to preserve and enhance the natural beauty of the land, waters, and air of the state.

(7) Encourage the expansion of businesses located in Louisiana and to whatever extent possible, to look favorably on Louisiana businesses in the recycling industry, which industry includes, but is not limited to those businesses that manufacture, distribute, or act as brokers for recycled products.

C. It is the intent of the legislature, whenever economically feasible and as markets allow, to continually expand the policies of the state to require utilization of recycled resources in the daily operations of the state.

D. The provisions of this Chapter shall only apply to waste that is nonhazardous under the provisions of this Subtitle and the rules adopted pursuant thereto.

Acts 1989, No. 185, §1, eff. Sept. 1, 1989; Acts 1995, No. 1297, §1; Acts 2006, No. 829, §1.

{{NOTE: SEE §§2 AND 3 OF ACTS 1989, NO. 185.}}

§2412. Definitions

As used in this Chapter, unless the context clearly indicates otherwise, the term:

(1) "Fraudulent taking" means the value gained from acts committed by an offender in violation of R.S. 30:2418(M)(1).

(1.1) Repealed by Acts 2006, No. 829, §2.

(2) "Label" means a molded imprint or raised symbol on or near the bottom of a plastic product.

(3) "Lubricating oil" includes but is not limited to any oil intended for use in an internal combustion engine, crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, airplane, train, heavy equipment, or machinery powered by an internal combustion engine.

(4) "Medium truck tire" means a tire weighing one hundred pounds or more and normally used on semitrailers, truck-tractor, semitrailer combinations or other like vehicles used primarily to commercially transport persons or property on the roads of this state or any other vehicle regularly used on the roads of this state.

(4.1) Repealed by Acts 2006, No. 829, §2.

(5) "Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck-tractor and semitrailer combination, or any other vehicle operated in this state, and propelled by power other than muscular power; but the term does not include bicycles and mopeds.

(5.1) "Off-road tire" means a tire weighing one hundred pounds or more and that is normally used on off-road vehicles.

(5.2) "Off-road vehicle" means construction, farming, industrial, mining, and other vehicles not normally operated on the roads of this state. This term does not include vehicles propelled solely by muscular power.

(6) "Oil recycling" means to prepare used oil for reuse as a petroleum product by rerefining, reclaiming, reprocessing, or other means or to use used oil in a manner that substitutes for a petroleum product made from new oil, specifically including the use of used oil as a fuel oil, provided the used oil meets all applicable rules and regulations.

(6.1) "Passenger/light truck/small farm service tire" means a tire weighing less than one hundred pounds and normally used on automobiles, pickup trucks, sport utility vehicles, front steer tractors, and farm implement service vehicles.

(7) "Pelletized paper waste" means pellets produced from discarded waste paper that has been diverted or removed from solid waste which is not marketable for recycling and which is wetted, extruded, shredded, or formulated into compact pellets of various sizes for use as supplemental fuel in a permitted boiler. The production of pellets for use as supplemental fuel in a permitted boiler may be used by a solid waste management facility or local governmental subdivision as credit toward attaining its waste reduction goal pursuant to R.S. 30:2413.

(8) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, an interstate body, or the federal government or any agency of the federal government.

(9) "Plastic bottle" means a plastic container that has a neck that is smaller than the body of the container, accepts a screw-type, snap cap, or other closure and has a capacity of sixteen fluid ounces or more, but less than five gallons.

(9.1) "Program eligible waste tires" means those waste tires generated within Louisiana.

(10) "Reclaiming" means the use of methods, other than those used in rerefining, to purify used oil primarily to remove insoluble contaminants, making the oil suitable for further use; which may include settling, heating, dehydration, filtration, distillation, or centrifuging.

(11) "Recovered materials" means those materials which have known recycling potential, can be feasibly recycled, and have been diverted or removed from the solid waste stream for sale, use, or reuse, by separation, collection, or processing.

(12) "Recyclable material" means those materials which are capable of being recycled and which would otherwise be processed or disposed of as nonhazardous solid waste.

(13) "Recycled content" means materials that contain a percentage of post-consumer materials as determined by the department in the products or materials to be procured, including but not limited to paper, aluminum, glass, and composted materials.

(14) "Recycling" means any process by which nonhazardous solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

(15) "Rerefining" means the use of refining processes on used oil to produce high-quality base stocks for lubricants or other petroleum products. Rerefining processes may include distillation, hydrotreating, or treatments employing acid, caustic, solvent, clay, or other chemicals, or other physical treatments other than those used in reclaiming.

(16) "Rigid plastic container" means any formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible finite shape or form with a capacity of eight ounces or more but less than five gallons.

(17) "Solid waste" means any garbage, refuse, sludge, and other discarded material, including those in a solid, liquid, or semisolid state resulting from residential, community, or commercial activities. As used in this Chapter, the term "solid waste" shall not include mining, agricultural, special and industrial wastes, or hazardous and infectious wastes. It also does not include or mean solid or dissolved material in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under R.S. 30:2074, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), as amended, or hazardous waste subject to permits under R.S. 30:2171 et seq. The definition of solid waste shall not include recovered materials or uncontaminated scrap metal materials which are purchased for resale to be recycled or reused and are not destined for disposal.

(18) "Solid waste management facility" means any solid waste disposal area, volume reduction plant, transfer station, or other facility the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste and which is owned or operated by or receives solid waste from a parish or municipality. This does not include those facilities which collect, process, remanufacture, or ship recovered materials unless such facilities are engaged in the management of solid waste.

(19) "Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle or off-road vehicle.

(20) "Used oil" means any oil, whether refined from crude oil or synthetic oil, that has been used and as a result of such use, is contaminated by physical or chemical impurities.

(21) "Used oil collection facility" means automotive service facilities, governmentally sponsored collection facilities, or other facilities, which in the course of business accept for disposal of five gallons or less of used oil from the general public, all as is more fully set forth by rule, and which store used oil in tanks or containers approved by the department.

(22) "Used oil recycling facility" means any facility that accepts more than ten thousand gallons of used oil annually for oil recycling purposes.

(23) "Waste tire" means a whole tire that is no longer suitable for its original purpose because of wear, damage, or defect.

(24) "Waste tire collection center" means a site where used tires are collected from the public prior to being offered for recycling.

(24.1) "Waste tire generation" means the replacement of an unserviceable tire with a serviceable tire. The sorting, collection, exchange, trade, or transportation of a waste tire is not waste tire generation.

(25) "Waste tire processing facility" means a site where equipment is used to cut, burn, or otherwise alter whole waste tires so that they are no longer whole.

(26) "White goods" means inoperative and discarded refrigerators, ranges, water heaters, freezers, microwave ovens, and other similar domestic and commercial large appliances.

(27) "Division" means the division of administration in the office of the governor.

(28) "Recycled paper product" means all paper and woodpulp products which contain the recommended minimum content standards specified in the guidelines as adopted by the Environmental Protection Agency under the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. 6901 et seq.), as amended, and which are specified in the rules and regulations promulgated by the secretary of the Department of Environmental Quality pursuant to R.S. 30:2415.4, except that high grade bleach printing and writing papers defined in such guidelines, rules, and regulations shall contain a minimum of fifty percent recovered paper or twenty percent recovered post-consumer fiber by fiber weight.

(29) "Recovered paper" means paper generated beyond the papermaking process which is subsequently recycled. The papermaking process ends after the first slitter/winder with the cutting and trimming of the reel into small rolls. Recovered paper includes the recovered material equivalent for cotton fiber paper.

(30) "Post-consumer recovered fiber" means fiber beyond the papermaking process, excluding pulp substitutes, which has been altered by the use of inks, adhesives, wet strength, resins, coating, plastics, toners, asphalt, hot melt, wax, and other like materials.

Acts 1989, No. 185, §1, eff. Sept. 1, 1989; Acts 1991, No. 379, §1; Acts 1991, No. 964, §§1 and 2; Acts 1992, No. 924, §1; Acts 1995, No. 1297, §1; Acts 1999, No. 1015, §1, eff. July 9, 1999; Acts 2001, No. 623, §1; Acts 2002, 1st Ex. Sess., No. 101, §1, eff. April 18, 2002; Acts 2006, No. 829, §§1 and 2.

§2413. Powers and duties of the secretary; fees; local government

A. The secretary shall have the following powers and duties:

(1) To provide technical assistance to parishes, municipalities, and other persons, and coordinate with appropriate federal agencies, and private organizations in carrying out the provisions of this Subchapter.

(2) To adopt rules and regulations to encourage reduction, recycling, and resource recovery of solid waste as a source of raw materials to be utilized in the production of goods in the state and to carry out the purposes of this Chapter.

(3) To assist in and encourage, to the maximum extent possible, the development within the state of industries and commercial enterprises which are based upon resource recovery, recycling, and reuse of solid waste.

(4) To promote research on alternative, economically feasible, cost-effective, and environmentally safe solid waste management and encourage public input during the research process.

(5) To serve as an information source of recycling businesses operating in the state and assist in matching recovered materials with markets. Such information as may be compiled shall be made available to local governments to assist with their solid waste management activities.

(6) To award grants to local governments through a mechanism to be established by rule for solid waste recycling and recovery programs.

(7) To promote public education and public awareness of the necessity of initiating waste reduction and recycling programs as an integral part of all solid waste management programs in the state.

(8) To adopt, by rules, such fees as may be necessary to administer this Chapter. Such rules shall be adopted in accordance with the Administrative Procedure Act; however, any legislative oversight hearings shall be held before a joint oversight subcommittee of the House Committee on the Environment and the Senate Committee on Environmental Quality.

(9)(a) The secretary shall collect and compile information and data, to be provided by the parishes and municipalities, on resource recovery and recycling programs operated by such parishes and municipalities.

(b) The department shall report annually to the House Committee on Environment and the Senate Committee on Environmental Quality its findings and conclusions on the status of resource recovery and recycling programs in the parishes and municipalities.

(10) To establish a recycling council composed of representatives from municipal, local, and state government, industry, business, solid waste management, academia, and organizations involved in recycling to delineate needs and to address solid waste management issues.

B. The secretary may require each parish, in conjunction with its major municipalities, to submit a plan for attaining a twenty-five percent waste reduction goal by December 31, 1992. The plans shall be reviewed annually by each parish and revisions or modifications submitted to the department along with an annual progress report. The initial plan should include proposed educational programs, recycling programs and incentives, review of recycled products markets and back-up markets being utilized, a review of existing recycling programs that are both public and private, and any contingency measures as appropriate.

C. Local governmental subdivisions are hereby authorized to pass through any fee imposed pursuant to this Chapter to any person provided any collection and disposal services regarding solid waste by a local governmental subdivision. However, such authorization shall not include deposits, fees, or assessments on any disposal beverage containers by any political subdivision or authority within the state of Louisiana.

D. In developing and implementing recycling programs, parishes and municipalities shall give consideration to the collection, marketing, and disposition of recyclable materials by persons engaged in the business of recycling on September 1, 1989, whether or not the persons were operating for profit. Parishes and municipalities are encouraged to use for-profit and nonprofit organizations in fulfilling their responsibilities under this Chapter.

Acts 1989, No. 185, §1, eff. Sept. 1, 1989; Acts 1991, No. 21, §1, eff. June 14, 1991; Acts 1996, 1st Ex. Sess., No. 36, §1, eff. May 7, 1996; Acts 2001, No. 562, §1, eff. June 22, 2001; Acts 2006, No. 829, §1.

§2413.1. Debris management plan

A. The legislature finds that hurricanes Katrina and Rita caused devastation throughout south Louisiana resulting in the generation of debris heretofore unanticipated. While the state has made progress in preparing a debris management plan, the legislature finds and declares that a plan for future events is vital to the protection and welfare of the people of the state of Louisiana. The legislature further finds and declares that a comprehensive management plan for debris generated by natural disasters within the state of Louisiana should be prepared in advance to facilitate a reasonable, efficient, and prompt recovery from natural disasters that will be protective of human health and the environment.

B. The secretary of the Department of Environmental Quality shall develop and implement a comprehensive debris management plan for debris generated by state and federally declared disasters and debris generated from the rebuilding efforts resulting from these disasters. The management plan shall be to reuse and recycle material and to divert debris from disposal in landfills to the maximum extent practical, efficient, and expeditious in a manner that is protective of human health and the environment. The plan shall be consistent with state and federal law and shall not supersede any ordinance adopted by a local governing authority. In developing such plan, the secretary shall utilize the following debris management practices in order of priority, to the extent they are appropriate, practical, efficient, timely, and have available funding:

(1) Recycling and composting.

(2) Weight reduction.

(3) Volume reduction.

(4) Incineration or co-generation.

(5) Land disposal.

C. Of the total green and woody debris intended for final disposal in a landfill, fifty percent shall be reduced by weight and fifty percent by volume prior to transport to a landfill. Green and woody debris may be used in coastal restoration projects, as compost, or as fuel. Green and woody debris shall not be disposed of in a landfill as the first option; however, such debris may be used as a component of the cover system for a landfill or a means for providing erosion control.

D. The comprehensive debris management plan shall utilize the most environmentally beneficial management techniques consistent with the health, safety, and welfare of the citizens of the state, to the extent funding is available, and shall promote the efficient and expeditious management of the debris. The plan shall place restrictions on open burning and shall require that any burning shall utilize equipment to reduce emissions of particulate matter if the department and respective local governing authority deem the use of equipment necessary to protect public health and the environment.

E. The goal of the comprehensive debris management plan shall be to reuse and recycle material, including the removal of aluminum from debris, in an environmentally beneficial manner and to divert debris from disposal in landfills to the maximum extent practical and efficient which is protective of human health and the environment. In complying with this goal, the plan shall require that uncontaminated wood debris generated from construction be segregated and reduced in weight and volume prior to transport to a landfill. In diverting debris from disposal in landfills, the plan shall require that recyclables and hazardous waste be segregated for beneficial environmental use or reduced in weight prior to transport to a landfill.

F. Such plan shall be submitted to the Senate Committee on Environmental Quality and the House Committee on Environment no later than July 1, 2006.

Acts 2006, No. 662, §1.

§2414. Exemptions

The following wastes or activities are exempt from the requirements of this Chapter:

(1) Recovered materials, except used oils, if a majority of the recovered materials at a facility are demonstrated to be sold, used, or reused within twelve months.

(2) Recovered materials, except used oils, or the products or byproducts of operations that process recovered materials which are not discharged, deposited, injected, dumped, spilled, leaked, or placed into or upon any land or water so that such products or byproducts or any constituent thereof may enter lands or be emitted into the air or discharged into the waters, including groundwaters, or otherwise enter the environment or pose a threat to public health and safety or the environment.

(3) Recovered materials which are hazardous wastes and have not been recovered from solid wastes and which are defined as hazardous wastes under applicable state or federal regulations.

(4) Those wastes exempt under the Louisiana Solid Waste Management and Resource Recovery Law and the Louisiana Solid Waste Rules and Regulations.

Acts 1989, No. 185, §1, eff. Sept. 1, 1989; Acts 1991, No. 964, §1.

§2415. Procurement by public bodies of material with recycled content

A. The division of administration, in coordination with the department, shall adopt rules to require the use and purchase of goods with recycled content by all state agencies and political subdivisions. The rules shall, at a minimum, include the Environmental Protection Agency's comprehensive guideline for procurement

of products containing recovered materials. Such rules shall also allow flexibility for the consideration of product performance, price, availability, content of recovered materials, remanufactured products, and no cost manufacturer take back programs.

B. Each state agency shall adopt a policy which encourages to the maximum extent possible the utilization of products with recycled contents.

C. The division of administration shall develop rules to allow up to a five percent differential in price for the purchase of products with recycled content, provided that such products are manufactured in Louisiana. These rules shall be reviewed annually by the division and department and a written report with data and recommendations submitted to the legislature annually.

D. The division shall establish a schedule to ensure a continued use of products with recycled content by establishing goals for state procurement of specified products. Such numeric goals shall be established by the division by January 1, 2007, and shall be directed toward the utilization of the maximum amount of goods and products with recycled content. In no case shall these goals be less than five percent of total applicable goods and purchases per year over a five-year period.

E. The Department of Transportation and Development shall, by January 1, 2007, initiate rulemaking to ensure the use of the maximum amount of recycled materials in highway construction and maintenance. The rules shall, at a minimum, include the Environmental Protection Agency's comprehensive guideline for procurement of products containing recovered materials.

F. State agencies in Louisiana and all others using state general funds shall encourage the purchase of paper and paper products, tissue and paper towels, which shall contain the recommended minimum content standards as provided in R.S. 30:2412(28).

G. The commissioner of administration shall monitor the goals for minimum uses by the state of recycled paper products, pursuant to R.S. 30:2415.1. A goal of an increase in the total state procurement shall be established that will result in an increase of five percent annually, until such time as a minimum goal of fifty percent of the total purchased is reached within ten years. A minimum of twenty percent of this total shall consist of high-grade white paper.

Acts 1989, No. 185, §1, eff. Sept. 1, 1989; Acts 1995, No. 1297, §1; Acts 2006, No. 829, §1.

§2415.1. Preference for recycled paper products

The division shall give preference by rules to the purchase of recycled paper products as defined pursuant to R.S. 30:2412(28).

Acts 1995, No. 1297, §1.

§2416. Compost standards and applications

A. Within six months after September 1, 1989, the department shall initiate rulemaking to prescribe allowable uses and application rates of compost sold as a product, and to establish the requirements necessary to produce hygienically safe compost products for various applications.

B. The rules shall classify the compost according to the following categories:

(1) The types of waste composted, including at least one category containing only yard trash.

(2) The maturity of the compost, including at least three categories for degree of decomposition for fresh, semimature, and mature compost.

(3) Categories based on levels of organic and inorganic constituents in the compost.

C. These rules shall establish methods for measuring:

(1) Compost maturity.

(2) Particle size.

(3) Moisture content.

(4) Average levels of organic and inorganic constituents, including heavy metals, for such classes of compost as the department establishes, and the analytical methods to determine those levels.

D. The rules shall also prescribe:

(1) The total quantity of organic and inorganic constituents, including heavy metals, allowed to be applied through the addition of compost to the soil per acre per year.

(2) The allowable uses of compost based on maturity and type of compost.

E. If compost is produced that does not meet the criteria prescribed by the department for agricultural and other uses, the compost must be reprocessed or disposed of in a manner approved by the department, unless a different application is specifically permitted by the department.

F. The department shall work with the Louisiana Department of Agriculture and Forestry in developing the standards and in seeking ways to promote the use and development of markets for composted materials.

G. The provisions of this Section shall not apply to compost produced by an individual for his own use.

Acts 1989, No. 185, §1, eff. Sept. 1, 1989.

§2417. Used oil; collection; recycling and reuse; disposal

A. It is the intent of the legislature to reduce the amount of illegally disposed used oil by providing incentives to increase the number of used oil collection facilities for used oil recovery, and consequently recover more of this valuable natural resource and concurrently enhance the state's environment. On or before January 1, 1992, the secretary shall promulgate regulations and guidelines for a used oil recycling program to promote and encourage the proper collection and reuse of used oil. The regulations and guidelines shall provide for but not be limited to:

(1) Awarding grants, subsidies, and loans to municipalities, parishes, and other political subdivisions to establish and provide continuous operation of collecting services and facilities for used oil.

(2) Establishing and maintaining a used oil information program.

(3) Maintaining an "800+" telephone information program to inform the public of used oil collection locations.

(4) Encouraging the voluntary establishment of used oil collection and recycling programs by public interest groups, automotive service facilities, and others, and providing technical assistance to such program organizers.

(5) Regulating mixtures of used oil and hazardous waste as used oil if the hazardous waste contained in the mixture is so classified solely due to the waste's characteristic of ignitability, such as mineral spirits, provided that the mixture does not exhibit the characteristic of ignitability pursuant to such rules and regulations.

(6), (7) Repealed by Acts 2006, No. 829, §2.

B. Any appropriations, gifts, grants, or other monies received for used oil recycling purposes shall be remitted to the state treasurer in compliance with Article VII, Section 9(B) of the Constitution of Louisiana within ten days after receipt by the Department of Revenue and shall be deposited to the credit of the Used Oil Recycling Trust Fund, which is hereby established in the state treasury. The monies in the Used Oil Recycling Trust Fund shall be invested by the state treasurer in the same manner as monies in the state general fund. All interest earned on money from this fund and invested by the state treasurer shall be credited to the Used Oil Recycling Trust Fund.

C. The secretary shall administer the Used Oil Recycling Trust Fund and the monies shall be used to:

(1) Provide technical assistance, grants, subsidies, and loans to local government for programs to encourage collection, reuse, and proper disposal of used oil.

(2) Provide technical assistance and incentives for the collection and recycling of used oil to nongovernment collection or recycling facilities.

(3) Provide for public education and research, including advertising, training, unique incentives, and other programs, provided, however, that no more than thirty-five percent of the monies may be used for this type of activity during any fiscal year.

D. The secretary shall develop guidelines to award grants, subsidies, and low interest loans to local government to encourage the establishment and maintenance of programs and facilities to reduce the improper disposal of used oil, which may include the following in the order of priority to be supported:

(1) Establishing publicly operated used oil collection facilities at landfills and other public places.

(2) Curbside pickup of used oil containers by a local government or its designee.

(3) Retrofitting solid waste equipment to promote curbside pickup or disposal of used oil at designated collection facilities.

(4) Providing containers and other materials and supplies that the public can use to store in an environmentally safe manner used oil for pickup or delivery to a collection facility.

E. The following activities are prohibited:

(1) No person may knowingly collect, transport, store, recycle, use, or dispose of used oil in any manner which endangers the public health or welfare.

(2) No person may knowingly discharge or cause to be discharged used oil into sewers, drainage systems, septic tanks, or any waters or lands of the state.

(3) After July 1, 1991, no person may knowingly mix or commingle used oil with solid waste that is to be disposed of in landfills or directly knowingly dispose of used oil in solid waste landfills within the state of Louisiana unless specifically approved by the department.

(4) Repealed by Acts 2006, No. 829, §2.

(5) Used oil shall not be used for road oiling, dust control, weed abatement, or other similar uses that have the potential to release used oil into the environment.

F. The department shall develop incentives for the reuse, recycling, and marketing of used oil. Such incentives may include a program to encourage individuals who change their own oil to return used oil to a used oil collection facility.

G. As of July 1, 1992, no person shall knowingly dispose of used oil in any manner other than at a permitted used oil collection facility, unless specifically approved by the department. Exempt from this requirement are entities which only burn used oil generated by the burner, provided such burning is done in compliance with applicable rules of the Louisiana Department of Environmental Quality.

H. Nothing herein shall be construed to prohibit the collection, transportation, or disposal of used oil mixed or commingled with solid waste by any person engaged in the collection, transportation, and/or disposal of solid waste, unless it can be demonstrated that such person knew that such used oil had been mixed or commingled with the solid waste collected, transported, or disposed of and unless it can be demonstrated that it is economically and environmentally feasible to remove and recover such used oil from the solid waste collected, transported, or disposed of.

I. When purchasing lubricating oils, every person acting as purchasing agent for any agency, board, commission, or department of the state shall give preference to rerefined oil which meets manufacturer's warranty, provided the cost of rerefined oil does not exceed by more than five percent the cost of other oils, and so long as the product contains at least twenty-five percent rerefined oil.

J. For the purposes of this Section, the owner or operator of a used oil collection facility which accepts used oil from the public may presume that a quantity of no more than five gallons of used oil accepted from any member of the public is not mixed with a hazardous substance, provided that such owner or operator acts in good faith and provided that the recycled or used oil:

(1) Has been removed from the engine of a light duty motor vehicle, farm equipment, or a household appliance by the owner of such vehicle, equipment, or appliance.

(2) Is presented by such owner to the dealer for collection, accumulation, and delivery to an oil recycling facility.

(3) The owner or operator is not knowingly accepting used oil which has been mixed with any listed or characteristic hazardous waste or hazardous substance.

K. No person, including the state of Louisiana or any political subdivision thereof, may recover under R.S. 30:2276 from a permitted used oil collection facility for any response costs or damages resulting from a release or threatened release of any collected used oil if such used oil:

(1) Is not knowingly mixed with any other hazardous substance.

(2) Is stored, treated, transported, or otherwise managed in compliance with:

(a) The regulatory standards established by the secretary hereunder.

(b) The terms and conditions of the collection facility's permit.

L. The limitation of liability provided for in Subsection K of this Section shall not relieve a permitted used oil collection facility from the responsibility of responding to and taking appropriate remedial action in response to a discharge at the used oil collection facility.

M. No person shall dispose of used refined motor oil by discharge into municipal sewers, municipal drainage systems, surface or groundwaters, watercourses, or marine waters.

N. Notwithstanding any other provision of law to the contrary, the regulations and guidelines promulgated pursuant to this Section shall require all used oil collection centers, transfer facilities, and transporters as defined in LAC 33:V.4001, which are or will be located in a parish with a population of between nine thousand eight hundred seventy and nine thousand eight hundred ninety people based on the 1990 federal census, to obtain licenses or permits authorizing such centers, facilities, and transporters to handle

used oil in compliance with this Section, if any such centers, facilities, and transporters are also conducting processing as defined in LAC 33:V.4001. Such processing includes but is not limited to physical separation of water from the used oil. Nothing in this Subsection shall apply to businesses that primarily engage in oil changes. Further, nothing in this Subsection shall apply to any center, facility, or transporter that is validly permitted or licensed and that began operations prior to January 1, 1999.

Acts 1989, No. 185, §1, eff. Sept. 1, 1989; Acts 1991, No. 964, §1; Acts 1992, No. 537, §1; Acts 1997, No. 658, §2; Acts 1999, No. 1296, §1, eff. July 12, 1999; Acts 2006, No. 829, §1, 2.

§2418. Waste tires

A. The owner or operator of a waste tire collection center shall, within six months after September 1, 1989, provide the department with a notification of the site's location, size, and the approximate number of waste tires that are accumulated at the site.

B. After January 1, 1990, it is unlawful for any person to dispose knowingly and intentionally of waste tires in the state, unless the waste tires are disposed of for processing, or collected for processing, at a permitted solid waste disposal facility, a permitted waste tire processing facility, or a waste tire collection center.

C. Waste tires that are not subjected to processing or recycling may not be deposited knowingly and intentionally in a landfill as a method of ultimate disposal after January 1, 1991. However, notwithstanding any other law or rule to the contrary, waste tires which have been prepared for disposal by cutting, separating, shredding, or other means in accordance with the rules or standards of the department may be disposed of in a landfill.

D. The department shall by rule encourage the voluntary establishment of waste tire collection centers at all retail outlets that are engaged in the sale of tires. Such centers shall be open to the public and programs to encourage the return of waste tires to collection centers shall be undertaken by the department.

E. Nothing herein shall be construed to prohibit the collection, transportation, or disposal of waste tires mixed or commingled with solid waste by any person engaged in the collection, transportation, or disposal of solid waste, unless it can be demonstrated that such person knew that such waste tires had been mixed or commingled with the solid waste collected, transported, and/or disposed and unless it can be demonstrated that it is economically and environmentally feasible to remove and recover such waste tires from the solid waste collected, transported, and/or disposed.

F. An owner or operator of a waste tire collection center may store waste tires for up to one year provided that such storage is solely for the purpose of accumulation of such quantities of waste tires as are necessary to facilitate proper recovery, processing, or disposal.

G. There is hereby established a fund in the state treasury to be known as the "Waste Tire Management Fund". Any fees collected, pursuant to the secretary's rules and regulations, on the sale of tires, and any other appropriations, gifts, grants, or other monies received by the Department of Environmental Quality for the credit of the Waste Tire Management Fund, shall be remitted to the state treasury and credited to the Bond Security and Redemption Fund, as provided by the laws of this state and the Constitution of Louisiana. After a sufficient amount is allocated from the Bond Security and Redemption Fund to pay all obligations secured by the full faith and credit of the state which become due and payable within any fiscal year, the treasurer shall pay into the Waste Tire Management Fund an amount equal to the total amount previously deposited into the treasury. All interest earned on money from this fund and invested by the state treasurer shall be credited to the fund. The monies of the fund shall be administered by the secretary solely for the purposes of solving the state's waste tire problem. No monies from the fund shall be used to provide payments to waste tire processors for processing tires that are generated in Louisiana when those tires are processed in any other state.

H. The secretary shall promulgate rules, regulations, and guidelines for the administration and enforcement of the waste tire program provided for in this Chapter which shall be subject to legislative review and approval by the Senate Committee on Environmental Quality and the House Committee on Environment. The rules, regulations, and guidelines shall provide for but not be limited to:

(1) Establishing standards, requirements, and permitting procedures for waste tire transporters, collection sites, and processors. Requirements shall include proof of liability insurance in a sufficient amount and other evidence of financial responsibility as determined by the secretary.

(2) Encouraging local governing authorities to establish advisory councils to advise the secretary regarding waste tire clean up.

(3) Providing technical assistance and incentives to encourage market research and development projects. Beginning on July 1, 2003, and continuing until June 30, 2008, five percent of all monies from fees collected on the sale of tires and deposited in the fund provided for in Subsection G of this Section shall be

used to encourage the development of products which are marketable and provide a beneficial use and for promotion of those products which have a beneficial use. The department shall make recommendations to the House Committee on the Environment and Senate Committee on Environmental Quality for tax credits to encourage the development and implementation of technologies utilizing used and recycled tire rubber.

(4) Providing incentives and assistance for those persons who collect and remit the fee imposed on the sale of tires.

(5) Providing incentives and assistance for collection and transportation of waste tires including, but not limited to, incentives and assistance for local governing authorities which shall be given the highest priority. Subject to Paragraph (7) of this Subsection, this Paragraph shall not prohibit local governing authorities from splitting, slicing, shredding, or baling tires as part of the disposal process or other beneficial use.

(6) Establishing a priority system for the clean up of existing waste tires.

(7) Providing incentives and assistance to waste tire processing facilities, but only if such facilities use, consume, or process the tires so that they may be reused as a raw material, product, or fuel source. No incentives shall be provided to persons who transport waste tires generated in Louisiana and process those tires in any other state.

(8) Remediating environmental and public health problems caused by such waste tires.

(9) Establishing a procedure and criteria for local governing authorities to apply for and receive funds to remediate waste tire problems in their respective jurisdictions. Payment of funds to local governing authorities for waste remediation tire problems shall commence May 1, 1993.

NOTE: Paragraph (H)(10) as enacted by Acts 2006, No. 821, §1, eff. July 5, 2006, until July 1, 2008. See Acts 2006, No. 821, §§2 and 5.

(10) An exemption from the fee levied pursuant to R.S. 30:2413(A)(8) for tires salvaged from a Louisiana-titled vehicle and sold by a scrap or salvage yard. The rule or regulation shall require documentation of the source of tires subject to this exemption.

I.(1) The fee on tires authorized to be levied pursuant to R.S. 30:2413(A)(8) shall not exceed two dollars per passenger/light truck/small farm service tire, five dollars per medium truck tire, and ten dollars per off-road tire. The secretary may provide for exemptions from the fees levied on the sale of tires pursuant to this Chapter in the regulations provided for in Subsection H of this Section for the sale of tires sold at wholesale and certain tires which are de minimis in nature, including but not limited to lawn mower tires, bicycle tires, and golf cart tires. After June 1, 2004, the secretary may provide for the exemption of certain tire sales from the fee which tires were not previously exempted only through the department's rulemaking authority, including legislative oversight as provided in R.S. 30:2413(A)(8).

(2) A permitted waste tire processing facility shall be paid a minimum of one dollar and fifty cents per twenty pounds of waste tire material that is recycled or that reaches end-market uses or per twenty pounds of whole waste tires marketed and shipped to a qualified recycler. This payment shall be conditioned on the facility providing to the department any documentation, including but not limited to manifests, statements, or certified scale-weight tickets, required by law or by rules and regulations promulgated by the department.

(3)(a) In the event the balance of the fund is insufficient to meet the obligations to waste tire processors provided for above, the department, after meeting all payments required by law, shall pay any undisputed obligations in a pro rata share to waste tire processors having a standard permit when the request for payment was submitted. Any remaining undisputed obligations which would have been paid to waste tire processors but for the insufficiency of the Waste Tire Management Fund shall be paid from future surplus funds in the Waste Tire Management Fund as provided in Subparagraph(b) of this Paragraph.

(b) In the event the fund has a surplus after meeting all obligations of the fund for the month, including any payments required by law, such surplus shall be distributed in a pro rata share to those waste tire processors having a standard permit when the request for payment was submitted and for whom there are unpaid obligations of the fund, excluding any disputed amounts. Such surplus shall be processed for payment by the department within fifteen days after the end of the month in which the surplus arose.

(c) For purposes of this Section, "undisputed obligations" means those waste tire material payments which should have been paid by the department to a waste tire processor since January 1, 2003, but which have not been paid due to the insufficiency of the Waste Tire Management Fund.

(4) If litigation relating to fund payments in dispute prior to March 1, 2004, is resolved through final judgment or settlement, the secretary shall pay from the fund the portion of such final judgment or settlement which represents previously disputed fund payments within one hundred eighty days of the judgment or

settlement. This Subsection shall not be construed to limit or condition the right of the judgment creditor or obligee under the settlement agreement to obtain payment in satisfaction of the judgment or settlement from any source authorized by law.

J. The secretary or his designee shall submit an annual report to the president of the Senate, the speaker of the House of Representatives, the Senate Committee on Environmental Quality, and to the House Committee on the Environment and appear before a joint meeting of the House Committee on the Environment and the Senate Committee on Environmental Quality during each regular session to present the report detailing the progress of the waste tire program for the preceding year, the current balance of the Waste Tire Management Fund, and the forecast for the fund in the following year.

K.(1) Except as provided in Paragraph (2) of this Subsection, the governing authority of each parish or municipality is hereby authorized to govern the siting of waste tire collection, processing, storage, and depository facilities within their respective jurisdictions. The department shall not issue any permit allowing the establishment of a waste tire collection, processing, storage, or depository facility unless the governing authority of the parish or municipality in which the proposed facility is to be located is first notified by the department of the proposed permit.

(2) The permit application submitted to the department shall be accompanied by a letter of compliance and certification of premises and buildings from the state fire marshal. The applicant shall post a bond in accordance with the requirements of the department sufficient to cover the costs of removal of tires from the site in the event operations cease.

(3) Copies of the permit applications to the department shall be made available to the public at the local governmental office. The department shall hold a public hearing within sixty days of submission of an application. The applicant shall cause the notice of the hearing to be published in the official journal of the parish or municipality on two separate days preceding the hearing. The last day of publication of such notice shall be at least ten days prior to the hearing. The applicant shall post a notice of the hearing at least two weeks prior to the hearing in the courthouse, government center, and all the libraries. A public comment period of at least thirty days shall be allowed following the public hearing.

L. The secretary shall promulgate rules and regulations providing incentives, including but not limited to financial rewards, for the reporting of the unauthorized disposal of waste tires.

M.(1) No person shall, with the intent to defraud, prepare, submit, tender, sign, make an entry upon, or certify any invoice, report, manifest, request for payment, claim, or other document in connection with the origin, transportation, storage, transfer, assignment, sale, or disposal of waste tires, as defined by R.S. 30:2412(23).

(2) Penalties for a violation of Paragraph (1) of this Subsection shall be based on the value of the fraudulent taking. When the fraudulent taking results from a number of distinct acts by the offender, the aggregate amount of the payments, subsidies, credits, other disbursements, or things of value obtained shall determine the grade of the offense. Penalties shall be as follows:

(a) If the fraudulent taking amounts to a value of five hundred dollars or more, the offender shall be imprisoned, with or without hard labor, for not more than ten years, or may be fined not more than three thousand dollars, or both.

(b) When the fraudulent taking amounts to a value of three hundred dollars or more, but less than five hundred dollars, the offender shall be imprisoned, with or without hard labor, for not more than two years, or may be fined not more than two thousand dollars, or both.

(c) When the fraudulent taking amounts to less than three hundred dollars the offender shall be imprisoned for not more than six months, or may be fined not more than five hundred dollars, or both. However, if such a conviction is the offender's third or subsequent conviction for violations of this Subsection, the offender shall be imprisoned, with or without hard labor, for not more than two years, or may be fined not more than two thousand dollars, or both.

(3) A waste tire processor shall not request or receive payments from the Waste Tire Management Fund for any waste tires unless the waste tires are generated and processed in Louisiana, the generator and transporter have signed a statement swearing under penalty of law that the tires were not generated outside the state of Louisiana and are Louisiana-eligible tires, and the processor has signed a statement swearing under penalty of law that he has no knowledge contrary to the representations of the generator and transporter. The department shall provide a standard form to be used by generators, transporters, and processors to comply with this Paragraph.

(4) In addition to any other penalties provided for in this Subsection, any person convicted of violating Paragraph (1) of this Subsection may be barred from participating in the program, including requesting and receiving payments or reimbursements from the Waste Tire Management Fund, and any license or registration

issued by the department that is required to participate in the program may be ordered to be surrendered. Participants shall include collectors, generators, processors, and transporters. Any such person convicted may be forever barred from employment with or from contracting with any license holder under this Section. Any sentence imposed which includes the suspension or barring under this Paragraph shall be suspended until after rendition of a final conviction from which no appeal may be taken.

(5) Nothing in this Subsection shall preclude the department from promulgating rules and regulations providing for the revocation of licenses or registrations through the Administrative Procedure Act.

N. The secretary shall promulgate rules to make payments to processors on the basis of weight or tire count at the option of the processor. Payments to a waste tire processor, or any portion thereof, shall not be temporarily or permanently withheld or terminated prior to written notification by the department of the reasons for such withholding or termination to the processor by certified mail. Any such disputed funds shall be immediately placed in escrow pending final resolution of the matter.

O.(1) Failure by any person to timely remit fees collected that are imposed in this Section shall cause the fees to become immediately delinquent, and the secretary has the authority, on motion in a court of competent jurisdiction, to take a rule to show cause in not less than two nor more than ten days, exclusive of holidays, why such person should not be ordered to cease from further pursuit of business. This rule may be tried in chambers and shall always be tried by preference. If the rule is made absolute, the order rendered thereon shall be considered a judgment in favor of the state, prohibiting the person from the further pursuit of said business until he has paid the delinquent fees and any fines, interest, penalties, and other costs in connection with the fees, and every violation of the injunction shall be considered as a contempt of court and punished according to law.

(2) The provisions of Paragraph (1) of this Subsection shall not apply if the person has entered into an installment agreement for the payment of the delinquent fees with the department and is in compliance with the terms of the agreement.

(3) Proceeds from the collection of the fees and any fines, penalties, interest, and costs collected in connection with the fees shall be deposited into the Waste Tire Management Fund to be used to administer the waste tire program authorized by this Section.

(4) The collection procedure provided for in this Subsection shall be in addition to any other collection procedure available to the department.

Acts 1989, No. 185, §1, eff. Sept. 1, 1989; Acts 1992, No. 664, §1, eff. July 2, 1992; Acts 1993, No. 79, §1; Acts 1993, No. 158, §1; Acts 1996, 1st Ex. Sess., No. 36, §1, eff. May 7, 1996; Acts 1999, No. 1015, §1, eff. July 9, 1999; Acts 1999, No. 1049, §1; Acts 2001, No. 623, §1; Acts 2002, 1st Ex. Sess., No. 101, §1, eff. April 18, 2002; Acts 2003, No. 582, §1, eff. June 27, 2003; Acts 2003, No. 789, §1; Acts 2004, No. 846, §1; Acts 2006, No. 821, §1, eff. July 5, 2006, and §2, eff. July 1, 2008.

§2419. Lead acid batteries; land disposal prohibition; scrap and scrap metal recycling, prohibited items

A.(1) No person may place knowingly and intentionally a lead acid battery in mixed solid waste, or discard or otherwise knowingly and intentionally dispose of a lead acid battery except by delivery to an automotive battery retailer or wholesaler, to a collection or recycling facility authorized under the laws of Louisiana to collect and recycle lead acid batteries, or to a secondary lead smelter permitted by the Environmental Protection Agency.

(2) No person may knowingly and intentionally deliver scrap to a scrap metal collection and recycling facility authorized under the laws of this state if such scrap contains any lead-acid or nickel cadmium battery, microwave oven, fluorescent light, capacitors exceeding one inch in length, width, or height, hazardous waste as defined by the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., radioactive materials regulated by the Louisiana Nuclear Energy and Radiation Control Law, R.S. 30:2101 et seq., and regulations promulgated pursuant thereto, fuel tanks if not certified as gas-free, or refrigerants containing chlorofluorocarbons (CFC's).

(3) Any person delivering any scrap, including but not limited to automobiles or automotive parts, to a scrap metal collection and recycling facility must submit to the scrap metal collection and recycling facility a certification signed by a duly authorized representative that all lead-acid or nickel cadmium batteries, microwave ovens, fluorescent lights, capacitors exceeding one inch in length, width, or height, hazardous waste as defined by the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., radioactive materials regulated by the Louisiana Nuclear Energy and Radiation Control Law, R.S. 30:2101 et seq., and regulations promulgated pursuant thereto, fuel tanks if not certified as gas-free, or refrigerants containing chlorofluorocarbons (CFC's) have been removed from and are not included with the scrap delivered.

B. No automotive battery retailer shall dispose of a used lead acid battery except by delivery to an agent of a battery wholesaler, to a battery manufacturer for delivery to a secondary lead smelter, or to a collection or recycling facility authorized under the laws of Louisiana to collect and recycle lead acid batteries.

C. Each item improperly placed, delivered, or disposed of in violation of this Section shall constitute a separate violation.

D. Nothing herein shall be construed to prohibit the collection, transportation, or disposal of lead acid batteries mixed or commingled with solid waste by any person engaged in the collection, transportation, and/or disposal of solid waste, unless it can be demonstrated that such person knew that such lead acid batteries had been mixed or commingled with the solid waste collected, transported, and/or disposed and unless it can be demonstrated that it is economically and environmentally feasible to remove and recover such lead acid batteries from the solid waste collected, transported, and/or disposed.

Acts 1989, No. 185, §1, eff. Sept. 1, 1989; Acts 1997, No. 95, §1.

§2420. Lead acid batteries; collection for recycling

A. Any person selling lead acid batteries at retail or offering lead acid batteries for retail sale in the state shall:

(1) Accept, at the point of transfer, in a quantity at least equal to the number of new batteries purchased, used lead acid batteries from customers, if offered by customers.

(2) Post written notice which must be at least eight and one-half inches by eleven inches in size and must contain the universal recycling symbol and the following language: "It is illegal to discard a motor vehicle battery or other lead acid battery. Recycle your used batteries. State law requires us to accept used motor vehicle batteries or other lead acid batteries for recycling, in exchange for new batteries purchased."

B. Any person selling new lead acid batteries at wholesale shall accept, at the point of transfer, in a quantity at least equal to the number of new batteries purchased, used lead acid batteries from customers, if offered by customers.

Acts 1989, No. 185, §1, eff. Sept. 1, 1989; Acts 2006, No. 829, §1.

§2421. White goods; disposal prohibited; collection for recycling

A. After July 1, 1990, no person may knowingly and intentionally place, discard, or otherwise knowingly and intentionally dispose of white goods except in a collection or recycling facility in accordance with the rules and regulations of the department. However, any person engaged in the collection, transportation, and/or disposal of white goods pursuant to a contract with a parish or municipality on the effective date of this Chapter may continue to dispose of said white goods collected, transported, or presented for disposal during the term of said contract and any extension authorized under such contracts.

B. The department shall establish by rule a procedure to require that all persons engaged in the retail sale of products that will meet the definition of white goods once the product becomes inoperable or discarded post written notice at the point of sale informing the purchaser of the options and preferred methods for disposal of the used items.

C. Nothing herein shall be construed to prohibit the collection, transportation, or disposal of white goods mixed or commingled with solid waste by any person engaged in the collection, transportation, and/or disposal of solid waste, unless it can be demonstrated that such person knew that such white goods had been mixed or commingled with the solid waste collected, transported, and/or disposed and unless it can be demonstrated that it is economically and environmentally feasible to remove and recover such white goods from the solid waste collected, transported, and/or disposed.

Acts 1989, No. 185, §1, eff. Sept. 1, 1989; Acts 2006, No. 829, §1.

§2422. Containers and packaging

A. The secretary shall adopt rules and regulations to set goals to phase out the disposal of materials which have known recycling potential, which can be feasibly recycled, or have been diverted or removed from the solid waste stream for sale, use, or reuse, by separation, collection, or processing. Such rules shall include the provisions for establishment of a list of recyclable materials. No rules and regulations adopted by the secretary shall apply to any materials prior to their entering into the solid waste stream.

B. The department shall, at least annually, review the list of recyclable items. This review shall consider the available recycling technologies, markets, cost, and any other factors as deemed to be appropriate when compiling and reviewing the list of recyclable items.

C. The secretary may require each solid waste management facility to provide for a drop-off location for source separated recyclable materials if deemed necessary to meet the purposes and goals of this Chapter.

D. On or after January 1, 1991, no person shall knowingly and intentionally distribute, sell, or offer for sale in this state any plastic bottle sixteen ounces or larger, or rigid plastic containers eight ounces or larger unless the product is labeled with a code indicating the plastic resin used to produce the bottle or container. Rigid plastic bottles or rigid plastic containers with labels and basecups of a different material shall be coded by their basic material. The code shall conform to the code developed by the Society of the Plastics Industry.

E. On or after January 1, 1991, no container shall knowingly and intentionally be sold or offered for sale in this state that is connected to other containers by a separate holding device constructed of plastic rings unless such rings are composed of such material which is capable of being recycled or degraded in one hundred twenty days or less.

Acts 1989, No. 185, §1, eff. Sept. 1, 1989.

§2423. Publicly owned aluminum materials; prohibitions; penalties

A. No person engaged in the business of recycling may purchase or have in his possession aluminum materials consisting of official highway signs or signals that provide traffic information, control, or directions or highway guard rails unless such purchase or possession is accompanied by an act of sale from the public entity which owns such materials.

B. Any person found to be in violation of this Section may be liable for a civil penalty, to be assessed by the secretary, the assistant secretary for the office of environmental compliance, or the court, of not more than five hundred dollars.

Acts 1990, No. 682, §1; Acts 1999, No. 303, §1, eff. June 14, 1999.

CHAPTER 19. OIL SPILL PREVENTION AND RESPONSE ACT

PART I. GENERAL PROVISIONS

§2451. Title

This Chapter may be cited as the "Oil Spill Prevention and Response Act".

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2452. Legislative findings

A. Louisiana is subject to greater exposure to a major oil spill disaster than any other state. This is the result of the large volumes of stored oil, numerous production platforms and miles of pipelines, large numbers of inland barges, and heavy tanker traffic, including the Louisiana Offshore Oil Port which receives fifteen percent of the oil imported into the United States. This exposure, coupled with the limited adequate highway access to the coast and remote inland areas for rapid transport of oil spill equipment and few areas suitable for staging facilities, creates great potential for a major oil spill event and its consequences in a state which has twenty-six percent of the nation's commercial fisheries, has the nation's highest marine recreational fishery catches, leads the nation in fur production and the world in alligator production, and has more overwintering waterfowl than any other state. Commercial and recreational marine fisheries are concentrated within a few miles inshore and offshore of the coastline where oil from a major coastal spill would concentrate.

B. Added to the high exposure and inaccessibility of large portions of the coast and inland areas is the vulnerability of Louisiana's nearshore and wetland environments. The numerous shallow interconnecting waterways and gentle slope of the coastal areas would allow deep penetration of oil into the state's estuaries. The vast expanses of Louisiana's soft unconsolidated marshes lying just a few inches above sea level would, in the event of an oil spill, soak up large amounts of oil.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1995, No. 740, §1.

§2453. Legislative intent

A. The legislature finds and declares that the release of oil into the environment presents a real and substantial threat to the public health and welfare, to the environment, the wildlife and aquatic life, and to the economy of the state. Further, the legislature declares that the purpose of this Chapter is to assist the legislature in fulfilling its duties to protect, conserve, and replenish the natural resources of this state in accordance with Article IX, Section 1 of the Constitution of Louisiana.

B. The legislature declares that it is the intent of this Chapter to support and complement the Oil Pollution Act of 1990 (P.L. 101-380) and other federal law, specifically those provisions relating to the national contingency plan for cleanup of oil spills and discharges, including provisions relating to the responsibilities of state agencies designated as natural resources trustees. The legislature intends this Chapter to be interpreted and implemented in a manner consistent with federal law.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2454. Definitions

In this Chapter:

(1) "Barrel" means forty-two United States gallons at sixty degrees Fahrenheit.

(2) "Coastal waters" means the waters and bed of the Gulf of Mexico within the jurisdiction of the state of Louisiana, including the arms of the Gulf of Mexico subject to tidal influence, estuaries, and any other waters within the state if such other waters are navigated by vessels with a capacity to carry ten thousand gallons or more of oil as fuel or cargo.

(3) "Coordinator" means the Louisiana oil spill coordinator.

(4) "Crude oil" means any naturally occurring liquid hydrocarbon at atmospheric temperature and pressure coming from the earth, including condensate.

(5) "Damages" means and includes any of the following:

(a) Natural resources - damages for injury to, destruction of, or loss of natural resources as defined in this Section, include the reasonable and any direct, documented cost to assess, restore, rehabilitate, or replace injured natural resources, or to mitigate further injury, and their diminution in value after such restoration, rehabilitation, replacement, or mitigation, which shall be recoverable by the state of Louisiana.

(b) Immovable or corporeal movable property - damages for injury to, or economic loss resulting from destruction of, immovable or corporeal movable property, which shall be recoverable by a person who owns or leases that property. For purposes of this Chapter, "immovable property" shall have the same meaning as "immovables" as provided in C.C. Art. 462. For purposes of this Chapter, "corporeal movable property" shall have the same meaning as "corporeal movables" as provided in C.C. Art. 471.

(c) Revenues - damages equal to the net loss of taxes, royalties, rents, fees, or net profit share due to the injury, destruction, or loss of immovable or corporeal movable property, or natural resources, which shall be recoverable by the state of Louisiana.

(d) Public services - damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, recoverable by the state of Louisiana or any of its political subdivisions.

(e), (f) Repealed by Acts 1995, No. 740, §2.

(6) "Deepwater port" is a facility licensed in accordance with the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524).

(7) "Discharge of oil" means an intentional or unintentional act or omission by which harmful quantities of oil are spilled, leaked, pumped, poured, emitted, or dumped into or on coastal waters of the state or at any other place where, unless controlled or removed, they may drain, seep, run, or otherwise enter coastal waters of the state.

(8) "Discharge cleanup organization" means any group or cooperative, incorporated or unincorporated, of owners or operators of vessels or terminal facilities and any other persons who may elect to join, organized for the purpose of abating, containing, removing, or cleaning up pollution from discharges of oil or rescuing and rehabilitating wildlife or other natural resources through cooperative efforts and shared equipment, personnel, or facilities. Any third-party cleanup contractor, industry cooperative, volunteer organization, or local government shall be recognized as a discharge cleanup organization, provided the coordinator properly certifies the organization.

(9) "Emergency" means an emergency declared by the governor in accordance with state law.

(10) "Facility" means any structure, group of structures, equipment, or device other than a vessel which is used for one or more of the following purposes: exploration for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

(11) "Federal fund" means the federal Oil Spill Liability Trust Fund.

(12) "Fund" means the Oil Spill Contingency Fund.

(13) "Harmful quantity" means that quantity of oil the discharge of which is determined by the coordinator to be harmful to the environment or public health or welfare or may reasonably be anticipated to present an imminent and substantial danger to the public health or welfare.

(14) "Hotline" means the emergency telephone number established in accordance with the provisions of this Chapter to respond to a threatened or unauthorized discharge of oil.

(15) "Marine terminal" means any terminal facility within the state of Louisiana used for transferring crude oil to or from vessels.

(16) "National contingency plan" means the plan prepared and published, as revised from time to time, under the Federal Water Pollution Control Act (33 U.S.C. §§ 1321 et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.).

(17) "Natural resources" means all land, fish, shellfish, fowl, wildlife, biota, vegetation, air, water, groundwater supplies, and other similar resources owned, managed, held in trust, regulated, or otherwise controlled by the state.

(18) "Oil" means oil of any kind or in any form, including but not limited to crude oil, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under Subparagraphs (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) and which is subject to the provisions of that Act.

(19) "Oil spill" shall have the same meaning as "discharge of oil" as defined in this Section.

(20) "Owner" or "operator" means:

(a) Any person owning, operating, or chartering by demise a vessel; or

(b)(i) Any person owning a terminal facility, excluding a political subdivision of the state that as owner transfers possession and the right to use a terminal facility to another person by lease, assignment, or permit; or

(ii) A person operating a terminal facility by lease, contract, or other form of agreement.

(21) "Person in charge" means the person on the scene who is directly responsible for a terminal facility or vessel when a threatened or unauthorized discharge of oil occurs or a particular duty arises under this Chapter.

(22) "Person responsible", "responsible person", or "responsible party" means:

(a) The owner or operator of a vessel or terminal facility from which an unauthorized discharge of oil emanates or threatens to emanate.

(b) In the case of an abandoned vessel or terminal facility, the person who would have been the responsible person immediately prior to the abandonment.

(c) Any other person, but not including a person or entity who is rendering care, assistance, or advice in response to a discharge or threatened discharge of another person, who causes, allows, or permits an unauthorized discharge of oil or threatened unauthorized discharge of oil.

(23) "Plan" means the state oil spill contingency plan.

(24) "Pollution" means the presence of harmful quantities of oil in waters of the state or in or on adjacent shorelines, estuaries, tidal flats, beaches, or marshes.

(25) "Removal costs" means, with respect to an actual or threatened discharge of oil, all costs incurred in an attempt to prevent, abate, contain, and remove pollution from the discharge, including costs of removing vessels or structures under this Chapter, and costs of any reasonable measures to prevent or limit damage to the public health, safety, or welfare, public or private property, or natural resources.

(26) "Tank vessel" means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that:

(a) Is a vessel of the United States.

(b) Operates on the navigable waters.

(c) Transfers oil or hazardous material in a place subject to the jurisdiction of the state of Louisiana.

(27) "Terminal facility" means any waterfront or offshore pipeline, structure, equipment, or device used for the purposes of drilling for, pumping, storing, handling, or transferring oil and operating where a discharge from the facility could threaten waters of the state, including but not limited to any such facility owned or operated by a public utility or a governmental or quasi-governmental body.

(28) "Unauthorized discharge of oil" means any actual or threatened discharge of oil not authorized by a federal or state permit.

(29) "Vessel" includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, whether self-propelled or otherwise, including barges.

(30) "Comprehensive assessment method" means a method including sampling, modeling, and other appropriate scientific procedures to make a reasonable and rational determination of injury and cost-effective restoration alternatives to natural resources resulting from an unauthorized discharge of oil.

(31) "Negotiated assessment" means a restoration plan agreed upon by the coordinator, in consultation and agreement with any other state trustees, and the responsible party.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1995, No. 740, §§1, 2.

PART II. ADMINISTRATION

§2455. Office of the Louisiana oil spill coordinator

The office of the Louisiana oil spill coordinator is hereby created within the office of the governor and shall exercise the powers and duties set forth in this Chapter or otherwise provided by law. The office shall be administered by the coordinator who shall be appointed by the governor, subject to Senate confirmation. The initial coordinator shall not perform any official duties prior to confirmation.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2456. General powers and duties of the coordinator

A. The coordinator, under the direction and control of the governor, shall:

(1) Develop a statewide oil spill prevention and response plan, taking into account the rules being developed by the federal government in accordance with the federal Oil Pollution Act of 1990 (P.L. 101-380) and similar plans being developed by other states.

(2) Provide a coordinated response effort from all appropriate state agencies in the event of an unauthorized or threatened discharge of oil affecting or potentially affecting the land, coastal waters, or any other waters of Louisiana.

(3) Coordinate the operational implementation and maintenance of the oil spill prevention program as provided in this Chapter.

(4) Administer a fund to provide for funding these activities.

(5) Provide clear delineation for state coordinated response efforts in relation to jurisdictional authorities and use of state and federal funds for removal costs under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), Water Pollution Control Act (33 U.S.C. §§ 321 et seq.), and the Oil Pollution Act of 1990 (P.L. 101-380).

B. The coordinator, in consultation with the interagency council, as provided in this Chapter, shall adopt and promulgate rules necessary and convenient to the administration of this Chapter in accordance with the Louisiana Administrative Procedure Act.

C. The coordinator shall by rule establish procedures under the Louisiana Administrative Procedure Act for all hearings required by this Chapter. The coordinator is hereby authorized to administer oaths, receive evidence, issue subpoenas to compel attendance of witnesses and production of evidence related to hearings, and make findings of fact and decisions with respect to administering this Chapter.

D.(1) The coordinator may contract with any public agency or private person or other entity, including entering into cooperative agreements with the federal government, acquire and dispose of nonresponse related real or personal property, delegate responsibility for implementing the requirements of this Chapter, and perform any other act within or without the boundaries of this state necessary to administer this Chapter.

(2) The coordinator may enter into any contracts for the purchase of goods or for services in accordance with the Louisiana Procurement Code and in consultation with the interagency council, including the emergency procurement procedures provided in R.S. 39:1598.

E. If the coordinator finds it necessary to enter property to conduct a vessel or terminal-facility audit, inspection, or drill authorized under this Chapter or to respond to an actual or threatened unauthorized discharge, the coordinator may enter the property after making a reasonable effort to obtain consent to enter the property.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1995, No. 740, §1.

§2457. Regulatory authority; coordinator

A. The coordinator shall from time to time adopt, amend, repeal, and enforce reasonable regulations not in conflict with federal law or regulations, including but not limited to those relating to the following matters regarding the threatened or actual unauthorized discharge of oil:

(1) Standards and requirements for discharge prevention programs and response capabilities of terminal facilities and vessels.

(2) Standards, procedures, and methods consistent with federal law or regulations for designating persons in charge and reporting threatened or actual unauthorized discharges and violations of this Chapter.

(3) Standards, procedures, methods, means, and equipment to be used in the abatement, containment, and removal of pollution.

(4) Development and implementation of criteria and plans of response to unauthorized discharges of various degrees and kinds, including realistically foreseeable worst-case scenarios consistent with federal regulations.

(5) Requirements for complete and thorough audits of vessel contingency and response plans covered by this Chapter.

(6) Requirements for complete and thorough inspections of terminal facilities covered by this Chapter.

(7) Certification of discharge cleanup organizations.

(8) Requirements for the safety and operation of vessels, motor vehicles, motorized equipment, and other equipment involved in the transfer of oil at terminal facilities and the approach and departure from terminal facilities.

(9) Requirements that required containment equipment be on hand, maintained, and deployed by trained personnel.

(10) Standards for reporting material changes in discharge prevention and response plans and response capability for purposes of terminal facility certificate reviews.

(11) Such other rules and regulations consistent with this Chapter and appropriate or necessary to carry out the intent of this Chapter, consistent with federal law or regulations.

B. The coordinator may establish as a prerequisite for certification of any discharge cleanup organization, other than the Marine Spill Response Corporation and any discharge cleanup organization operated for profit or that has multi-state response jurisdiction, that the organization maintain on its governing body a minimum of two representatives from local governments within the area served by the organization.

C.(1) Any rule, regulation, guideline, or plan authorized by this Chapter, excluding Part VI, shall be proposed or adopted pursuant to the rulemaking procedures set forth in the Louisiana Administrative Procedure Act and shall be subject to approval by the House Committee on Natural Resources, House Committee on the Environment, Senate Committee on Natural Resources, and the Senate Committee on Environmental Quality.

(2) Any rule or regulation authorized to be adopted or promulgated in Part VI shall be subject to approval by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs. Such approval shall be presumed unless either committee submits objections or notification of a hearing in writing to the coordinator within fifteen days after receipt of the proposed rule, regulation, or guideline. Such written objections or disapproval shall be subject to override by the governor within five days after receipt of the objections or notice of disapproval by the governor.

(3) The coordinator shall submit an annual budget to the Joint Legislative Committee on the Budget for the approval of a majority of members of the committee. The budget shall show all proposed expenditures by the office from the fund or otherwise.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1995, No. 740, §1; Acts 1996, 1st Ex. Sess., No. 36, §1, eff. May 7, 1996.

§2458. Interagency council

A. The coordinator shall convene at least twice annually and as deemed necessary and serve as chairperson to a cooperative council, the interagency council, composed of the following:

(1) Four people, who are not legislators, one selected by each of the following.

(a) The chairman of the Senate Committee on Natural Resources.

(b) The chairman of the Senate Committee on Environmental Quality.

(c) The chairman of the House Committee on Natural Resources.

(d) The chairman of the House Committee on Appropriations.

(2) The secretary of the Department of Wildlife and Fisheries or his designee.

(3) The secretary of the Department of Public Safety and Corrections or his designee.

(4) The secretary of the Department of Natural Resources or his designee.

(5) The secretary of the Department of Environmental Quality or his designee.

(6) The attorney general or his designee, who shall serve as a nonvoting member.

(7) The executive assistant for coastal activities in the office of the governor.

(8) The executive assistant for environmental affairs in the office of the governor.

(9) An assistant director of the Governor's Office of Homeland Security and Emergency Preparedness designated by the director of the office, or the director if there is no assistant director.

(10) The Louisiana oil spill coordinator.

B. The council shall consider matters relating to the coordination of state prevention, response, and cleanup operations related to unauthorized discharges of oil, including but not limited to:

(1) Assisting the coordinator in the development of a statewide oil spill prevention and contingency plan.

(2) Assisting the coordinator in preparing an annual work plan, identifying state agency needs which must be met in order to comply with the state oil spill contingency plan.

(3) Developing recommendations for additional legislation.

(4) Assisting the coordinator in preparing a budget necessary to implement the provisions of this Chapter.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1995, No. 740, §1; Acts 2003, No. 40, §3, eff. May 23, 2003; Acts 2006, 1st Ex. Sess., No. 35, §2, eff. March 1, 2006; Acts 2006, No. 442, §3, eff. June 15, 2006.

PART III. STATE OIL SPILL CONTINGENCY PLAN

§2459. State oil spill contingency plan

A. The coordinator shall develop and distribute to the public a state oil spill contingency plan of response for actual or threatened unauthorized discharges of oil and clean up of pollution from such discharges. In addition, the Department of Environmental Quality, in cooperation with the coordinator, shall recommend provisions of the plan relating to unauthorized discharges of oil. The Department of Wildlife and Fisheries, in cooperation with the coordinator, shall recommend provisions of the plan providing for protection, rescue, and rehabilitation of aquatic life and wildlife and appropriate habitats on which they depend under its jurisdiction. The Department of Natural Resources, in cooperation with the coordinator, shall recommend provisions of the plan providing for protection and rehabilitation of appropriate resources under its jurisdiction. The Department of Public Safety and Corrections, in cooperation with the coordinator, shall recommend provisions of the plan providing for emergency response coordination to protect life and property, excluding prevention, abatement, containment, and removal of pollution from an unauthorized discharge.

B. In promulgating the plan, the coordinator shall provide for clear designation of responsibilities and jurisdiction and avoid unnecessary duplication and expense. In promulgating the plan, the coordinator shall also provide for participation by local political subdivisions contiguous to coastal waters.

C. The plan shall be fully operational and implemented not later than one year after the latest effective date of the area and regional contingency plans designated for Louisiana pursuant to federal law and implemented by the United States Coast Guard and Environmental Protection Agency.

D. Prior to adopting the state oil spill contingency plan, the coordinator shall adopt a fully delineated inland boundary for coastal waters as defined in this Chapter, which boundary shall be based upon data provided by, including but not limited to the United States Army Corps of Engineers, United States Department of the Interior, Minerals Management Service, the Louisiana Department of Natural Resources, and the oil and gas industry. The coordinator shall be authorized to amend the boundary by rule as conditions may warrant. The boundary, as adopted, shall be clearly marked on large scale maps or charts, official copies of which shall be available for public inspection in the office of coastal restoration and management in the Department of Natural Resources, in each agency comprising the interagency council, and in the parish seat of each parish located within the boundary.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1995, No. 740, §1.

§2460. Contingency plan provisions

A. The plan shall include all of the following:

(1) Detailed emergency operating procedures for initiating actions in response to unauthorized discharges.

(2) A response command structure and state response team.

(3) An inventory of public and private equipment and its location and a list of available sources of supplies necessary for response.

(4) A table of organizations with the names, addresses, and telephone numbers of all persons and agencies responsible for implementing each phase of the plan and provisions for notification to such persons and agencies in the event of an unauthorized discharge.

(5) Plans for practice drills for the response command structure and the state response team.

(6) Establishment of a single state hotline for reporting incidents that will satisfy all state notification requirements under this Chapter and R.S. 32:1501 et seq., R.S. 30:2025(J), and R.S. 30:2361 et seq.

(7) Provisions for notifying the Department of Environmental Quality under the state oil spill contingency plan.

(8) Plans for volunteer coordination and training.

(9) Use of both proven and innovative prevention and response methods and technologies.

(10) The circumstances under which an unauthorized discharge may be declared to be a state of emergency under applicable law.

(11) The circumstances under which the unauthorized discharge may be declared to be abated and pollution may be declared to be satisfactorily removed.

(12) Designation of environmental and other priority zones to determine the sequence and methods of response and cleanup.

(13) Procedures for disposal of removed oil or hazardous substances.

(14) Procedures established in cooperation with the Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources for assessment of natural resources damages and plans for mitigation of damage to and restoration, protection, rehabilitation, or replacement of damaged natural resources.

(15) Any plan developed by the coordinator pursuant to this Chapter shall include appropriate local governmental authorities and shall provide for the participation and involvement of the appropriate local governmental authorities that may be affected by or involved in the prevention, response, and removal of an oil spill.

(16) Any other matter necessary or appropriate to carry out response activities, including but not limited to preapproval of the use of dispersants.

B.(1) The coordinator shall promulgate rules and a state contingency plan that, to the greatest extent practicable, conform to the national contingency plan and rules promulgated under federal law.

(2) The coordinator may impose requirements under such rules and the state oil spill contingency plan that are in addition to or vary materially from federal requirements if the state interests served by the requirements substantially outweigh the burdens imposed on those subject to the requirements.

C. The plan shall be filed with all state agencies participating in response operations and federal officials responsible for federal discharge response within waters of the state, and local political subdivisions deemed appropriate by the coordinator.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

PART IV. OIL SPILL PREVENTION AND RESPONSE

§2461. Coordinator; notification

On notification of an actual or threatened unauthorized discharge of oil, the coordinator shall take immediate action to assess the discharge and prevent, abate, or contain any pollution from the discharge.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2462. Administration of oil spill response and cleanup

A. The coordinator, in consultation with the Department of Environmental Quality, is authorized to administer this Chapter and direct all state discharge response and cleanup operations resulting from unauthorized discharges of oil or threatened unauthorized discharges of oil in coastal waters, the land, or any other waters of Louisiana as directed by the governor or upon a declaration of emergency as declared by the governor. The Department of Environmental Quality, under the direction and control of the coordinator, is the lead technical agency of the state for response to actual or threatened unauthorized discharges of oil and for cleanup of pollution from unauthorized discharges of oil.

B. All persons and all other officers, agencies, and subdivisions of the state shall carry out response and cleanup operations related to unauthorized discharges of oil subject to the authority granted to the coordinator under this Chapter.

C. In the event of an unauthorized discharge of oil nothing in this Chapter shall preclude the Department of Environmental Quality from, at the earliest time practicable, assuming response and cleanup duties for the discharge of oil pursuant to R.S. 30:2001 et seq., provided, however, the coordinator is notified within twenty-four hours.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1995, No. 740, §1.

§2463. Notification and response

A. Any person responsible for an unauthorized discharge of oil or the person in charge of any vessel or a terminal facility from or at which an unauthorized discharge of oil has occurred, as soon as that person has knowledge of the discharge, shall:

(1) Immediately notify the hotline of the discharge.

(2) Undertake all reasonable actions to abate, contain, and remove pollution from the discharge.

B. If the persons responsible or in charge are unknown or appear to the coordinator to be unwilling or unable to abate, contain, and remove pollution from an unauthorized discharge of oil in an adequate manner, the coordinator may abate, contain, and remove pollution from the discharge and may contract with and appoint agents who shall operate under the direction of the coordinator to abate, contain, or remove pollution from the discharge.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2464. Response coordination

A. In responding to actual or threatened unauthorized discharges of oil, the coordinator shall appoint a state-designated on-scene coordinator to act in the coordinator's absence in the event that the coordinator is unable to be physically present at the scene of the discharge.

B. If the unauthorized discharge of oil is subject to the national contingency plan, in responding to the discharge the coordinator or the state-designated on-scene coordinator shall act in accordance with the national contingency plan as is practicable under the circumstances and cooperate with the federal on-scene coordinator or other federal agency or official exercising authority under the national contingency plan.

C. The coordinator or the state-designated on-scene coordinator may act independently to the extent no federal on-scene coordinator or authorized agency or official of the federal government has assumed federal authority to oversee, coordinate, and direct response and cleanup operations.

D. The coordinator or the state-designated on-scene coordinator may act to protect any interests of the state that are not covered by the national contingency plan, and are consistent with the state or national contingency plans.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2465. Assistance and compensation

A. Subject to the coordinator's authority as authorized by this Chapter to determine otherwise, any person or discharge cleanup organization may assist in abating, containing, or removing pollution from any unauthorized discharge of oil.

B. Any person or discharge cleanup organization that renders assistance in abating, containing, or removing pollution from any unauthorized discharge of oil may receive compensation from the fund for removal costs, provided the coordinator approves compensation prior to the assistance being rendered. Prior approval for compensation may be provided for in the state oil spill contingency plan. The coordinator, on petition and for good cause shown, may waive the prior approval prerequisite.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2466. Qualified immunity for response actions

A. No action or omission taken by any person, including any discharge cleanup organization, to abate, contain, remove, clean up, or otherwise respond to pollution from a threatened or actual unauthorized discharge of oil or refined petroleum product, or to otherwise render care, assistance, or advice, whether such action or omission is taken voluntarily, or pursuant to or consistent with the national contingency plan or state oil spill contingency plan, or pursuant to or consistent with a response plan required under this Chapter, or pursuant to or consistent with the request of an authorized federal or state official, or pursuant to or consistent with the request of the responsible person, shall be construed as an admission of responsibility or liability for the discharge.

B. Notwithstanding any other provision of law, and except for the responsible person, no person, including any discharge cleanup organization, that voluntarily, pursuant to or consistent with the national contingency plan or the state oil spill contingency plan, or pursuant to or consistent with any response plan required under this Chapter, or pursuant to or consistent with the request or direction of an authorized federal or state official, or pursuant to or consistent with the request of the potentially responsible person, renders care, assistance, or advice in abating, containing, removing, cleaning up, or otherwise responding to pollution from an unauthorized discharge or threat of discharge of oil or refined petroleum products is liable for removal costs, damages, or civil penalties, whether under this Chapter or other laws of this state, resulting from acts or omissions committed in rendering such care, assistance, or advice. This Section shall not apply to actions for

personal injury or wrongful death or for acts or omissions of gross negligence or willful misconduct. A party responsible for the initial discharge is liable for any removal costs or damages for which another person is relieved under this Subsection.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2467. Equipment and personnel

The coordinator may contract with any private person or entity for the use of equipment and personnel at places the coordinator determines may be necessary for response and prevention operations, in accordance with the state oil spill contingency plan. The coordinator may contract with any public agency, via interagency transfer of funds, to conduct baseline environmental, wetlands, water quality, habitat, wildlife, and natural resources assessments, or for any other matter deemed necessary to comply with the state and national oil spill contingency plans.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2468. Refusal to cooperate

A. If a responsible person, or a person or discharge cleanup organization under the control of a responsible person, participating in operations to abate, contain, and remove pollution from any unauthorized discharge of oil, reasonably believes that any directions or orders given by the coordinator or the coordinator's designee under this Chapter will unreasonably endanger public safety or natural resources or conflict with directions or orders of the federal on-scene coordinator, the party may refuse to comply with the direction or orders.

B. The party shall state at the time of refusal the reasons for his failure to comply. The party shall give the coordinator written notice of the reason or the reasons for the refusal within forty-eight hours of the refusal.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2469. Derelict vessels and structures

A. A person may not leave, abandon, or maintain any structure or vessel involved in an actual or threatened unauthorized discharge of oil in coastal waters or on public or private lands or at a public or private port or dock, in a wrecked, derelict, or substantially dismantled condition, without the consent of the coordinator.

B. The coordinator shall locate, identify, mark, and analyze the contents of any abandoned or derelict vessels or structures found within the state. If the vessel or structure contains oil or oil based materials he shall establish a priority for removal of those vessels and structures on the basis of highest risk to human health and safety, the environment, and wildlife habitat. The coordinator shall compile a computerized list of all vessels or structures indicating the location, identity, and contents of each.

C. The coordinator may remove any vessel or structure described in Subsection A of this Section and may recover the costs of removal from the owner or operator of the vessel or structure. In the event that the owner or operator cannot be located, the coordinator may use the monies in the fund up to one million dollars in any fiscal year for the removal of any vessel or structure described in Subsection A of this Section.

D. The Department of Environmental Quality may petition the coordinator for the removal of any vessel or structure as described in Subsection A of this Section and the coordinator shall either comply or submit the matter to the interagency council for review.

E. The office of conservation in the Department of Natural Resources may petition the coordinator to abate an unauthorized discharge or the threat of a discharge from a facility or structure which the secretary certifies to be involved in an actual discharge or poses a threat of a discharge and for which the secretary certifies that the office of conservation cannot immediately locate a viable responsible party. Upon approval of the department's petition the coordinator shall reimburse the office of conservation for all expenses incurred, within the limits of provisions of this Section, and he shall seek reimbursement for the fund as provided elsewhere in this Chapter. The coordinator shall use monies in the fund for this purpose, which shall not exceed two million dollars in any fiscal year.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1992, No. 426, §1; Acts 1995, No. 740, §1.

§2469.1. Repealed by Acts 1995, No. 740, §2.

§2470. Registration of terminal facilities

A. A person may not operate or cause to be operated a terminal facility without a discharge prevention and response certificate issued pursuant to rules promulgated under this Chapter; however, such facility may be operated without a certificate for those purposes that do not involve the transfer or storage of oil.

B.(1) As a condition precedent to the issuance or renewal of a certificate, the coordinator shall require satisfactory evidence that:

(a) The applicant has implemented a discharge prevention and response plan consistent with state and federal plans and regulations for prevention of unauthorized discharges of oil and abatement, containment, and removal of pollution when such discharge occurs.

(b) The applicant can provide, directly or through membership or contract with a discharge cleanup organization, all required equipment and personnel to prevent, abate, contain, and remove pollution from an unauthorized discharge of oil as provided in the plan.

(2) A terminal facility response plan that complies with requirements under federal law and regulations for a terminal facility response plan satisfies the requirements of Subparagraph (1)(a) of this Subsection.

C. Notwithstanding other provisions of this Chapter, the owner of a facility shall qualify for a certificate if all persons leasing or operating the facility have received a certificate.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2471. General terms

A. Discharge prevention and response certificates are valid for a period of five years. The coordinator by rule shall require each registrant to report annually on the status of its discharge prevention and response plan and response capability.

B. The coordinator may review a certificate at any time there is a material change affecting the terminal facility's discharge prevention and response plan or response capability.

C. Certificates shall be issued subject to such terms and conditions as the coordinator may determine are reasonably necessary to carry out the purposes of this Chapter.

D. Certificates issued to any terminal facility shall take into account the vessels used to transport oil to or from the facility.

E. The coordinator, by rule, shall establish and require payment of a reasonable fee for processing applications for certificates. This fee is in addition to the fee levied under R.S. 30:2485 and must be reasonably related to the administrative costs of verifying data submitted pursuant to obtaining the certificates and reasonable inspections.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2472. Information

Each applicant for a discharge prevention and response certificate shall submit information, in a form satisfactory to the coordinator, describing all of the following:

(1) The barrel or other measurement capacity of the terminal facility.

(2) The dimensions and barrel capacity of the largest vessel docking at or providing service from the terminal facility.

(3) The storage and transfer capacities and average daily throughput of the terminal facility.

(4) The types of oil stored, handled, or transferred at the terminal facility.

(5) Information related to implementation of the applicant's discharge prevention and response plan, including:

(a) All response equipment including but not limited to vehicles, vessels, pumps, skimmers, booms, bioremediation supplies and application devices, dispersants, chemicals, and communication devices to which the terminal facility has access, as well as the estimated time required to deploy the equipment after an unauthorized discharge.

(b) Personnel available to deploy and operate the response equipment, as well as the estimated time required to deploy the personnel after an unauthorized discharge.

(c) The measures employed to prevent unauthorized discharges.

(d) The terms of agreement and operation plan of any discharge cleanup organization to which the owner or operator of the terminal facility belongs.

(6) The source, nature of, and conditions of financial responsibility for removal costs and damages.

(7) Any other information necessary or appropriate to the review of a registrant's discharge prevention and response capabilities.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2473. Issuance

Upon compliance with the applicable provisions of this Chapter and upon payment of the certificate application fee, the coordinator shall issue the applicant a discharge prevention and response certificate covering the terminal facility.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2474. Suspension

If the coordinator determines that a registrant does not have a suitable or adequate discharge prevention and response plan or that the registrant's preventive measures or containment and cleanup capabilities are inadequate, the coordinator may, after an adjudicatory hearing pursuant to the regulatory authority provided in Part II of this Chapter, suspend the registrant's certificate until such time as the registrant complies with the requirements of this Chapter.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2475. Contingency plans for vessels and facilities

Every owner or operator covered by this Chapter shall provide to the coordinator the tank vessel and facility response plans as provided in Section 4202(a)(5) of the Oil Pollution Act of 1990 (P.L. 101-380).

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2476. Entry into port

In conjunction with the United States Coast Guard and prior to being granted entry into any port in this state, the person in charge of a vessel subject to the provisions of this Chapter may be required to report or show to the coordinator:

(1) Any unauthorized discharges from the vessel since leaving the last port.

(2) Any mechanical or operational problem on the vessel creating the possibility of an unauthorized discharge.

(3) Any denial of entry into any port during the current voyage of the vessel.

(4) That the vessel has a discharge prevention and response plan and the personnel and equipment to implement it as required under this Chapter.

(5) That the vessel has evidence of financial responsibility as required under this Chapter.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2477. Audits, inspections, and drills

The coordinator, in conjunction with the United States Coast Guard, may subject a vessel covered by this Chapter as a condition to being granted entry into any port in this state, or a terminal facility to an announced or unannounced audit, inspection, or drill to determine the discharge prevention and response capabilities of the terminal facility or vessels.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

PART V. LIABILITY OF PERSONS RESPONSIBLE

§2478. Financial responsibility

A. Each owner or operator of a tank vessel with a capacity to carry ten thousand gallons or more of oil as fuel or cargo subject to the provisions of this Chapter operating within coastal waters or a terminal facility shall maintain and furnish evidence of their financial responsibility for costs and damages from unauthorized discharges of oil in accordance with the Oil Pollution Act of 1990 (P.L. 101-380).

B. If a tank vessel with a capacity to carry ten thousand gallons or more of oil as fuel or cargo covered by this Chapter or terminal facility is not required under federal law to establish and maintain evidence of financial responsibility, the owner or operator of that vessel or terminal facility shall establish and maintain evidence in a form prescribed by rules promulgated under this Chapter that such registrant or vessel has the ability to meet liability that may be incurred under this Chapter.

C. After an unauthorized discharge of oil, a vessel shall remain in the jurisdiction of the coordinator until the owner, operator, or person in charge has shown the coordinator evidence of financial responsibility. The coordinator may not detain the vessel longer than twelve hours after proving financial responsibility.

D. In addition to any other remedy or enforcement provision, the coordinator may suspend a registrant's discharge prevention and response certificate or may deny a vessel entry into any port in waters of the state for failure to comply with this Section.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2479. Limitation of liability

A. The total of the liability of a responsible party for all damages and removal costs shall not exceed the following:

(1) For a tank vessel, the greater of:

(a) One thousand two hundred dollars per gross ton; or

(b)(i) In the case of a vessel greater than three thousand gross tons, ten million dollars.

(ii) In the case of a vessel of three thousand gross tons or less, two million dollars.

(2) For any other vessel, six hundred dollars per gross ton or five hundred thousand dollars, whichever is greater.

(3) For an offshore facility except a deepwater port, the total of all removal costs plus seventy-five million dollars.

(4)(i) For any onshore facility or a deepwater port, three hundred fifty million dollars; provided that, for onshore facilities, where the president of the United States, in accordance with Section 1004(d)(1) of the Oil Pollution Act of 1990 (P.L. 101-380), has established a limitation of less than three hundred fifty million dollars, the limitation of liability provided under this Paragraph shall be the limitation of liability established by the president of the United States.

(ii) Provided that for a deepwater port, where the secretary designated by Section 1004(d)(2)(C) of the Oil Pollution Act of 1990 (P.L. 101-380) has established a limitation of less than three hundred fifty million dollars, in accordance with Section 1004(d)(2)(C) of the Oil Pollution Act of 1990 (P.L. 101-380), the limitation of liability under this Paragraph shall be the limitation of liability established by the secretary.

B.(1) For the purposes of determining the responsible party and applying this Chapter, and except as provided in Paragraph (2) of this Subsection, a mobile offshore drilling unit which is being used as an offshore facility is deemed to be a tank vessel with respect to the discharge, or substantial threat of discharge, of oil on or above the surface of the water.

(2) To the extent that removal costs and damages from any incident described in Paragraph (1) of this Subsection exceed the amount for which a responsible party is liable, as that amount may be limited under R.S. 30:2479(A)(1), the mobile offshore drilling unit is deemed to be an offshore facility. For the purposes of applying R.S. 30:2479(A)(3) the amount specified by that provision shall be reduced by the amount for which the responsible party is liable under R.S. 30:2479(A)(1).

C.(1) The limits of liability provided for in this Section do not apply if the incident was primarily caused by gross negligence or willful misconduct of, or the violation of an applicable federal, state, or local safety, construction, or operating regulation by the responsible party, an agent or employee of the responsible party, or a person acting pursuant to a contractual relationship with the responsible party, except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail.

(2) The limits of liability provided for in this Section do not apply if the responsible party fails or refuses:

(a) To report the incident as required by law and the responsible party knows or has reason to know of the incident; or

(b) To provide all reasonable cooperation and assistance requested by a responsible state or federal official in connection with removal activities.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2480. Natural resource damages

A. In any action to recover natural resources damages, the coordinator, in consultation with any other state trustees, shall make the determination whether to assess natural resource damages and the amount of damages according to the procedures and plans contained in the state oil spill contingency plan, and such determination shall create a rebuttable presumption of the amount of such damages.

B. The coordinator may establish the rebuttable presumption by submitting to the court a written report of the damages computed or state funds expended according to the state plan. The written report shall be admissible in evidence, but the facts surrounding the cause of the unauthorized discharge of oil as set out in the report shall be subject to de novo review.

C.(1) The coordinator, in consultation with the state trustees, shall develop an inventory that identifies and catalogs the physical locations, the seasonal variations in location, and the current condition of natural resources; provides for data collection related to coastal processes, abandoned pits, facilities, sumps, reservoirs and oil spills; and identifies the recreational and commercial use areas that are most likely to suffer injury from an unauthorized discharge of oil. The inventory shall be completed by June 30, 1999, and shall be incorporated into the state oil spill contingency plan after public review and comment.

(2)(a) The physical locations surveyed for the inventory of natural resources shall consist of coastal waters as defined in this Chapter and depicted on the official state inland boundary map for coastal waters.

(b) The inventory shall initially concentrate on areas exhibiting a high probability for oil spills.

(3) The current condition of selected natural resources inventoried and cataloged shall be determined by, at a minimum, a baseline sampling and analysis of current levels of constituent substances selected after considering the types of oil most frequently transported through and stored near coastal waters.

(4)(a) The inventory shall consist of Phase I and Phase II. In Phase I of the inventory, the coordinator shall define and coordinate the formulation of the Oil Spill Technical Assistance Program which shall consist of a management and implementation plan for coastal waters as defined in this Chapter. The management and implementation plan shall provide for data gathering techniques, monitoring protocols, maintaining the state inland coastal waters boundary map and data management during the actual inventory and during any response and natural resources damages assessment phase of an unauthorized discharge of oil. The coordinator shall solicit input from the state trustees and other interested parties. Phase I shall be completed by June 30, 1999.

(b) Phase II of the inventory shall consist of the coordinator retaining a manager and program staff within the office of the coordinator for the Oil Spill Technical Assistance Program. In Phase II the coordinator, in consultation with the trustees, shall conduct and maintain an environmental baseline inventory. The environmental baseline inventory shall be developed and maintained in such a manner that it will provide the coordinator with the technical data regarding the coastal waters before, during and after an unauthorized discharge of oil. This data shall also be available to the trustees, other agencies of the state and to the potentially responsible party within twenty-four hours after being collected.

(5) The coordinator shall adopt administrative procedures and protocols for the assessment of natural resource damages from an unauthorized discharge of oil in accordance with the Louisiana Administrative Procedure Act. As developed with the trustees and other interested parties, the procedures and protocols shall require the trustees to assess natural resource damages by considering the unique characteristics of the spill incident and the location of the natural resources affected. These procedures and protocols shall be incorporated by reference in the state oil spill contingency plan by December 31, 1997.

(6) The administrative procedures and protocols shall include provisions which address the following:

(a) Notification by the coordinator to all trustees in the event of an unauthorized discharge of oil.

(b) Coordination with and among trustees, spill response agencies, potentially responsible parties, experts in science and economics, and the public.

(c) Participation in all stages of the assessment process by the potentially responsible party, as is consistent with trustee responsibilities.

(7) The administrative procedures and protocols shall also require the trustees to do the following:

(a) Assist the on-scene coordinator, during spill response activities and prior to the time that the state on-scene coordinator determines that the cleanup is complete, in predicting the impact of the oil and in devising the most effective methods of protection for the natural resources at risk.

(b) Identify appropriate sampling and data collection techniques to efficiently determine the impact on natural resources of the unauthorized discharge of oil.

(c) Initiate, within twenty-four hours after approval for access to the site by the on-scene coordinator, an actual field investigation which may include sampling and data collection; the protocols shall require that the responsible party and the trustees be given, on request, split samples and copies of each other's photographs and videos utilized in assessing the impact of the unauthorized discharge of oil.

(d) Establish plans, including alternatives that are cost-effective and efficient, including natural recovery, to satisfy the goal of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured natural resources.

(8)(a) The administrative procedures and protocols shall also include the following types of assessments procedures and deadlines for their completion:

(i) An expedited assessment procedure which may be used in situations in which the spill has limited observable mortality and restoration activities can be speedily initiated and/or in which the quantity of oil discharge does not exceed one thousand gallons; the purpose of utilizing the expedited assessment procedure is to allow prompt initiation of restoration, rehabilitation, replacement, and/or acquisition of an equivalent natural resource without lengthy analysis of the impact on affected natural resources; this procedure shall, at a minimum, require that the trustees consider the following items:

(aa) The quantity and quality of oil discharged;

(bb) The time period during which coastal waters are affected by the oil and the physical extent of the impact;

(cc) The condition of the natural resources prior to the unauthorized discharge of oil; and

(dd) The actual costs of restoring, rehabilitating, and/or acquiring the equivalent of the injured natural resources;

(ii) A comprehensive assessment procedure for use in situations in which expedited or negotiated assessment procedures are not appropriate; and

(iii) Any other assessment method agreed upon between the responsible person and the trustees, consistent with their public trust duties.

(b) The coordinator, in consultation with the trustees, shall determine, within sixty days of the determination by the on-scene coordinator that the cleanup is complete, whether:

(i) Action to restore, rehabilitate, or acquire an equivalent natural resource is required;

(ii) An expedited assessment which may include early commencement of restoration, rehabilitation, replacement, and/or acquisition activities, may be required; and

(iii) A comprehensive assessment is necessary.

(9) At any time the coordinator, in consultation and with the agreement of the state trustees, deems appropriate, the coordinator may enter into a negotiated assessment.

D. The trustees may petition the coordinator for a longer period of time to make the determinations under Subsection C of this Section by showing that the full impact of the discharge on the affected natural resources cannot be determined in sixty days.

E. The coordinator shall complete the comprehensive assessment procedure within twenty months of the date of the determination by the state on-scene coordinator that the cleanup is complete. The trustees may petition the coordinator for a longer period of time to complete the assessment by showing that the full impact of the discharge on the affected natural resources cannot be determined in twenty months.

F. Any assessment generated by the coordinator shall use the protocols and the procedures implemented pursuant to this Chapter and shall be reasonable and have a rational connection to the costs of conducting the assessment and of restoring, rehabilitating, replacing and/or acquiring the equivalent of the injured natural resources. The coordinator shall ensure that the cost of any restoration, rehabilitation, replacement, or acquisition project shall not be disproportionate to the value of the natural resource before the injury. The coordinator shall utilize the most cost-effective method to achieve restoration, rehabilitation, replacement, or acquisition of an equivalent resource. Furthermore, the coordinator shall take into account the quality of the actions undertaken by the responsible party in response to the spill incident, including but not limited to containment and removal actions and protection and preservation of natural resources.

G. The potentially responsible party shall make full payment or initiate restoration, rehabilitation, replacement, or mitigation of damages to natural resources within sixty days of the completion of the assessment by the coordinator or, if mediation pursuant to this Subsection is conducted, within sixty days of the conclusion of the mediation. To facilitate an expedited recovery of funds for natural resource restoration and to assist the coordinator and the responsible party in the settlement of disputed natural resource damage assessments at their discretion and at any time, all disputed natural resource damage assessments shall be referred to mediation as a prerequisite to the jurisdiction of any court. Results of the mediation and any settlement offers tendered during the mediation shall be treated as settlement negotiations for the purposes of admissibility in a court of law. Either the coordinator or the potentially responsible person may initiate the mediation process, after an assessment has been issued, by giving written notice to the coordinator within forty-five days of the date all assessment documents are received, who shall in turn give written notice to all parties. One mediator shall be chosen by the coordinator and one mediator shall be chosen by the responsible parties. Within forty-five days of the receipt of the assessment from the trustees, the mediators shall be designated. The mediation shall end no later than one hundred thirty-five days after the receipt of the assessment from the coordinator.

H. For the purposes of this Section, mediation shall consist of a minimum of three meetings whereby the mediators seek to facilitate a consensus decision by trustees and the potentially responsible party concerning all aspects of the assessment.

I. Any assessment issued by the coordinator shall be subject to a public hearing, if requested, and a comment period of no less than thirty calendar days.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1995, No. 740, §1; Acts 1997, No. 882, §1; Acts 2001, No. 649, §1, eff. June 22, 2001.

§2480.1. Regional Restoration Planning Program

A. To assist in making the natural resource damage assessment process more efficient, the Regional Restoration Planning Program, encompassing the entire geographic area of the state, is established in the office

of the oil spill coordinator. The office of the oil spill coordinator shall develop and implement the program in coordination with the state natural resource trustees.

B. The office of the oil spill coordinator is authorized to employ additional staff members to implement, administer, and manage the program.

Acts 2001, No. 649, §1, eff. June 22, 2001.

§2480.2. Natural Resource Restoration Trust Fund

A. To fulfill the constitutional mandate of Article IX, Section 1 of the Constitution of Louisiana to protect, conserve, and replenish the natural resources of the state, the legislature hereby establishes the Natural Resource Restoration Trust Fund in order for the office of the oil spill coordinator to carry out the duties charged in R.S. 30:2480 and 2480.1.

B. Out of the funds remaining in the Bond Security and Redemption Fund after a sufficient amount is allocated from the fund to pay all obligations secured by the full faith and credit of the state that become due and payable within the fiscal year, the treasurer in each fiscal year shall pay into the Natural Resource Restoration Trust Fund an amount equal to the amount of all restoration monies received by the office of the oil spill coordinator from natural resource damage assessments. The monies in this fund shall be used solely as provided in this Section and only in the amounts appropriated by the legislature. All unexpended and unencumbered monies in this fund at the end of the fiscal year shall remain in the fund. The monies in this fund shall be invested by the state treasurer in the same manner as monies in the state general fund, and interest earned on the investment of these monies shall remain in the fund. The amounts placed in the fund shall be separate from the Oil Spill Contingency Fund and not counted toward the limitations established for in R.S. 30:2486. Any federal monies placed in the fund shall be administered in accordance with federal requirements for such monies.

Acts 2001, No. 649, §1, eff. June 22, 2001.

§2481. Defenses

A person shall not be liable under the provisions of this Chapter if the discharge resulted solely from any of the following:

(1) An act of God, war, or terrorism.

(2) An act of government, either state, federal, or local.

(3) An unforeseeable occurrence exclusively occasioned by the violence of nature without the interference of any human act or omission.

(4) The willful misconduct or a negligent act or omission of a third party, other than an employee or agent of the person responsible or a third party whose conduct occurs in connection with a contractual relationship with the responsible person, unless the responsible person failed to exercise due care and take precautions against foreseeable conduct of the third party.

(5) Any combinations of Paragraphs (1), (2), and (3).

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2482. Claims against third parties

If a responsible person alleges a defense under R.S. 30:2481 the responsible person shall pay all removal costs and damages; however, the responsible person shall be subrogated to any rights or cause of action belonging to those to whom such payment is made.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

PART VI. OIL SPILL CONTINGENCY FUND

§2483. Oil Spill Contingency Fund

A. "Secretary" as used in this Part shall mean the secretary of the Department of Revenue.

B. In order to fulfill the constitutional mandate of Article IX, Section 1 of the Constitution of Louisiana to protect, conserve, and replenish the natural resources of the state, the legislature hereby declares that sufficient funds shall be made available to the Oil Spill Contingency Fund, in order for prevention of and response to unauthorized discharges of oil.

C. The purpose of the fund is to immediately provide available funds for response to all threatened or actual unauthorized discharges of oil, for clean up of pollution from unauthorized discharges of oil, natural resources damages, damages sustained by any state agency or political subdivision, and removal costs from threatened, unauthorized discharges of oil.

D. All fees, taxes, penalties, judgments, reimbursements, charges, and federal funds collected pursuant to the provisions of this Chapter, except as provided by R.S. 30:2480.2, shall be deposited immediately upon receipt into the state treasury.

E. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, an amount equal to that deposited, as required in Subsection D hereof, and monies appropriated by the legislature shall be credited to a special fund hereby created in the state treasury to be known as the "Oil Spill Contingency Fund". The monies in this fund shall be used solely as provided in this Section and only in the amounts appropriated by the legislature. All unexpended and unencumbered monies in this fund at the end of the fiscal year shall remain in the fund. The monies in this fund shall be invested by the state treasurer in the same manner as monies in the state general fund, and interest earned on the investment of these monies shall remain in the fund. The balance of the fund shall not exceed thirty million dollars, exclusive of all fees, other than all fees collected pursuant to R.S. 30:2485 and 2486, penalties, judgments, reimbursements, charges, interest, and federal funds collected pursuant to the provisions of this Chapter.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1997, No. 658, §2; Acts 2001, No. 649, §1, eff. June 22, 2001.

§2484. Uses of fund

A. Money in the fund may be disbursed for the following purposes and no others:

(1) Administrative and personnel expenses of the office of the coordinator, excluding those of the oil spill technical assistance program, not to exceed six hundred thousand dollars in any fiscal year.

(2) Removal costs related to abatement and containment of actual or threatened unauthorized discharges of oil incidental to unauthorized discharges of hazardous substances.

(3) Removal costs and damages related to actual or threatened unauthorized discharges of oil as provided in this Chapter.

(4) Protection, assessment, restoration, rehabilitation, or replacement of or mitigation of damage to natural resources damaged by an unauthorized discharge of oil as provided in this Chapter.

(5) Grants, with the approval of the interagency council, for interagency contracts as provided in R.S. 30:2495, not to exceed seven hundred fifty thousand dollars in any fiscal year. Of the total amount of grants awarded in any fiscal year, one hundred thousand dollars shall be made available for grants specifically for the purposes of research, testing, and development of discharge and blowout prevention and training using full scale well service training.

(6) Beginning in Fiscal Year 96-97 and each fiscal year thereafter until Fiscal Year 1999-2000, the monies expended from the fund for the Oil Spill Technical Assistance Program established in R.S. 30:2480(C)(4) shall be increased by one hundred thousand dollars each fiscal year whereupon funding for the Oil Spill Technical Assistance Program shall reach five hundred thousand dollars during Fiscal Year 2000-2001.

(7) Operating costs and contracts for response and prevention as provided in this Chapter, excluding operating costs and contracts where indicated of the oil spill technical assistance program, not to exceed six hundred thousand dollars in any fiscal year.

(8) Other costs and damages authorized by this Chapter.

(9) Any state agency or political subdivision seeking an appropriation from the fund or proposing expenditures utilizing money from the fund must notify the coordinator in writing before submitting the appropriation request to the legislature.

(10) An inventory under R.S. 30:2480, to be completed by July 1, 2001, in an amount not to exceed five million five hundred fifty thousand dollars in total.

B. Funds paid to the office of the oil spill coordinator as cost recoveries from responsible parties, the Oil Spill Contingency Fund, or the federal Oil Spill Liability Trust Fund, shall not be included in the amounts provided for in Paragraphs (1) and (7) of Subsection A. Such cost recoveries and other funds may be used to supplement the activities normally funded under those Paragraphs beyond the set limits provided therein.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1992, No. 426, §1; Acts 1995, No. 740, §1; Acts 1997, No. 882, §1; Acts 2000, 1st Ex. Sess., No. 103, §1; Acts 2001, No. 649, §1, eff. June 22, 2001; Acts 2003, No. 1082, §1, eff. July 2, 2003.

§2485. Oil spill contingency fee

A. There is hereby imposed a fee on every person owning crude oil in a vessel at the time such crude oil is transferred to or from a vessel at a marine terminal within the state of Louisiana. This fee is in addition to all taxes or other fees levied on crude oil.

B. The operator of the marine terminal shall collect the fee from the owner of the crude oil and remit the fee to the secretary. The fee shall be imposed only once on the same crude oil. The fee shall be paid quarterly by the last day of the month following the calendar quarter in which liability for the fee is incurred. Fees collected during a quarter must be remitted to the state even if the fee is suspended during that quarter. For the expenses of collecting this fee, the operator is authorized to withhold one and one-half percent of the fees collected during each quarter provided that the amount due was not delinquent at the time of payment.

C. The fee levied by this Part shall be subject to the provisions of Chapter 18 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950. The coordinator in conjunction with the secretary shall adopt rules for the collection and administration of the fee provided for in this Section.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2486. Determination of fee

A. Except as otherwise provided in this Section, the rate of the fee shall be two cents per barrel of crude oil until the state treasurer certifies that the balance in the fund has reached seven million dollars. The state treasurer shall certify to the secretary of the Department of Revenue the date on which the balance in the fund equals seven million dollars. The fee shall not be collected or required to be paid on or after the first day of the second month following the treasurer's certification to the secretary.

B. If the balance in the fund falls below five million dollars, the treasurer shall certify such fact to the secretary of the Department of Revenue. On receiving the state treasurer's certification, the secretary of the Department of Revenue shall resume collecting the fee until suspended in the manner provided in Subsection A of this Section.

C. Notwithstanding the provisions of Subsection A or B of this Section, the fee shall be levied at the rate of four cents per barrel if the state treasurer certifies to the secretary of the Department of Revenue a written finding of the following facts:

(1) The balance in the fund is less than five million dollars.

(2) An unauthorized discharge of oil in excess of one hundred thousand gallons has occurred within the previous thirty days as certified by the coordinator.

(3) Expenditures from the fund for damages and removal costs are reasonably expected by the coordinator and interagency council to deplete the fund by more than fifty percent of the balance of the fund, and certification of this expectation and the estimated damages and removal costs have been submitted to the state treasurer.

D. In the event of a certification to the secretary under Subsection C of this Section, the secretary shall collect the fee at the rate of four cents per barrel until the balance in the fund reaches seven million dollars. The state treasurer shall certify to the secretary the date on which the balance in the fund equals seven million dollars. The fee shall not be collected or required to be paid on or after the first day of the second month following the state treasurer's certification to the secretary.

E. For the purposes of this Section, the balance of the fund shall be determined by the cash balance of the fund at the end of each month or on the date of a finding under Subsection C of this Section.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1995, No. 740, §1; Acts 1997, No. 658, §2; Acts 2003, No. 1082, §1, eff. July 2, 2003.

§2487. Administration of fee

A. The state treasurer shall notify the coordinator when the balance of the fund reaches seven million dollars or falls below five million dollars as specified in R.S. 30:2486, whereupon the coordinator shall publish the finding in the Louisiana Register. In the event of any suspension or other reinstatement of the fee, and upon notice thereof, the coordinator shall publish the suspension or reinstatement in the Louisiana Register at least thirty days prior to the scheduled effective date of the suspension or reinstatement.

B. In the event of a declaration of emergency or as provided in R.S. 30:2486(B) and (C), the secretary shall reinstate the fee in accordance with rules promulgated for that purpose.

C. The fee levied under this Part shall be due and collected beginning on the first day of the first month beginning sixty days after the effective date of this Chapter.

D. If refunds are determined to be due, they shall be paid only from the fund.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1995, No. 740, §1; Acts 2003, No. 1082, §1, eff. July 2, 2003.

§2488. Liability of the fund

A. The coordinator shall prescribe appropriate forms and requirements and by rule shall establish procedures for filing claims for compensation from the fund and for removal costs reimbursements to other state agencies from the fund.

B. The fund shall not be liable to any person for damage to equipment resulting from an oil spill discharge and which are compensable under the Fisherman's Gear Compensation Fund.

C. The fund shall be liable for the following removal costs and damages, provided that such are not recoverable under the federal Oil Pollution Act of 1990 (P.L. 101-380) and the claimant has exhausted all federal remedies:

(1) All proven, reasonable damages and removal costs incurred by state agencies or local governing authorities, authorized by this Chapter from a threatened or unauthorized discharge of oil.

(2) All natural resources damages from an unauthorized discharge of oil.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2489. Reimbursement of fund

A. The coordinator shall diligently pursue reimbursement to the fund of any sum expended or paid from the fund in accordance with the state and national oil spill contingency plans.

B. The coordinator shall recover for the use of the fund, either from persons responsible for the unauthorized discharge or otherwise liable, or from the federal Oil Spill Liability Trust Fund, all sums owed to or expended from the fund. The coordinator, on behalf of the state of Louisiana and the trustees, shall seek reimbursement from the federal fund for damages to natural resources in excess of the liability limits prescribed by this Chapter. If that request is denied or additional money is required following receipt of the federal money, the coordinator has the authority to pay the requested reimbursement from the fund for a period of two years from the date the federal fund grants or denies the request for reimbursement.

C. In any action to recover such sums, the coordinator shall submit to the court a written report of the amounts paid from or owed by the fund to claimants. The amounts paid from or owed by the fund to the claimants stated in the report shall create a rebuttable presumption of the amount of the fund's damages. The written report shall be admissible in evidence.

D. The coordinator shall ensure that there will be no double recovery of damages or response costs.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1995, No. 740, §1.

§2490. Awards exceeding fund

A. In the event that the awards against the fund exceed the existing balance of the fund, the claimant or claimants shall be paid from the future income of the fund. Each claimant or claimants applying for reimbursement shall receive a pro rata share of all money available in the fund until the total amount of awards is paid.

B. The coordinator by rule may make exceptions to Subsection A of this Section in cases of hardship. Amounts collected by the fund from the prosecution of actions shall be used to satisfy the claims as to which such prosecutions relate to the extent unsatisfied.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

PART VII. REMEDIES AND ENFORCEMENT

§2491. Exclusive remedies

A. When applicable, the limitations of liability and immunities provided in this Chapter shall be exclusive and shall supersede any other liability provisions provided by any other applicable state law. The provisions of this Chapter shall supersede, but not repeal, any conflicting laws of this state. Any conflicting applicable federal law shall take precedence over this Chapter.

B. Notwithstanding any other provision of this law, nothing herein shall be construed to preclude the Department of Wildlife and Fisheries from bringing a civil suit to recover penalties for the value of each fish, wild bird, wild quadruped, and other wildlife and aquatic life unlawfully killed, caught, taken, possessed, or injured pursuant to R.S. 56:40.1 et seq.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2492. Enforcement

Any violation of the provisions of this Chapter shall be subject to the enforcement, penalty, procedural, and adjudicatory provisions of this Subtitle. In addition to other factors required to be considered by the secretary in such proceedings, the coordinator shall submit his report regarding a violation of this Chapter to the secretary, and the secretary shall give due consideration to the report.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

PART VIII. MISCELLANEOUS PROVISIONS

§2493. Federal funds

A. In implementing this Chapter, the coordinator to the greatest extent practicable shall employ federal funds unless federal funds will not be available in an adequate period of time.

B. All federal funds received by the state relating to removal costs for threatened or unauthorized discharges of oil under this Chapter shall be deposited in the fund.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2494. Interstate compacts

The coordinator may enter into agreements with other states consistent with and to further the purposes of this Chapter and may recommend legislation establishing interstate compacts consistent with federal law. The coordinator may also participate in initiatives to develop multistate and international standards and cooperation on unauthorized discharge prevention and response.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991.

§2495. Institutions of higher education

The coordinator by interagency contract may provide grants to state institutions of higher education for research, testing, and development of discharge prevention and response technology, discharge response training, wildlife and natural resources protection, rescue, and rehabilitation, development of computer models to predict the movements and impacts of discharges, and other purposes consistent with and in furtherance of the purposes of this Chapter. Contracts or agreements relating to wildlife, aquatic resources, and habitats under the jurisdiction of the Department of Wildlife and Fisheries shall be made in coordination with that department. Contracts or agreements relating to wetlands and coastal resources under the jurisdiction of the Department of Natural Resources shall be made in coordination with that department. To the greatest extent possible, contracts shall be coordinated with studies being done by other state agencies, the federal government, or private industry to minimize duplication of efforts.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1995, No. 740, §1.

§2496. Exclusive authority

The provisions of this Chapter shall be the exclusive authority on oil spill prevention, response, removal, and the limitations of liability.

Acts 1991, 1st Ex. Sess., No. 7, §1, eff. April 23, 1991; Acts 1995, No. 740, §1.

CHAPTER 20. LOUISIANA ENVIRONMENTAL EDUCATION ACT

§2501. Title

This Chapter may be cited as the "Louisiana Environmental Education Act".

Acts 1993, No. 450, §1.

§2502. Legislative findings

A. It is in the public interest that a comprehensive and balanced environmental education initiative be undertaken that will result in environmentally literate citizens who will effectively and constructively solve existing environmental problems, prevent new ones, and maintain a sustainable environment for future generations. The appropriate audiences for environmental education include formal education, business, government, nonprofit organizations, and citizens.

B. Characteristics of an environmentally literate citizenry must include:

(1) An understanding of the right of every person to own, control, use, enjoy, and dispose of private property, subject only to reasonable regulation.

(2) An understanding that the Louisiana Constitution requires the use of a balancing process in environmental protection decisions in which environmental costs and benefits must be given full and careful consideration along with economic, social, and other factors.

(3) Ecological literacy, including a basic understanding of ecological principles and concepts and their application, the cause and effect relationship between human health and the environment, and the economics of that relationship.

(4) Civic literacy, including a basic understanding of the decisionmaking processes of governments, business, and other social, political, and economic institutions impinging upon environmental issues.

(5) Mathematical, technological, and scientific literacy, including an understanding of the basic concepts of mathematics and science to evaluate environmental problems and make sound decisions regarding their resolution.

(6) Personal and social action skills, including developing and using skills such as problem solving, risk analysis, and integrating diverse perspectives to understand and contribute to decisionmaking processes.

(7) Attitudes, including the expression of care for other humans, present and future, and for other components of the environment. These attitudes also affect understanding of ecology and civic responsibility.

(8) Motivation for action, including the commitment to act for a healthy environment based on one's attitudes, knowledge, and skills.

C. The legislature declares that it is the intent of this Chapter to create a balanced statewide environmental education program for the purpose of identifying the needs and setting priorities for environmental education within the state.

Acts 1993, No. 450, §1.

§2503. Louisiana Environmental Education Commission; creation; membership; duties

A.(1) There is hereby created, within the office of the governor, the Louisiana Environmental Education Commission, hereinafter referred to as the "commission".

(2) The commission shall consist of the state superintendent of education or his designee, the secretary of the Department of Environmental Quality or his designee, the secretary of the Department of Natural Resources or his designee, the secretary of the Department of Health and Hospitals or his designee, the commissioner of the Department of Agriculture and Forestry or his designee, the secretary of the Department of Wildlife and Fisheries or his designee, the chancellor of the Louisiana State University Agricultural Center or his designee, the chancellor of Southern University Agricultural and Mechanical College or his designee, and the following members appointed by the governor:

(a) One member of the Board of Regents or his designee.

(b) Two members representing environmental advocacy organizations.

(c) Two members representing the industrial community.

(d) One member representing the small business community.

(e) One member representing local governments.

(f) One member of the Board of Elementary and Secondary Education.

(g) One member who is a professional environmental scientist.

(h) One environmental educator from each congressional district to be recommended by the president of the Louisiana Environmental Educators Association.

(i) One member of the Louisiana Science Teachers' Association.

(j) The secretary of the Department of Culture, Recreation and Tourism or his designee.

B. The initial term of the members of the commission shall be staggered in one, two, or three-year increments. After the initial term, all future terms shall be for three years. Annually, in December of each year, the commission shall elect a chairman and vice chairman whose terms shall commence on the following January first and end on December thirty-first.

C. The commission shall:

(1) Develop, review, approve, and transmit a plan for environmental education to the governor, the legislature, and the public.

(2) Advise and assist the governor, the legislature, the secretary of the Department of Environmental Quality, and other state agencies, including university extension services, conservation and environmental organizations, community action groups, and nature and environmental centers on policies and practices needed to provide environmental education.

(3) Serve as a forum for the discussion and study of problems that affect the environment and environmental education.

(4) Assist and obtain information from various sources to coordinate the environmental education programs of federal and state agencies.

Acts 1993, No. 450, §1; Acts 1995, No. 322, §1; Acts 2001, No. 615, §1.

§2504. The office of environmental education

A. There is hereby created, within the office of the governor, the office of environmental education which shall, under the direction of its coordinator, assist the commission:

(1) To review the status of environmental education in the state every two years.

(2) To design a plan for environmental education and review the plan every two years at the direction of and with the assistance of the commission.

(3) To provide assistance to the commission in the administration and evaluation of the state environmental education grants program.

(4) To promote and aid in the establishment and assessment of elementary and secondary school environmental education programs through cooperation with the Department of Education and the Board of Elementary and Secondary Education.

(5) To promote and aid in the development of pre-service and in-service environmental education programs for environmental educators, formal and non-formal, through cooperation with the Board of Regents and the state's colleges and universities.

(6) To cooperate with state and federal agencies and the private sector in developing, promoting, conducting, and evaluating programs of environmental education.

(7) To function as an environmental education clearinghouse by:

(a) Reviewing and recommending environmental education materials.

(b) Establishing an electronic capacity to disseminate databases of environmental education information, formal and non-formal, and to network with interstate and federal programs.

(c) Cooperating with state and federal agencies and organizations in the development and distribution of an environmental education newsletter.

(8) To promote the development of cooperative environmental education initiatives with the private sector.

(9) To initiate, develop, implement, assess, and market non-formal environmental education programs; facilitate, encourage, and support multi-school district cooperative efforts to determine the need for, develop, and assess environmental education curricula; promote state government and private sector policy that is consistent with the environmental education strategic plan established; and coordinate non-formal environmental education with elementary, secondary, and postsecondary environmental education programs.

(10) To initiate research in environmental education.

(11) To coordinate environmental education conferences to assist in the dissemination, development, and achievement of the state's environmental education goals.

B. The coordinator shall be appointed by the governor, subject to Senate confirmation, from a list of three persons recommended by the commission.

Acts 1995, No. 322, §1.

§2505. Grant program

A. The commission shall investigate establishing a program for the award of grants annually to nonprofit organizations and public agencies for the development, dissemination, and assessment of environmental education programs.

B. Identification of funding sources shall be an integral part of any grants program recommended by the commission.

C. Proposals shall address the needs and priorities identified by the commission.

D. The commission shall adopt rules establishing the specific criteria and guidelines for the grant program.

Acts 1995, No. 322, §1.

§2506. Curriculum framework

A. The commission and the office of environmental education shall work with the Department of Education to develop a curriculum framework for establishing environmental education programs in all public and private elementary and secondary schools. The program shall integrate environmental concepts and skills into regular curricula, which include:

(1) Basic ecological relationships including field experiences.

(2) Issue investigation, analysis, evaluation, problem solving, prediction, and action skills that enable the student to understand concepts such as the interrelationships and interdependence of natural and human systems.

(3) The values and behaviors of individuals, institutions, and nations regarding environmental problems.

(4) Alternative responses to environmental issues and their consequences.

B. The commission and the office of environmental education shall work with the Department of Education to implement an environmental education program in grades K through twelve.

Acts 1995, No. 322, §1.

§2507. Pre-service teacher education

A. The commission and the office of environmental education shall work with members of teacher education institutions, colleges and universities, and the Board of Regents to develop guidelines for incorporating environmental education into teacher education requirements.

B. Pre-service teacher education should consist of the following components:

(1) Definition of the environmental education competencies that teacher candidates are expected to acquire.

(2) Definition of the acceptable approaches that can be used to develop the competencies.

(3) A time line for implementing the required pre-service education programs at colleges and universities.

Acts 1995, No. 322, §1.

§2508. Professional development

In-service teachers should develop the same environmental education competencies specified for pre-service teachers as follows:

(1) School districts shall be encouraged to develop environmental staff development plans and seek matching funds for implementation of these plans from the state grants program.

(2) The Department of Natural Resources, the Department of Environmental Quality, the Department of Wildlife and Fisheries, the Department of Health and Hospitals, the office of state parks within the Department of Culture, Recreation and Tourism, the Department of Agriculture and Forestry, and the Department of Education shall develop and publicize environmental education teacher in-service or professional internships related to their mission and shall be encouraged to develop such programs if they do not exist.

Acts 1995, No. 322, §1.

§2509. Postsecondary environmental education

Universities, colleges, and vocational institutions shall implement programs that encourage environmental literacy and provide opportunities for environmental stewardship among the student population.

Acts 1995, No. 322, §1.

§2510. Non-formal education

A. Non-formal education refers to education conducted outside of traditional formal education systems.

B. All state agencies conducting non-formal environmental education programs shall:

(1) Identify target audiences and programs.

(2) Promote coordination and communications between the agencies conducting environmental education activities.

(3) Conduct a periodic review of non-formal environmental education offered by the department throughout the state.

(4) Maintain an inventory of its environmental education materials, programs, and resources.

(5) Prepare a periodic report to the commission outlining environmental education programs, activities, and needs.

C. The commission shall prepare and maintain a perpetual inventory on all non-formal education programs.

Acts 1995, No. 322, §1.

§2511. Louisiana Environmental Education Fund

A. The office of environmental education is authorized to generate funds from any source.

B. Funds received by the office of environmental education from any source including public and private donations and grants shall be deposited immediately upon receipt into the state treasury.

C. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, an amount equal to that deposited as required by Subsection A hereof shall be credited to a special fund in the state treasury to be known as the "Louisiana Environmental Education Fund". The monies in this fund shall be used solely for the purposes of this Chapter and only in the amounts appropriated by the legislature. All unexpended and unencumbered monies in this fund at the end of the fiscal year shall remain in such fund. The monies in this fund shall be invested by the state treasurer in the same manner as monies in the state general fund.

D. The funds received from the Department of Public Safety and Corrections, office of motor vehicles, pursuant to driver's license issuance and renewal shall be deposited into the Louisiana Environmental Education Fund and shall be used for public service announcements and for the education and training of drivers of motor vehicles regarding littering or to finance local littering enforcement activities in order to promote public safety, order, and general welfare by making the streets, roads, and highways of Louisiana clean, safe, and free of debris, litter, and other material falling from or being thrown from motor vehicles by drivers operating such motor vehicles using such streets, roads, and highways. These funds shall be distributed equally among the five Louisiana Public Service Commission districts and shall not be considered by the division of administration when making annual budgets for the operating expenses of the office.

Acts 1995, No. 322, §1; Acts 2003, No. 527, §1.

CHAPTER 21. STATEWIDE BEAUTIFICATION

PART I. LOUISIANA LITTER REDUCTION AND PUBLIC ACTION COMMISSION

§2521. Declaration of policy and public purpose

Recognizing that the need for the control and reduction of litter is an integral part of a statewide beautification program to enhance the tourist, recreational, and economic development of the state, there is hereby created the Louisiana Litter Reduction and Public Action Commission and the litter reduction and public action section within the Department of Environmental Quality.

Acts 1986, 1st Ex. Sess., No. 32, §1; Acts 1989, No. 687, §1; Acts 1992, No. 655, §1; Acts 1995, No. 1019, §§1, 9; Acts 1997, No. 27, §1; Acts 1999, No. 303, §1, eff. June 14, 1999.

§2522. Definitions

As used in this Part, the following words have the meanings ascribed to them unless the context requires otherwise:

(1) "Commission" means the Louisiana Litter Reduction and Public Action Commission.

(2) "Department" means the Department of Environmental Quality.

(3) "Dispose" means to throw, discard, place, deposit, discharge, burn, dump, drop, eject, or allow the escape of a substance.

(4) "Litter" means all waste material except as provided and defined in R.S. 30:2173(2), including but not limited to disposable packages, containers, sand, gravel, rubbish, cans, bottles, refuse, garbage, trash, debris, dead animals, furniture or appliances, automotive parts including but not limited to tires and engines, trailers, boats and boating accessories, tools and equipment, and building materials, roofing nails, or other discarded materials of any kind and description. While being used for or distributed in accordance with their intended uses, litter shall not include political pamphlets, handbills, religious tracts and newspapers, and other similar printed materials, the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of Louisiana. Litter shall not include agricultural products that are being transported from the harvest or collection site to a processing or market site if reasonable measures are taken to prevent the agricultural product from leaving the transporting vehicle. Litter shall also not include recyclable cardboard being transported in compressed bundles to processing facilities. "Agricultural product" as used in this definition means all crops, livestock, poultry, and forestry, and all aquacultural, floracultural, horticultural, silvicultural, and viticultural products.

(5) "Local governing authority" means the governing authority of the parish or the governing authority of the municipality in which the littering offense was committed.

(6) "Public or private property" means the right-of-way of any road or highway, levee, any body of water or watercourse or the shores or beaches thereof, any park, playground, building, refuge, or conservation or recreation area, and residential or farm properties, timberlands, or forests.

(7) "Section" means the litter reduction and public action section located within and acting through the Department of Environmental Quality.

Acts 1986, 1st Ex. Sess., No. 32, §1; Acts 1989, No. 687, §1; Acts 1989, No. 768, §3; Acts 1992, No. 655, §1; Acts 1995, No. 1019, §§1, 9; Acts 1997, No. 27, §1; Acts 1998, 1st Ex. Sess., No. 148, §3; Acts 1999, No. 303, §1, eff. June 14, 1999; Acts 2003, No. 950, §3, eff. Jan. 1, 2004; Acts 2006, No. 234, §1.

§2523. Repealed by Acts 2001, No. 1137, §1.

§2524. Donations and grants; Louisiana Litter Abatement Grant Program

A. The section is hereby authorized to accept, administer, and make use of federal, state, and any local and private appropriations, any public and private grants and donations, and, when it is deemed appropriate and feasible, to accept nonmonetary funding in the form of services or equipment for use in connection with any of the programs or purposes of this Part.

B.(1) The Louisiana Litter Abatement Grant Program is hereby created within the section for the purpose of supporting community-based litter abatement programs.

(2) Grants through the program shall be made available to local governments and nonprofit organizations. Funding through the grant program shall be subject to the availability of funds and shall be awarded on a comparative basis to be determined by the section.

(3) The monies awarded through the grants shall be used to further the administration and execution of the Keep Louisiana Beautiful Program. Allowable uses of grant funding shall include but not be limited to the following:

(a) Keep America Beautiful fees.

(b) Keep America Beautiful pre-certification training, education curriculums, and workshops.

(c) Law enforcement seminars.

(d) Litter surveys.

(e) Projects, services, activities, and operational costs of litter abatement programs.

(f) Materials and services for program development and training.

(g) Direct expenditures for materials that can facilitate litter reduction, recycling, waste reduction, reuse, and general solid waste management programs.

(h) Minimal advertising, public relations, and promotional materials necessary for publicity and promotion of program activities.

(i) Salary of the program coordinator.

(4) Each successful applicant shall supplement grant funds with a twenty-five percent match from other sources. All matching funds must be available to the program after the date of the grant award, and funds spent prior to the grant award shall not be considered in fulfillment of the match requirement.

(5) The department, in cooperation with the section, shall promulgate rules and regulations to implement this Subsection which shall include but not be limited to program submission and program administration requirements.

Acts 1986, 1st Ex. Sess., No. 32, §1; Acts 1989, No. 687, §1; Acts 1995, No. 1019, §§1, 9; Acts 1997, No. 694, §1.

§2525. Litter reduction and public action section; staff; powers and duties; cooperation; funding

A. The section shall perform and have responsibilities for the function of the state relative to litter control and education awareness as provided for in this Chapter.

B. The section shall maintain staff necessary to effectuate this Chapter properly. Insofar as funds are appropriated, staff shall be employed by the director of the section under the direction and control of the secretary and in accordance with policies of the department.

C. The section shall implement the provisions of this Part, including the following:

(1) Develop and implement publicity, educational, and motivational campaigns to build and sustain public awareness of litter and of the unacceptability of littering and to create a litterless ethic.

(2) Serve as the coordinating agency between the various government and private organizations seeking to aid in litter control and reduction and recycling efforts.

(3) Assist local governments in the adoption and revision of ordinances aimed at litter control and reduction.

(4) Encourage, organize, and coordinate voluntary campaigns seeking to focus the attention of the public on programs to control and reduce litter and increase public awareness.

(5) Provide encouragement of and increased funds for litter cleanup and collection, litter prevention, and cleanup equipment.

(6) Provide for strict enforcement of laws to control and reduce litter and littering.

(7) Promote litter abatement and control and encourage recycling.

(8) Promote public awareness and education.

(9) Design a logo or symbol as provided in R.S. 30:2527 and establish an insignia for litter receptacles.

(10) Serve as the coordinating agency among various local governments, industries, and other organizations which aid in the anti-litter effort.

(11) Cooperate with local governments to accomplish coordination of local anti-litter efforts.

(12) Encourage, organize, and coordinate all voluntary local anti-litter campaigns seeking to focus the attention and participation of the public on the laws of this state enacted to control and remove litter and to provide for the recycling of trash materials.

(13) Investigate the availability of and apply for funds from any private or public source to be used for the purposes of this Part.

(14) Exchange information directly with judges, district and municipal attorneys, Louisiana state police, and local law enforcement officers on enforcement mechanics and offer technical assistance.

(15) Award grants and provide financial assistance on a local level in accordance with rules adopted pursuant to this Part in order to achieve the purposes of this Part and award certificates of achievement for litter abatement.

(16) Establish a method whereby summer employment of persons for litter cleanup may be obtained.

(17) Develop plans, investigate methods, and monitor effectiveness of this Part and of techniques in the control of litter and develop, encourage, and coordinate litter control within the state.

(18) Report annually by April first of each year to the House Committee on Natural Resources and the Senate Committee on Environmental Quality giving details regarding the success of the section's efforts to comply with the above duties or any other duties required of it by law.

(19) Serve as the authority which approves and disburses financial assistance to any local government or nonprofit organization which, in written application, seeks such assistance to implement a local litter prevention or abatement program.

Acts 1986, 1st Ex. Sess., No. 32, §1; Acts 1989, No. 687, §1; Acts 1992, No. 655, §1; Acts 1995, No. 1019, §§1, 9; Acts 1997, No. 694, §1.

§2526. Notice to public required

The section shall cause the prohibitions and penalties provided by this Part to be posted along the public highways of this state in all publicly owned campgrounds and trailer parks; at all entrances to state parks, forestlands, and recreational areas; and at all publicly owned beaches and roadside parks. In addition, each state department in charge of a facility shall post the prohibitions provided by this Part in places where persons are likely to be informed of the existence and content of this Part and the penalties for the violation of its provisions.

Acts 1986, 1st Ex. Sess., No. 32, §1; Acts 1989, No. 687, §1; Acts 1995, No. 1019, §§1, 9.

§2527. Use of anti-litter symbol; distribution; placement

The section shall adopt by rule a uniform, distinctive logo or symbol to mark litter receptacles for wide and extensive distribution throughout the public places of this state. All litter receptacles shall be designed to attract attention and to encourage the depositing of litter therein; however, no provision of this Part shall be construed to require a specified size, shape, capacity, color, or type of receptacle.

Acts 1986, 1st Ex. Sess., No. 32, §1; Acts 1989, No. 687, §1; Acts 1995, No. 1019, §1.

§2528. Litter bags; distribution and design

The section may adopt a design for and the department may produce a litter bag bearing the statewide logo or symbol established pursuant to R.S. 30:2527 and a statement of the penalties prescribed for littering in this state. Such litter bags may be distributed by the office of motor vehicles of the Department of Public Safety and Corrections at no charge to the owner of every licensed motor vehicle in this state at the time and

place of license renewal. The Department of Wildlife and Fisheries may make such litter bags available to the owners of watercraft in this state. The Department of Culture, Recreation and Tourism may provide such litter bags at no charge at points of entry into this state and at visitor centers to the operators of incoming vehicles or watercraft.

Acts 1986, 1st Ex. Sess., No. 32, §1; Acts 1989, No. 687, §1; Acts 1995, No. 1019, §§1, 9.

§2529. Removal of litter; responsibility

The duty to remove litter from receptacles placed at publicly-owned parks, beaches, campgrounds, trailer parks, roadside parks, and other property shall remain with those state and local agencies performing litter removal within their respective jurisdictions. The duty to remove litter from litter receptacles placed on private property which is used by the public shall remain with the owner.

Acts 1986, 1st Ex. Sess., No. 32, §1; Acts 1995, No. 1019, §9.

{{NOTE: SEE ACTS 1986, 1ST EX. SESS., NO. 32, §§3-7.}}

§2530. Anti-litter campaign; industrial and civic cooperation requested

In order to aid in the statewide anti-litter campaign authorized by this Part, the commission and the section shall solicit the assistance and active cooperation of industry and private civic organizations which are active in anti-litter efforts with the commission and the section or a local government as approved under authority of this Part so that additional effect may be given to the campaign to eradicate litter within the state.

Acts 1986, 1st Ex. Sess., No. 32, §1; Acts 1989, No. 687, §1; Acts 1992, No. 655, §1; Acts 1995, No. 1019, §§1, 9.

§2531. Intentional littering prohibited; criminal penalties; simple littering prohibited; civil penalties; special court costs

A. Intentional littering. (1) No person shall intentionally dispose or permit the disposal of litter upon any public place in the state, upon private property in this state not owned by him, upon property located in rural areas in this state not owned by him, or in or on the waters of this state, whether from a vehicle or otherwise, including but not limited to any public highway, public right-of-way, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley, except when such property is designated by the state or by any of its agencies or political subdivisions for the disposal of such litter and such person is authorized to use such property for such purpose.

(2) Whoever violates the provisions of this Subsection shall:

(a) Upon first conviction, be fined two hundred fifty dollars and sentenced to serve eight hours of community service in a litter abatement work program as approved by the court.

(b) Upon second conviction, be fined five hundred dollars and sentenced to serve sixteen hours of community service in a litter abatement work program as approved by the court.

(c) Upon third or subsequent conviction, be fined one thousand two hundred fifty dollars, have his motor vehicle driver's license suspended for one year, and be sentenced to serve eighty hours of community service in a litter abatement work program as approved by the court, or all or any combination of the penalties provided by this Subparagraph.

B. Simple littering. (1) No person shall dispose of, or create a condition that the person knew or should have known was likely to result in the disposal of, litter upon any public place in this state, upon private property in this state not owned by him, upon property located in a rural area in this state not owned by him, or in or on the waters of this state, whether from a vehicle or otherwise, including but not limited to any public highway, public right-of-way, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley.

(2) Persons found liable under the provisions of this Subsection shall be assessed the following civil penalties and costs:

(a) For a first violation, such person shall either be fined seventy-five dollars or given the option to perform eight hours of community service in a litter abatement work program in lieu of the assessed seventy-five dollar fine.

(b) For a second and each subsequent violation, such person shall either be fined five hundred dollars or be given the option to perform sixteen hours of community service in a litter abatement work program in lieu of the five hundred dollar fine.

C. Whoever violates the provisions of this Section shall pay special court costs of one hundred dollars in lieu of other costs of court and the special court costs shall be disbursed as follows:

(1) Twenty dollars shall be paid to the judicial expense fund for that judicial district, or to the justice of the peace or the city court, as the case may be.

(2) Twenty dollars shall be paid to the office of the district attorney, to the constable, or to the municipal prosecuting attorney, as the case may be.

(3) Ten dollars shall be paid to the clerk of the district court, or to the justice of the peace or the city court, as the case may be.

(4) Twenty-five dollars shall be paid to the state treasury for credit to the Keep Louisiana Beautiful Fund.

(5) Twenty-five dollars shall be paid to the law enforcement agency that issued the citation.

D.(1) If the litter is disposed from a motor vehicle, boat, or conveyance, except a bus or large passenger vehicle or a school bus, all as defined in R.S. 32:1, there shall be an inference that the driver of the conveyance disposed of the litter. If such litter was possessed by a specific person immediately before the act of disposing, there shall be an inference that the possessor committed the act of disposing.

(2) When litter disposed in violation of this Section is discovered to contain any article or articles, including but not limited to letters, bills, publications, or other writings, which display the name of a person or in any other manner indicate that the article belongs or belonged to such person, there shall be an inference that such person has violated this Section.

E. The person shall be cited for the offense by means of a citation, summons, or other means provided by law.

F. A person may be found guilty or held liable and fined under this Section although the commission of the offense did not occur in the presence of a law enforcement officer if the evidence presented to the court establishes that the defendant has committed the offense.

G. For the purposes of this Section, each occurrence shall constitute a separate violation.

H. In addition to penalties otherwise provided, a person convicted or held liable under this Section shall:

(1) Repair or restore property damaged by or pay damages for any damage arising out of the violation of this Section.

(2) Pay all reasonable investigative expenses and costs to the investigative agency or agencies.

I. Notwithstanding any provision to the contrary, this Section shall not apply to any activity by persons owning or operating duly licensed commercial vehicles engaged in the collection and transportation of solid waste, construction, or demolition debris or wood waste, as such terms are defined by the rules and regulations of the Department of Environmental Quality, occurring in the course of servicing scheduled pickup routes pursuant to commercial or local government contracts or en route to an authorized pickup station, transfer station, or disposal facility.

Acts 1998, 1st Ex. Sess., No. 148, §3; Acts 2003, No. 950, §3, eff. Jan. 1, 2004.

§2531.1. Gross littering prohibited; criminal penalties; indemnification

A. No person shall intentionally dispose or permit the disposal of any household or office furniture or appliances, automotive parts, including but not limited to tires and engines, trailers, boats and boating accessories, tools and equipment, building materials, roofing nails, and bags or boxes of household or office garbage or refuse upon any public place in the state, upon private property in this state not owned by him, upon property located in rural areas in this state not owned by him, or in or on the waters of this state, whether from a vehicle or otherwise, including but not limited to any public highway, public right-of-way, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley, except when such property is designated by the state or by any of its agencies or political subdivisions for the disposal of such items and such person is authorized to use such property for such purpose.

B.(1) If the litter listed in Subsection A is disposed of from a motor vehicle, boat, or conveyance, except a bus or large passenger vehicle or a school bus, all as defined by R.S. 32:1, there shall be an inference that the driver of the conveyance disposed of the litter. If such litter was possessed by a specific person immediately before the act of disposing, there shall be an inference that the possessor committed the act of disposing.

(2) When litter disposed in violation of this Section is discovered to contain any article or articles, including but not limited to letters, bills, publications, or other writings, which display the name of a person or in any other manner indicate that the article belongs or belonged to such person, there shall be an inference that such person has violated this Section.

C. The person shall be cited for the offense by means of a citation, summons, or other means provided by law.

D.(1) Whoever violates the provisions of this Section shall, upon first conviction, be fined not less than five hundred dollars nor more than one thousand dollars and sentenced to serve eight hours of community service in a litter abatement work program as approved by the court.

(2) Upon second conviction, an offender shall be fined not less than one thousand dollars nor more than two thousand five hundred dollars and sentenced to serve twenty-four hours of community service in a litter abatement work program as approved by the court.

(3) Upon third or subsequent conviction, an offender shall be fined not less than one thousand five hundred dollars nor more than five thousand dollars, have his motor vehicle driver's license suspended for one year, be imprisoned for not more than thirty days, or sentenced to serve not less than forty-eight and not more than one hundred hours in a litter abatement work program as approved by the court, or all or any combination of the aforementioned penalties.

(4) The judge may require an individual convicted of a violation of this Section to remove litter from state highways, public rights-of-way, public playgrounds, public parks, or other appropriate locations for any prescribed period of time in lieu of the penalties prescribed in this Section.

E. A person may be found guilty and fined under this Section although the commission of the offense did not occur in the presence of a law enforcement officer if the evidence presented to the court establishes that the defendant has committed the offense.

F. For the purposes of this Section, each occurrence shall constitute a separate violation.

G. In addition to penalties otherwise provided, a person convicted under this Section shall:

(1) Repair or restore property damaged by or pay damages for any damage arising out of the violation of this Section.

(2) Pay all reasonable investigative expenses and costs to the investigative agency or agencies.

Acts 1998, 1st Ex. Sess., No. 148, §3; Acts 2006, No. 234, §1.

§2531.2. Repealed by Acts 2003, No. 950, §4, eff. Jan. 1, 2004.

§2531.3. Commercial littering prohibited; civil penalties; indemnification; special court costs

A. No person shall dispose or permit the disposal of litter resulting from industrial, commercial, mining, or agricultural operations in which the person has a financial interest upon any public place in the state, upon private property in this state not owned by him, upon property located in rural areas in this state not owned by him, or in or on the waters of this state, whether from a vehicle or otherwise, including but not limited to any public highway, public right-of-way, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley, except when such property is designated by the state or by any of its agencies or political subdivisions for the disposal of such items and such person is authorized to use such property for such purpose.

B. No person shall operate any truck or other vehicle on any highway in such a manner or condition that litter resulting from industrial, commercial, mining, or agricultural operations in which the person is involved can blow or fall out of such vehicle or that mud from its tires can fall upon the roadway.

C.(1) If the litter is disposed of from a motor vehicle, boat, or conveyance, except a bus or large passenger vehicle or a school bus, all as defined by R.S. 32:1, there shall be an inference that the driver of the conveyance disposed of the litter. If such litter was possessed by a specific person immediately before the act of disposing, there shall be a permissive rebuttable presumption that the possessor committed the act of disposing.

(2) When litter disposed in violation of this Section is discovered to contain any article or articles, including but not limited to letters, bills, publications, or other writings, which display the name of a person or in any other manner indicate that the article belongs or belonged to such person, there shall be a permissive rebuttable presumption that such person has violated this Section.

(3) Any industrial, commercial, mining, or agricultural operation in the city of Donaldsonville shall construct and maintain fences or walls to enclose or contain litter generated by its operations. Failure to construct or maintain an enclosure shall constitute a separate violation of this Paragraph for each day that the enclosure is not built or maintained.

D. A person shall be jointly and severally liable for the actions of its agents, officers, and directors for any violation of this Section by any agent, officer, or director in the course and scope of his employment or duties.

E. The person shall be cited for the offense by means of a citation, summons, or other means provided by law.

F. Any person found liable under the provisions of this Section shall:

(1)(a) For a violation of Paragraph (C)(3) of this Section, pay a civil penalty of five hundred dollars.

(b) For any other violation, pay a civil penalty of one hundred dollars.

(2) Repair or restore property damaged by or pay damages for any damage arising out of the violation of this Section.

(3) Pay all reasonable investigative expenses and costs to the investigative agency or agencies.

(4) Pay for the cleanup of the litter unlawfully discarded by the defendant.

G. Any person found liable under the provisions of this Section shall pay special court costs of fifty dollars in lieu of other costs of court which shall be disbursed as follows:

(1) Twenty dollars shall be paid to the judicial expense fund for that judicial district, or to the justice of the peace or the city court, as the case may be.

(2) Twenty dollars shall be paid to the office of the district attorney, or to the constable or to the municipal prosecuting attorney, as the case may be.

(3) Ten dollars shall be paid to the clerk of the district court, or to the justice of the peace or the city court, as the case may be.

H. A person may be held liable and fined under this Section although the commission of the offense did not occur in the presence of a law enforcement officer if the evidence presented to the court establishes that the defendant has committed the offense.

I. For the purposes of this Section each occurrence shall constitute a separate violation.

Acts 1998, 1st Ex. Sess., No. 148, §3; Acts 2001, No. 865, §1.

§2531.4. Community service litter abatement work program; establishment; limited liability

A.(1) A "court-approved community service litter abatement program" means a community service litter abatement program that has been approved by the court having jurisdiction over the violation being prosecuted.

(2) Court-approved community service litter abatement work programs may be established in each parish under the administration of the sheriff or parish governing authority. Such program shall supervise* persons ordered to perform community service work collecting or removing litter. The establishing authority shall establish regulations deemed necessary for the management, supervision, and discipline of persons in the program. The program shall provide for the collection and removal of litter from public highways, rights-of-way, parks, roads, beaches, recreational areas, and other public areas within the sheriff's or the parish governing authority's jurisdiction.

B.(1) A community service litter abatement work program may be established by each municipality. The community service litter abatement work program shall be court approved in those municipalities that have a city court; otherwise, the program shall be established by ordinance adopted by the municipality. Such program shall supervise* persons ordered to perform community service work collecting and removing litter within its jurisdiction. The municipality shall establish regulations by ordinance it deems necessary for the management, supervision, and discipline of persons in the program. The program shall provide for the collection and removal of litter from public areas within the jurisdiction.

(2) A municipality may enter into a contractual arrangement with the sheriff or the parish governing authority for any or all services associated with this program.

C. A person who participates in a community service litter abatement work program established pursuant to this Section shall have no cause of action for damages against the entity conducting the program or supervising his participation therein, nor against any employee or agent of such entity, for any injury or loss suffered by him during or arising out of his participation in the program, unless the injury or loss was caused by the intentional or grossly negligent act or omission of the entity or its employee or agent. The entity shall not be liable for any injury caused by the individual participating in the program unless the gross negligence or intentional act of the entity or its employee or agent was a substantial factor in causing the injury. No provision hereof shall negate the requirement to provide an offender with necessary medical treatment as statutorily required.

Acts 1998, 1st Ex. Sess., No. 148, §3.

*As appears in enrolled bill.

§2531.5. Legal enforcement; penalties; payment by mail or credit card

A. All criminal violations under the provisions of this Part shall be prosecuted by the district attorney of the judicial district in which the violation occurred.

B. Civil violations under the provisions of this Part shall be prosecuted by the district attorney of the judicial district in which the violation occurred, the prosecuting attorney for a municipality having a city court within the municipality in which the violation occurred, or the constable, if filed in justice of the peace court.

C. Each governing authority on whose behalf citations are issued for alleged violations of the provisions of R.S. 30:2531 through 2531.3 shall establish a procedure by which alleged offenders may plead guilty to the alleged offense and pay the fine by mail; however, if the offender fails to pay the fine by mail in advance of adjudication and fails to appear at the time and date indicated on the citation, the court may impose an additional fine or penalty in an amount not to exceed the amount of the fine or penalty for the original violation. In addition, each governing authority shall establish a procedure allowing for payment of the fine by credit cards as it may designate. However, the procedure shall not limit such payments to payment by credit card.

D. An action brought pursuant to R.S. 30:2531(B) or 2531.3 shall be tried as a summary proceeding pursuant to Code of Civil Procedure Article 2591 et seq.

E. Any suspension of a motor vehicle driver's license as a result of violation of any provision of R.S. 30:2531 through 2531.3 shall be referred to the Department of Public Safety and Corrections and shall be handled in compliance with the provisions of R.S. 32:414 or any other provision of law or rule or regulation of the department relative to the suspension of driving privileges. Any cost of administering the suspension of driver's licenses under the provisions of R.S. 30:2531 through 2531.3 shall be payable from the receipts of penalties assessed pursuant to this Section.

F. Whenever the driver's license of a person has been suspended pursuant to the provisions of this Chapter, the judicial officer of the court exercising jurisdiction shall immediately forward to the Department of Public Safety and Corrections notice of the time period of the suspension with information necessary for identification of the person. The Department of Public Safety and Corrections shall immediately notify the person of the suspension of his operator's license and the imposition of a fifty-dollar fee. The Department of Public Safety and Corrections shall also notify the person that upon expiration of the time period of suspension, and upon payment of an additional fifty dollars to the department, the operator's license of the person shall be renewed or reissued.

Acts 1998, 1st Ex. Sess., No. 148, §3; Acts 2003, No. 950, §3, eff. Jan. 1, 2004.

§2531.6. Citations; unlawful acts; records; failure to pay or appear; procedures

A.(1) Whenever any person has allegedly violated any provision of R.S. 30:2531 through 2531.3, a law enforcement officer shall take the person's name, address, and driver's license number, and if the violation occurs from a motor vehicle, the license number of the motor vehicle, and shall issue a citation or summons or otherwise notify him in writing that he must appear in court at a time and place to be specified in such citation or summons.

(2) If applicable, the citation or summons shall indicate that the alleged violator may admit liability and, in lieu of appearing in court, make the payment of the applicable fines, penalties, and costs to the appropriate court by mail or credit card. The law enforcement officer shall provide, in writing, the date by which the payment must be received and the name and phone number of the court having jurisdiction over the alleged offense. The citation or summons shall instruct the alleged violator to contact the court to obtain the amounts of the applicable fines, penalties, and costs and advise him that if he has violated R.S. 30:2531 he must pay special court costs of one hundred dollars, but for violations of R.S. 30:2531(B) he has the option to perform community service in a court-approved litter abatement work program in lieu of paying a fine.

B. Each law enforcement officer upon issuing a citation or summons to an alleged violator of any provision of R.S. 30:2531 through 2531.3 shall deposit the original citation or summons or a copy of same with a court having jurisdiction over the alleged offense.

C. Upon the deposit of the original citation or summons or a copy of same with a court having jurisdiction over the alleged offense, the original citation or summons or a copy of same shall be disposed of only by trial in a court of proper jurisdiction or any other official action by a judge of the court, including payment of the appropriate fines, penalties, and costs to that court by the person to whom such citation or summons has been issued.

D. It shall be unlawful for any law enforcement officer or any other officer or public employee to dispose of a litter citation or summons or copies thereof or of the record of the issuance of the citation or summons in a manner other than as required herein.

E. The chief administrative officer of each law enforcement agency in the state shall require all officers under his supervision to return to him a copy of every litter citation or summons which was issued by the officer for the violation of a litter law or ordinance, and in addition shall require the return of all copies of

every litter citation or summons which has been spoiled or upon which an entry has been made without having issued the citation or summons to the alleged offender.

F. The chief administrative officer shall also maintain or cause to be maintained in connection with every litter citation or summons issued by an officer under his supervision a record of the disposition of the charge by the court in which the original or a copy of the litter citation or summons was deposited.

G. Nothing herein shall be construed as prohibiting or interfering with the authority of a district attorney or other prosecuting attorney to dismiss a litter citation or summons or litter charge by entry of a nolle prosequi.

H. Whenever an alleged offender fails to appear before the judicial officer at the place and time specified in a citation or summons, the judicial officer of the court exercising jurisdiction shall immediately forward to the Department of Public Safety and Corrections notice of the failure to appear, with information necessary for identification of the alleged offender, and another date and time for the alleged offender to appear before the judicial officer. Thereupon, unless the original charges have been disposed of, the Department of Public Safety and Corrections shall immediately notify the alleged offender that:

(1) The judicial officer has taken judicial notice of his failure to appear at the hearing on the date and time listed on the original citation or summons and has found him in contempt of court and his failure to appear could subject him to additional penalties or fines.

(2) He must appear before the judicial officer on a specified date and time to answer the charges for his original violation and his contempt of court.

(3) His failure to appear at this second hearing could subject him to another charge of contempt of court along with the punishment of serving time in jail.

Acts 1998, 1st Ex. Sess., No. 148, §3; Acts 2003, No. 950, §3, eff. Jan. 1, 2004.

§2531.7. Rules and regulations

The deputy secretary of the Department of Public Safety and Corrections, office of public safety services, shall promulgate rules and regulations to provide for a uniform citation document which shall be used for issuing citations for violations of this Part.

Acts 1998, 1st Ex. Sess., No. 148, §3.

§2531.8. Duties of law enforcement officers

It shall be the duty of all law enforcement officers of this state to enforce the provisions of this Part.

Acts 1998, 1st Ex. Sess., No. 148, §3.

§2531.9. Application of other laws

A. Nothing in this Part shall limit the authority of any state agency to enforce any other laws, rules, or regulations relating to waste or the management of solid, biomedical, or hazardous waste.

B. Nothing in this Part shall be construed to affect any ordinance of any political subdivision of the state of Louisiana in effect on June 16, 1998, or to prohibit any political subdivision of the state from adopting ordinances aimed at litter control and reduction. Parish governing authorities may enact such ordinances as further provided in R.S. 33:1236(54).

C. Nothing in this Part shall be deemed to supersede, amend, or delete the provisions of R.S. 30:2545 and 2546.

D. Any occurrence in violation of this Part and otherwise regulated by any other Chapter of this Subtitle may be prosecuted under this Part. However, no person shall be prosecuted for an occurrence in violation of this Part if the person is being prosecuted for the same occurrence under any other Chapter of this Subtitle.

Acts 1998, 1st Ex. Sess., No. 148, §3.

§2532. Collection and distribution of fines; Keep Louisiana Beautiful Fund

A. All fines collected under the provisions of this Part shall be payable as follows:

(1) Fifty percent shall be paid to the law enforcement agency issuing the citation.

(2)(a) Thirty percent shall be paid to the sheriff of the parish, the parish governing authority, or the municipality where the violation occurred if a community service litter abatement program has been established pursuant to R.S. 30:2531.4.

(b) When the law is enforced by a justice of the peace court, then thirty percent shall be paid to the parish governing authority for reimbursement of expenses of the justice of the peace court.

(3) Ten percent shall be paid to the office of the district attorney of the judicial district where the violations occurred, or if prosecuted in a justice of the peace court or a city court, then to the parish governing authority for reimbursement of expenses of the constable or to the municipality, as the case may be.

(4) The remainder shall be paid to the state treasury for credit to the Keep Louisiana Beautiful Fund.

B.(1) All other monies received under the provisions of this Part shall be paid into the state treasury on or before the twenty-fifth day of each month following their collection and, in accordance with Article VII, Section 9 of the Constitution of Louisiana, shall be credited to the Bond Security and Redemption Fund. Out of the funds remaining in the Bond Security and Redemption Fund after a sufficient amount is allocated therefrom to pay all obligations secured by the full faith and credit of the state which become due and payable within each fiscal year, the treasurer shall pay an amount equal to the total amount of such funds collected or received under the provisions of this Part paid into the treasury into a special fund which is hereby created in the state treasury and designated as the Keep Louisiana Beautiful Fund for administration by the Department of Environmental Quality. The secretary shall administer the Keep Louisiana Beautiful Fund and shall make disbursements from the fund for the necessary and appropriate operating expenses of the section.

(2) The funds received from donations and local and private appropriations shall be used for expenses above and beyond the normal operating expenses of the section and shall not be considered by the division of administration when making annual budgets for the operating expenses of the section.

C. All unexpended and unencumbered monies in the fund at the end of the fiscal year shall remain in the fund. The monies in the fund shall be invested by the treasurer in the same manner as monies in the state general fund. All interest earned on monies in the fund invested by the treasurer shall be credited to the state general fund.

D. The Keep Louisiana Beautiful Fund shall be audited annually by the legislative auditor.

Acts 1986, 1st Ex. Sess., No. 32, §1; Acts 1987, No. 235, §1; Acts 1988, No. 692, §1; Acts 1989, No. 687, §1; Acts 1989, No. 768, §3; Acts 1992, No. 361, §§1 and 2, eff. July 1, 1992; Acts 1992, No. 362, §1; Acts 1992, No. 655, §1; Acts 1992, No. 984, §8; Acts 1993, No. 579, §3; Acts 1995, No. 1019, §§1, 9; Acts 1998, 1st Ex. Sess., No. 148, §3.

§2533. Litter violations bureau

A. Each court, except justice of the peace courts, may establish a litter violations bureau and provide for the operation and administration thereof, including any or all of the following:

(1) The fixing of a schedule of fines and costs for the various litter offenses within the limits of such penalties as are set by law.

(2) Providing that any person charged with such an offense may plead guilty before an officer designated by the court.

B. Nothing in this Part shall be construed to affect any ordinance of any political subdivision of the state of Louisiana in effect on the effective date of this Part or to prohibit any political subdivision of the state from adopting ordinances aimed at litter control and reduction. Parish governing authorities may enact such ordinances as further provided in R.S. 33:1236(54).

Acts 1986, 1st Ex. Sess., No. 32, §1; Acts 1989, No. 250, §1; Acts 1989, No. 296, §2; Acts 1995, No. 1019, §9.

§2534. Adopt-a-road program

A. In order to fulfill the obligations and responsibilities assigned to it under R.S. 30:2521, the section shall develop a program to be known as "adopt-a-road", whereby a business or a private civic organization may adopt a section of state-maintained highway, interstate highway interchanges, interstate highway rest areas, or roadside parks for the sole purpose of controlling litter along that section of highway, interchange, rest area, or park. Included in the responsibilities of any business or private civic organization which chooses to participate in the program shall be the following:

(1) Development of a functional plan to influence and encourage the public to improve the appearance of the adopted section of highway.

(2) A general cleanup of the area at least twice a year.

(3) Assistance to the section in securing media coverage for the program.

B. The section shall also develop a program whereby a business or private civic organization may adopt the neutral ground of a portion of a state-maintained highway inside a municipality. The business or private civic organization shall control litter, cut grass, maintain existing shrubs and trees, and trim curbs. It may also plant flowers and additional plants if approved by the commission and the Department of Transportation and Development. The adoption of these areas shall be for periods of one year.

C. Any organization which adopts an interstate highway interchange, interstate highway rest area, or roadside park shall conduct its general cleanup of such areas only when escorted by a municipal or parish law enforcement officer or other person approved by the section.

D. Any parish or municipality which maintains a portion of the green space on the interstate system or any state road may place a sign identifying the parish or municipality upon approval of the Department of Transportation and Development.

E. Any parish or municipality which has a parkway adoption program may place a sign identifying an organization, business, department of government or individual that adopts a portion of the interstate highway system or state highway upon approval of the Department of Transportation and Development.

F. The Department of Transportation and Development shall promulgate rules and regulations to implement the provisions of this Section regarding the planting of flowers and plants and the placement, construction, and maintenance of the signs provided in this Section.

Acts 1989, No. 420, §1; Acts 1989, No. 687, §1; Acts 1995, No. 1019, §§1, 9.

§2535. Litter receptacle; placement and use; logo; penalties

A. Any owner or person in control of any property which is held out to the public as a place for parking consisting of fifteen or more parking spaces shall be responsible for the procurement, placement, and maintenance of litter receptacles. The section shall be authorized to adopt and promulgate reasonable rules and regulations to implement this Section for the purpose of abating litter throughout the state, including placement, minimum standards, and removal.

B. A "litter receptacle" means a container of not less than fifteen gallons constructed, appropriately marked, and placed for use as a temporary depository for litter. Any containers, commonly referred to as "dumpsters", and any garbage receptacle for deposit of litter for single or multi-family residences may be used and shall in no way be governed by this Section.

C. A litter receptacle shall be required at any parking lot consisting of thirty or more parking spaces operated for public use.

D. All such receptacles may bear a logo designed by the section and made available to the public without cost.

E. Any person who violates the provisions of this Section shall be subject to the penalties prescribed in R.S. 30:2531(A).

Acts 1987, No. 936, §1; Acts 1989, No. 687, §1; Acts 1995, No. 1019, §§1, 9; Acts 2003, No. 950, §3, eff. Jan. 1, 2004.

§2536. Beautification and litter clearing by prisoners

A. Any prisoner who has been sentenced to imprisonment in the parish prison for a period of less than one year may be set to work collecting litter on the parish roads under the supervision of the sheriff, or his designee, at the request of the governing authority of the parish. Such prisoners may be utilized by municipalities within the parish by mutual agreement between the sheriff and the governing authority of the municipality.

B. It shall be the duty of such prisoners to pick up and collect litter, trash, and other miscellaneous items that are unsightly to the public that have accumulated on the parish roads, municipal streets, and state highways.

C. Work performed by the prisoner pursuant to this Section shall be credited towards reduction of the prisoner's sentence in the following manner: for each ten-hour day worked on the road collecting litter by the prisoner, his sentence shall be reduced by one day.

D. The Department of Transportation and Development may provide one truck to each parish of sufficient size and design to hold and haul away the litter, trash, and other miscellaneous items as collected by such prisoners, and one employee capable of driving the truck provided upon request of the sheriff. However, the department shall use trucks owned by the department and shall not purchase additional trucks for the purpose of this Section. Any parish or municipality utilizing prisoners may furnish any transportation or trucks required in the utilization of prisoner labor.

E. A prisoner, who participates in a litter abatement or collection program pursuant to this Section, shall have no cause of action for damages against the sheriff conducting the program or supervising his participation therein, nor against his employee or agent, for any injury or loss suffered by him during or arising out of his participation in the program, if such injury or loss is a direct result of the lack of supervision or act or omission of the sheriff or his employee or agent, unless the injury or loss was caused by the intentional or grossly negligent act or omission of the sheriff or his employee or agent. The sheriff shall not be liable for any injury

caused by the prisoner, unless the gross negligence or intentional act of the sheriff or his employee or agent was a substantial factor in causing the injury. No provision hereof shall negate the requirement to provide a prisoner with necessary medical treatment as statutorily required.

Acts 1987, No. 936, §1; Acts 1995, No. 1019, §9; Acts 1997, No. 656, §2.

§2537. Adopt-a-beach program

In order to fulfill the obligations and responsibilities assigned to it under R.S. 30:2521, the section shall develop a program to be known as "adopt-a-beach", whereby an industry or a private civic organization may adopt one mile of Louisiana beach for the sole purpose of controlling litter along that section of beach. Included in the responsibilities of any industry or private civic organization which chooses to participate in the program shall be the following:

(1) Development of a functional plan to influence and encourage the public to improve the appearance of the adopted section of beach.

(2) A general clean up of the area at least twice a year.

(3) Assistance to the section in securing media coverage for the program.

Acts 1988, No. 410, §1; Acts 1989, No. 687, §1; Acts 1995, No. 1019, §§1, 9.

§2538. Trash bash program

In order to fulfill the obligations and responsibilities assigned to it under R.S. 30:2521, the section shall develop a program known as "trash bash program", whereby an annual coordinated cleanup shall be conducted during the spring Easter weekend encouraging local groups to clean streets, alleys, public areas, adopted roads and beaches, and state and parish highways in surrounding areas. Beautification programs shall be conducted along with the trash bash program at schools, public buildings and grounds, median areas, entrances to subdivisions, commercial areas, and other similar areas. Graffiti removal and excess signage removal programs shall be held simultaneously.

Acts 1992, No. 655, §1; Acts 1995, No. 1019, §§1, 9.

§2539. Beach sweep program

In order to fulfill the obligations and responsibilities assigned to it under R.S. 30:2521, the section shall develop a program known as "beach sweep program" whereby an annual coordinated cleanup shall be conducted of the state's seventy-six miles of beaches. The beach sweep program shall be conducted in September along with the other gulf states, and shall consist of removing debris and trash while conducting data collection to ascertain sources of marine debris.

Acts 1992, No. 655, §1; Acts 1995, No. 1019, §§1, 9.

§2540. Inland water cleanup

In order to fulfill the obligations and responsibilities assigned to it under R.S. 30:2521, the section shall develop a program known as "inland water cleanup" whereby a waterway cleanup shall be conducted annually by local groups to clean rivers, bayous, lakes, streams, and other waterways encouraging beautification through proper waste disposal and handling and placement of litter receptacles at parking lots and dock sites bordering waterway entrances and exits.

Acts 1992, No. 655, §1; Acts 1995, No. 1019, §§1, 9.

§2541. Boaters' and fishermen's pledge

In order to fulfill the obligations and responsibilities assigned to it under R.S. 30:2521, the section shall develop a program known as "boaters' and fishermen's pledge" whereby the program shall be conducted asking sportsmen to sign a commitment to bring trash and debris generated in their vehicle or boat back home or to proper disposal receptacles.

Acts 1992, No. 655, §1; Acts 1995, No. 1019, §§1, 9.

§2542. Great Louisiana people's pledge

In order to fulfill the obligations and responsibilities assigned to it under R.S. 30:2521, the section shall develop a program known as "great Louisiana people's pledge" whereby the program shall be conducted asking citizens to sign a pledge to prevent litter from blowing onto highways, into streams or waterways, and practice proper waste disposal of trash and debris generated from their home, business, vehicle, or water vessel.

Acts 1992, No. 655, §1; Acts 1995, No. 1019, §§1, 9.

§2543. People against littering

In order to fulfill the obligations and responsibilities assigned to it under R.S. 30:2521, the section shall develop a program known as "people against littering" whereby a program shall be conducted for local litter

watch committees to encourage the issuing of litter tickets, monitor the number of litter tickets given locally, the payment and prosecution with local authorities, and encourage the use of prisoners for litter detail within the community and on state and parish roads.

Acts 1992, No. 655, §1; Acts 1995, No. 1019, §1.

§2544. Litter-free zones; temporary signs, handbills, flyers and notices; notice to remove; penalties

A. The public rights-of-way of all state, parish, and municipal roads, highways, and streets are hereby declared litter-free zones. No person shall dispose of litter, as both terms are defined in R.S. 30:2522(3) and (6), in a litter-free zone.

B. Each local governing authority should make a reasonable effort to recycle any recyclable litter collected in litter-free zones and shall use the proceeds from the sale of recyclable litter solely for the purposes of litter abatement in drug-free zones.

C. For the purposes of this Section, littering shall also be defined to include the posting, erecting, or displaying on any surface, pole, or stanchion of temporary signs, handbills, flyers, and notices, including but not limited to political campaign signs. However, no person shall be held in violation of any provision of this Section unless:

(1) The owner of a temporary sign, handbill, flyer, or notice fails to remove such item within thirty days after receiving notice, by certified mail, indicating the location or locations of such item and directing the immediate removal thereof.

(2) In the case of political signs, the candidate for political office, who is deemed to be the owner of the sign, fails to remove the sign within thirty days following the general election for the office which the sign was posted.

D. Whoever violates the provisions of this Section shall be fined in accordance with the provisions of R.S. 30:2531(A); however, for purposes of Subsection C of this Section no fine shall be assessed unless the owner has been properly notified as required by that Subsection.

E. Nothing in this Section shall be construed to abrogate or affect any ordinance of any political subdivision of the state which may be more restrictive than the provisions of this Section.

Acts 1989, No. 768, §3; Acts 1992, No. 361, §2, eff. July 1, 1992; Acts 1995, No. 844, §1; Acts 1995, No. 1019, §9; Acts 1998, 1st Ex. Sess., No. 148, §3; Acts 2003, No. 950, §3, eff. Jan. 1, 2004.

§2545. Beaches; glass container prohibition

A. No person shall use or carry a glass water or beverage container upon a beach in this state, nor shall any person throw, drop, deposit, discard, or otherwise dispose of such a glass container on a beach.

B. For the purposes of this Section:

(1) "Beach" means any area constituting the shore of the Gulf of Mexico within the boundaries of the state of Louisiana or Lake Pontchartrain which is operated as or held out to the public as an area of recreation associated with the respective body of water.

(2) "Beverage" means any drink, whether liquid or frozen including, but not limited to, soda pop, ale, beer, wine, fruit punch, milk, shakes, floats, whiskey, or any mixture or combination which includes these products.

(3) "Glass container" means any glass object used to hold water or a beverage, which is typically used to drink, sip, or eat the beverage from, and which is typically designed to hold between one and sixteen four-ounce servings.

C. An offender may be cited for the offense by means of a ticket, summons, or other means provided by law. Whoever violates a provision of this Section shall, upon conviction, be fined not less than one hundred nor more than five hundred dollars.

Acts 1990, No. 949, §1; Acts 1995, No. 1019, §9.

§2546. Littering of waters; definitions; penalties; disposal facilities

A. It shall be unlawful for an operator, passenger, crew member, or any person on board any vessel to intentionally discharge, discard, and permanently abandon into the waters of the state any type of finished plastic products, including but not limited to synthetic ropes, fishing nets, and garbage bags, or to intentionally discharge, discard, and permanently abandon other garbage, including but not limited to paper products, glass, metal, dunnage, lining, and packing materials.

B. As used in this Section, "vessel" means any boat, barge, or other vehicle operating in the waters of the state, including all commercial and recreational watercraft.

C. Any person who violates the provisions of this Section shall be fined not less than fifty dollars nor more than two hundred dollars for each violation; subsequent to notification of such violation, each twenty-four hour day the condition remains uncorrected shall constitute a separate violation.

D. The commission shall require, by regulation, that all marinas and all other access areas used by vessels have proper disposal facilities on site. The commission shall establish the requirements for such disposal reception facilities.

Acts 1992, No. 487, §1; Acts 1995, No. 1019, §9.

§2547. Adopt-a-byway program

A. In order to fulfill the obligations and responsibilities assigned to it under R.S. 30:2521, the section shall develop a program to be known as "adopt-a-byway", whereby an organization which owns, uses, or leases property adjacent to a parish maintained road may adopt a section of such road for the sole purpose of controlling litter along that section. Included in the responsibilities of any organization which chooses to participate in the program shall be the following:

(1) Development of a functional plan to influence and encourage the public to improve the appearance of the adopted section of the road.

(2) A general cleanup of the area at least twice a year.

(3) Assistance to the section in securing media coverage for the program.

B. Any parish or municipality which develops an "adopt-a-byway" program shall coordinate the adoption of rules governing the program with the section.

C. Any parish or municipality which develops an "adopt-a-byway" program may use funds received from the collection of fines provided for under the provisions of R.S. 30:2532(A) to place a sign upon a portion of a road identifying the organization which has adopted such portion of the road.

Acts 1995, No. 923, §1; Acts 1995, No. 1019, §9; Acts 1999, No. 303, §1, eff. June 14, 1999.

PART II. BROWNFIELDS CLEANUP AND REDEVELOPMENT

§2551. Brownfields Cleanup Revolving Loan Fund; purpose

A. The legislature finds and declares that the cleanup, redevelopment, and reuse of brownfields sites in the state should be encouraged and facilitated for the benefit of the state's citizens by way of economic development, health, and aesthetics. The legislature further finds and declares that providing loans for cleanup of brownfields sites will result in benefits to the public by reducing risk to public health and the environment.

B.(1) In furtherance of that purpose, there is hereby established a fund in the state treasury to be known as the "Brownfields Cleanup Revolving Loan Fund" hereafter referred to as the "fund", which shall be maintained and operated by the Department of Environmental Quality. Grants from the federal government or its agencies allotted to the state for the capitalization of the fund and state funds when available shall be deposited directly in or credited to the account of the fund in compliance with the terms of the federal or state grant or state appropriation.

(2) Money in, credited to the account of, or to be received by the fund shall be expended in a manner consistent with terms and conditions of the grants and other sources of said deposits and credits and of all applicable federal and state legislation and may be used:

(a) To make loans from the fund at or below market interest rates.

(b) To provide assistance to a political subdivision, public trust, quasi governmental organization, or eligible nonprofit or private entity to remediate eligible brownfields' properties, except as provided in Subsection C of this Section.

(c) To fund other brownfields-related programs authorized by the terms of the grants and appropriations.

(d) To fund other programmatic activities of the department to develop and operate the revolving loan program.

(e) To provide for any other expenditure consistent with the federal grant program and state law.

(3) Money not currently needed for the operation of the fund or otherwise dedicated may be invested in an interest bearing account. All such interest earned on investments shall be credited to the fund.

C. Responsible persons shall not be eligible to apply for or receive loans pursuant to this Part.

D. The fund shall be administered by the department, which is authorized to enter into contracts and other agreements in connection with the operation of the fund. The department shall maintain full authority for the operation of the fund in accordance with applicable federal and state law.

E. Prior to making a loan, the department shall determine that the applicant has the ability to repay the loan. Further, the department may require security for loans made pursuant to this Part.

F. The secretary is authorized to adopt rules and regulations in accordance with the Administrative Procedure Act to implement the provisions of this Part. These rules shall include but not be limited to:

(1) Eligibility requirements of the entity or person and properties.

(2) Criteria for ranking and selecting applicants.

(3) Procedures for making and repaying loans.

(4) Requirement of security for loans to eligible non-profits and private entities.

(5) Establishment of procedures for interest rates on loans.

G. As used in this Part, the following terms shall have the meaning ascribed to them in this Subsection, unless the context clearly indicates otherwise:

(1) "Brownfields site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

(2) "Loan" means a loan of money from the Brownfields Cleanup Revolving Loan Fund.

(3) "Nonprofit organization" means any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purpose in the public interest; is not organized principally for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization.

(4) "Responsible person" means responsible person or responsible owner as those terms are defined in R.S. 30:2285.2.

H. On or before March 1, 2005, the department shall provide a report of all loans made, a status of loan repayments, and a report of monies expended from the fund to the House Committee on Environment and the Senate Committee on Environmental Quality. Thereafter, the department shall provide such report annually.

Acts 2004, No. 655, §1.

§2552. Brownfields Cleanup Revolving Loan Fund Program; authority to make loans and grants; incur debt; tax exemption

A. Any political subdivision, public trust, quasi governmental organization, or eligible nonprofit or private entity, except as provided in R.S. 30:2551(C), is hereby authorized to make loans from and incur debt payable to the department in accordance with the provisions of this Section. The making of a loan from the Brownfields Cleanup Revolving Loan Fund and the issuance of debt evidencing such loan by any political subdivision, eligible nonprofit organization, or eligible private entity shall be approved by the State Bond Commission. This Section shall not be deemed to be the exclusive authority under which a political subdivision, eligible nonprofit organization, or eligible private entity may borrow money from or incur indebtedness to the department. The department shall aggressively pursue leveraging of all funds to the maximum amount allowable by law.

B. All bonds, notes, or other evidence of indebtedness of any political subdivision, public trust, quasi governmental organization, or eligible nonprofit or private entity issued to represent a loan from the department or the fund shall be authorized and issued pursuant to a resolution of the governing authority of such entity, which resolution shall prescribe the form and details thereof, including the terms, security for, manner of execution, repayment schedule, and redemption features thereof, and such resolution may provide that an officer of such entity may execute in connection with such obligation any related contract, including but not limited to a credit enhancement device, indenture of trust, loan agreement, pledge agreement, or other agreement or contract needed to accomplish the purposes for which said evidence of indebtedness is given, in substantially the form attached to said resolution, but which final executed credit enhancement device, indenture of trust, loan agreement, pledge, or other contract or agreement may contain such changes, additions, and deletions as shall in the sole opinion of the executing officer be appropriate under the circumstances. Any such resolution shall include a statement as to the maximum principal amount of any such obligation, the maximum interest rate to be incurred or borne by said obligation or guaranteed by said obligation, the maximum redemption premium, if any, and the maximum term in years for such obligation, guarantee, or pledge.

C. Notwithstanding any other provision of law to the contrary, a political subdivision, public trust, quasi governmental organization, or eligible nonprofit entity, upon entering into a loan in accordance with the fund as provided in R.S. 30:2551, may dedicate and pledge a portion of any revenues it has available to it, including but not limited to revenues from the general revenue fund, sales taxes, assessments, or property taxes of the political subdivision, for a term not exceeding twenty years from the date of project completion for

repayment of the principal of, interest on, and any premium, administrative fee, or other fee, or cost imposed by the department in connection with such loan.

D.(1) Bonds, notes, or other evidence of indebtedness of any political subdivision, quasi governmental organization, or public trust shall be sold at a private, negotiated sale to the department at such price or prices, including premiums and discounts, as shall be authorized in the resolution of the political subdivision, quasi governmental organization, or public trust authorizing the issuance of any such obligation and agreed to by the department. The general laws of the state governing fully registered securities of public entities shall be applicable to the bonds, notes, or other evidence of indebtedness issued pursuant to this Section.

(2) All resolutions authorizing the issuance of bonds, notes, or other evidence of indebtedness pursuant to this Section shall be published once in the official journal of the political subdivision, quasi governmental organization, or public trust incurring said debt. It shall not be necessary to publish exhibits to any such resolution, but such exhibits shall be made available for public inspection at the offices of the governing authority of the political subdivision, quasi governmental organization, or public trust at reasonable times, and such fact must be stated in the publication within the official journal. For a period of thirty days after the date of such publication any persons in interest may contest the legality of the resolution authorizing such evidence of indebtedness and any provisions thereof made for the security and payment thereof. After such thirty-day period no one shall have any cause or right of action to contest the regularity, formality, legality, or effectiveness of said resolution and the provisions thereof or of the bonds, notes, or other evidence of indebtedness authorized thereby for any cause whatsoever. If no suit, action, or proceeding is begun contesting the validity of the bonds, notes, or other evidence of indebtedness authorized pursuant to such resolution within the thirty days prescribed by this Subsection, the authority to issue the bonds, notes, or other evidence of indebtedness, or to provide for the payment thereof, and the legality thereof, and all of the provisions of the resolution and such evidence of indebtedness shall be conclusively presumed, and no court shall have authority or jurisdiction to inquire into any such matter.

E. Bonds, notes, or other evidence of indebtedness issued under the authority of this Section shall be exempt from all taxation for state, parish, municipal, or other purposes. Such bonds, notes, or other evidence of indebtedness shall be legal and authorized investments for banks, savings banks, insurance companies, any other financial institution, tutors of minors, curators of interdicts, trustees, and other fiduciaries. Such bonds, notes, or other evidence of indebtedness may be used for deposit with any officer, board, or political subdivision of the state, in any case where, by law, deposit of security is required for state funds.

Acts 2004, No. 655, §1.

CHAPTER 22. LOUISIANA ENVIRONMENTAL REGULATORY INNOVATIONS PROGRAMS

§2561. Citation

This Chapter shall be known and may be cited as the "Louisiana Environmental Regulatory Innovations Programs Act".

Acts 1997, No. 992, §1.

§2562. Policy; purpose

A. The legislature finds and declares that the improvement of the environment of the state of Louisiana is a matter of vital concern to all citizens of this state, and recognizes that existing environmental law plays a critical role in protecting the environment.

B. The legislature further finds and declares that environmental protection could be enhanced by authorizing innovative advances in environmental regulatory methods.

C. The legislature further finds that present laws and regulations applicable thereto do not provide the authority needed to comply with federal programs that offer industry regulatory flexibility in exchange for superior environmental performances.

Acts 1997, No. 992, §1.

§2563. Definitions

As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) "Final project agreement" means the final document agreed upon between the secretary and a program participant that specifically states the terms and duration of the proposed project. The final project agreement is an enforceable document.

(2) "Regulatory flexibility" means that a qualified participant in a regulatory innovations program may be exempted by the secretary from regulations promulgated by the department under this Chapter consistent with federal law and regulation.

(3) "Superior environmental performance" means:

(a) A significant decrease of pollution to levels lower than the levels currently being achieved by the subject facility under applicable law or regulation, where these lower levels are better than required by applicable law and regulation; or

(b) Improved social or economic benefits, as determined by the secretary, to the state while achieving protection to the environment equal to the protection currently being achieved by the subject facility under applicable law and regulation, provided that all requirements under current applicable law and regulation are being achieved by the facility.

Acts 1997, No. 992, §1.

§2564. Louisiana Environmental Regulatory Innovations Programs

A. The department shall establish and implement environmental regulatory innovations programs. The programs shall provide regulatory flexibility for participants in these programs. Participation in such programs shall be strictly voluntary, and the department shall not require participation in such programs.

B. The Louisiana Environmental Regulatory Innovations Programs shall include but are not limited to the excellence and leadership program.

C. Minimum criteria for participation in any of the Louisiana Environmental Regulatory Innovations Programs are:

(1) The demonstration project must provide superior environmental performance:

(a) Without increasing negative impacts on the environment, the local community, or worker health and safety.

(b) Without transferring the pollution impacts into a product.

(2) The pollution reduction goals of the demonstration project must be verifiable.

(3) The participant agrees to make available to the public in a format approved by the department all information he submits to the department about the demonstration project, except information that is declared confidential under R.S. 30:2030.

(4) The demonstration project must include stakeholder participation.

(5) The participant agrees to provide an annual written report to the department containing but not limited to pollution reduction data, economic benefits, and paperwork and other administrative tasks that do not directly benefit the environment.

(6) The project is consistent with federal law and regulation.

D. The secretary shall determine the number of environmental regulatory innovations programs and the number of projects to be conducted under the programs each fiscal year.

E. On or before June 30, 1999, and on a quarterly basis thereafter, the secretary shall report to the legislature on implementation of these innovative programs, their environmental results, the level of stakeholder support, and the costs and benefits.

F. The secretary shall give notice of the final project agreement to a person who has requested notice of the agreement. The program participant must publish a notice of the final project agreement in the official journal of the parish governing authority for the parish in which the project will occur.

Acts 1997, No. 992, §1.

§2565. Excellence and Leadership Program

A. The Excellence and Leadership Program shall allow regulatory flexibility to participants who agree to conduct a demonstration project that provides superior environmental performance.

B. In addition to meeting the minimum requirements in R.S. 30:2564 for participating in the Louisiana Environmental Regulatory Innovations Programs, any participant in this program shall also demonstrate that:

(1) A stakeholder group is involved in the demonstration project.

(2) The demonstration project reduces paperwork or financial costs.

(3) The demonstration project is transferable to other members of the regulated community.

(4) The demonstration project should not unduly shift the risk burden to citizens or communities.

(5) The pollution goals of the demonstration project are verifiable and enforceable.

(6) The project is consistent with federal laws and regulations.

Acts 1997, No. 992, §1.

§2566. Regulations

On or before January 30, 1998, the secretary shall promulgate regulations, pursuant to the provisions of the Administrative Procedure Act, for the administration of the Louisiana Environmental Regulatory Innovations Programs including the Excellence and Leadership Program. The regulations shall provide for but are not limited to:

(1) Developing regulatory flexibility for participants in the Excellence and Leadership Program.

(2) Encouraging facility owners and operators to assess the pollution they emit or cause, directly and indirectly, to the air, water, and land.

(3) Encouraging facility owners and operators to innovate, set measurable and verifiable goals, and implement effective pollution prevention, or other pollution reduction strategies for their facilities, while complying with verifiable and enforceable pollution limits.

(4) Encouraging superior environmental performance and continuous improvement toward sustainable levels of resource usage and minimization of pollution discharges.

(5) Establishing a priority system for the selection of demonstration projects.

(6) Reducing the time and money spent by the department and facility owners and operators on paperwork and other administrative tasks that do not benefit the environment.

(7) Increasing public participation and requiring stakeholder participation in the development of innovative environmental regulatory methods and in monitoring the environmental performance of projects under this Chapter.

(8) Encouraging groups of facilities and communities to work together to reduce pollution to levels lower than levels required by applicable law.

Acts 1997, No. 992, §1.

CHAPTER 23. LOUISIANA MERCURY RISK REDUCTION ACT

§2571. Citation

This Chapter shall be known and may be cited as the "Louisiana Mercury Risk Reduction Act."

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2572. Legislative declaration; control of mercury releases

A. The legislature finds and declares that the control of mercury releases to the environment is essential for the reduction of human health risks. Mercury in the environment represents a persistent and growing problem for the citizens of the state. Mercury is a persistent and toxic pollutant that bioaccumulates in the environment. Mercury contamination in fish is resulting in increasing issuance of fish consumption advisories to abate a significant public health threat. Studies across the nation have documented that exposure to the elevated levels of mercury in the environment has resulted in harm to fish-consuming wildlife. There are many sources of mercury in the environment, many of which have existing regulatory means for control. However, landfilling of municipal and other solid waste with mercury-containing products, devices and substances is a largely uncontrolled source of mercury to the environment. Removal of mercury-containing products from the waste stream is an effective way to reduce mercury.

B. Accidental mercury spills, breakages, and releases have occurred throughout Louisiana and the nation, resulting in costly cleanups and mercury exposures to humans, and often children, who represent one of the most sensitive portions of the population. Nationally, health care facilities, educational and research institutions, and businesses have also experienced significant employee exposures and incurred significant costs due to accidental mercury releases.

C. The intent of this Chapter is to achieve significant reductions in environmental mercury by encouraging the establishment of effective state and local waste reduction, recycling, and management programs while encouraging non-mercury alternatives.

D. The secretary of the Louisiana Department of Environmental Quality is hereby authorized to implement, by rules enacted pursuant to the Louisiana Administrative Procedure Act, any and all regulations necessary to carry out the provisions in this Chapter. The secretary may apply for grants, accept donations, or

seek appropriations from the state general fund to carry out the provisions in this Chapter. The department shall not use existing fees collected for another purpose to carry out the provisions of this Chapter.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2573. Definitions

A. As used in this Chapter, unless the context clearly indicates otherwise, the term:

(1) "Fabricated mercury-added product" means a product that consists of a combination of individual components that combine to make a single unit, including but not limited to mercury-added measuring devices, lamps, and switches.

(2) "Formulated mercury-added product" means a chemical product, including but not limited to laboratory chemicals, cleaning products, cosmetics, pharmaceuticals, and coating materials, that are sold as a consistent mixture of chemicals.

(3) "Health care facility" means any hospital, nursing home, extended care facility, long-term care facility, clinical or medical laboratory, state or private health or mental institution, clinic, physician's office, or health maintenance organization.

(4) "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture which produces a mercury-added product or an importer or domestic distributor of a mercury-added product produced in a foreign country. In the case of a multi-component mercury-added product, the manufacturer is the last manufacturer to produce or assemble the product. If the multi-component product is produced in a foreign country, the manufacturer is the importer or domestic distributor.

(5) "Mercury-added novelty" means a mercury-added product intended mainly for personal or household enjoyment or adornment. Mercury-added novelties include, but are not limited to, items intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, items of apparel including footwear, or similar products.

(6) "Mercury-added product" means a product, commodity, chemical, or a product with a component that contains mercury or a mercury compound intentionally added to the product, commodity, chemical, or component in order to provide a specific characteristic, appearance, or quality or to perform a specific function or for any other reason. These products include formulated mercury-added products and fabricated mercury-added products.

(7) "Mercury fever thermometer" means a mercury-added product that is used for measuring body temperature.

B. The mere presence of mercury as a contaminate does not of itself make a product a mercury-added product.

C. Notwithstanding any other provision of this Chapter, dental amalgam, amalgam dispose caps, capsulated dental amalgam, or elemental mercury intended to be used for dental amalgam is not included in the definition of mercury-added product when dispensed by a qualified health care provider. Manufacturers of dental amalgam, amalgam dispose caps, capsulated dental amalgam and/or components of these items, and elemental mercury intended to be used for dental amalgam are subject to this Section.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2574. Notifications

A. Effective January 1, 2007, no mercury-added product shall be offered for final sale or use or distributed for promotional purposes in Louisiana without prior notification in writing by the manufacturer of the product to the Department of Environmental Quality in accordance with the requirements of this Section. The notification to the department shall at a minimum include:

(1) A brief description of the product to be offered for sale, use, or distribution.

(2) The amount of and purpose for mercury in each unit of the product.

(3) The total amount of mercury contained in all products manufactured by the manufacturer.

(4) The name and address of the manufacturer, and the name, address and phone number of a contact at the manufacturer.

(5) For purposes of complying with this Section, the manufacturer may submit to the Department of Environmental Quality copies of reports sent by the manufacturer to the Interstate Mercury Education and Reduction Clearinghouse (IMERC). At a minimum, copies of the reports shall contain the information listed in Paragraphs (1) through (4) of this Subsection. Any changes in the information contained in these reports shall be reported to the Department of Environmental Quality when those changes are reported to IMERC.

B. Any mercury-added product for which federal law governs notice in a manner that preempts state authority shall be exempt from the requirements of this Section.

C. With the approval of the Department of Environmental Quality, the manufacturer may supply the information required above for a product category rather than an individual product. The manufacturer shall update and revise the information in the notification whenever there is significant change in the information or when requested by the Department of Environmental Quality. The Department of Environmental Quality may define and adopt specific regulations in accordance with Louisiana Administrative Procedure Act for the content and submission of the required notification.

D. Public disclosure of confidential business information submitted to the Department of Environmental Quality pursuant to this Section shall be governed by the requirements of R.S. 30:2030. Notwithstanding the requirements of R.S. 30:2030, the state may provide the Interstate Mercury Education and Reduction Clearinghouse with copies of such information and the Department of Environmental Quality and the Interstate Mercury Education and Reduction Clearinghouse may compile or publish analyses or summaries of such information provided that the analyses or summaries do not identify any manufacturer or reveal any confidential information.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2575. Restrictions on the sale of certain mercury-added products

A. On and after July 1, 2007, no mercury-added novelty shall be offered for final sale or use or distributed for promotional purposes in Louisiana. Manufacturers that produce and sell mercury-added novelties shall notify retailers about the provisions of this product ban and how to dispose of the remaining inventory properly. Novelties for which the only added mercury comes from a removable mercury-added lamp or mercury-added button cell battery are exempt from this Subsection if the manufacturer of the mercury-added lamp or mercury-added button cell battery has complied with the applicable provisions of R.S. 30:2574, 2577, 2578, 2579, and 2581.

B. On and after January 1, 2007, no person shall sell or supply mercury fever thermometers to consumers and patients, except by prescription. The manufacturers of mercury fever thermometers shall, in addition to providing notice of mercury content and instructions on proper disposal, supply clear instructions on the careful handling of the thermometer to avoid breakage and on proper cleanup should a breakage occur. Mercury fever thermometer manufacturers shall also comply with R.S. 30:2574, 2576, 2577, 2579, and 2581.

C. On and after January 1, 2007, no school in Louisiana shall use or purchase for use in a primary or secondary classroom, bulk elemental or chemical mercury or mercury compounds. Manufacturers that produce and sell such materials shall notify retailers about the provisions of this ban and how to dispose of the remaining inventory properly. Other mercury-added products that are used by schools are not subject to this prohibition.

D. On and after July 1, 2007, no mercury dairy or natural gas manometers shall be offered for final sale or use or distributed for promotional purposes in Louisiana. Manufacturers that produce and sell mercury dairy or natural gas manometers shall notify retailers about the provisions of this product ban and how to dispose of the remaining inventory properly. The Department of Environmental Quality in consultation with the Louisiana Department of Agriculture and Forestry and the Louisiana Department of Natural Resources shall examine the feasibility of implementing a collection and replacement program for dairy and natural gas manometers, respectively, including technical and monetary assistance to operations that once contained mercury manometers.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2576. Exemptions and phase outs

A. No mercury-added product shall be offered for final sale or use or distributed for promotional purposes in Louisiana if the mercury content of the product exceeds:

(1) 1 gram (1,000 milligrams) for mercury-added fabricated products or 250 parts per million (ppm) for mercury-added formulated products, on and after July 1, 2008.

(2) 100 milligrams for mercury-added fabricated products or 50 parts per million (ppm) for mercury-added formulated products, effective July 1, 2010.

(3) 10 milligrams for mercury-added fabricated products or 10 parts per million (ppm) for mercury-added formulated products, effective July 1, 2012.

B. For a product that contains one or more mercury-added products as a component, this Section is applicable to each component part or parts and not to the entire product.

C. For a product that contains more than one mercury-added product as a component, the phase out limits specified in Subsection A of this Section shall apply to each component and not the sum of the mercury in all of the components. For a newly manufactured automobile containing mercury-added displays and lighting, the phase out limits would apply to each component separately, and not the combined total of mercury in all of the components.

D. Fluorescent lamps shall be exempt from the requirements of Subsection A of this Section. On and after July 1, 2014, the mercury content of fluorescent bulbs must either not exceed 10 milligrams or the manufacturer must comply with the exemption requirements pursuant to Subsection F of this Section.

E. A mercury-added product shall be exempt from the limits on total mercury content set forth in Subsection A of this Section, if the level of mercury or mercury compounds contained in the product are required in order to comply with federal or state health, safety, or homeland security requirements. In order to claim exemption under this Section the manufacturer must notify, in writing, the Department of Environmental Quality and provide the legal justification for the claim of exemption.

F. The department shall promulgate regulations that provide for manufacturers to apply for exemptions from this Subsection. Such rules shall provide that manufacturers of a mercury-added product may apply to the Louisiana Department of Environmental Quality for an exemption from the limits on total mercury content set forth in Subsection A of this Section for a product or category of products. Applications for exemptions must document the basis for the requested exemption or renewal of exemption; describe how the manufacturer will ensure that a system exists for the proper collection, transportation, and processing of the products at the end of their useful life; and document the readiness of all necessary parties to perform as intended in the planned system. The Department of Environmental Quality may grant with modifications or conditions an exemption for a product or category of products if it finds that a system exists for the proper collection, transportation, and processing of the mercury-added product. Such a system may include direct return of a waste product to the manufacturer or an industry or trade group that supports a collection and recycling system, or other similar private and public sector efforts and it considers each of the following criteria:

(1) Use of the product is beneficial to the environment or protective of public health or protective of public safety.

(2) There is no technically feasible alternative to the use of mercury in the product.

(3) There is no comparable non-mercury-added product available at reasonable cost.

G. Prior to issuing an exemption the Department of Environmental Quality shall consult with neighboring states and regional organizations to promote consistency. The state shall avoid to the extent feasible inconsistencies in the implementation of this Section. Upon reapplication by the manufacturer and findings by the Department of Environmental Quality of continued eligibility under the criteria of this Subsection and of compliance by the manufacturer with the conditions of its original approval, an exemption may be renewed one or more times and each renewal may be for a period of no longer than two years.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2577. Labeling of mercury-added products

A. No mercury-added product manufactured on and after July 1, 2008, shall be offered for final sale or use or distributed for promotional purposes in Louisiana unless both the product and its packaging are labeled in accordance with this Section, any adopted rules, or the terms of any approved alternative labeling or notification granted under R.S. 30:2579. A retailer may not be found in violation of this Subsection if the retailer lacked knowledge that the product contained mercury.

B. Where a mercury-added product is a component of another product, the product containing the component and the component must both be labeled. The label on a product containing a mercury-added component shall identify the component with sufficient detail so that it may be readily located for removal.

C. All labels must be clearly visible prior to sale and must inform the purchaser, using words or symbols, that mercury is present in the product and that the product should not be disposed of or placed in a waste stream destined for disposal until the mercury is removed and reused, recycled, or otherwise managed to ensure that the mercury in the product does not become mixed with other solid waste or wastewater.

D. Labels affixed to the product shall be constructed of materials that are sufficiently durable to remain legible for the useful life of the product.

E. On and after July 1, 2008, any person offering a mercury-added product for final sale or use or promotional purposes to an address in Louisiana shall clearly advise the purchaser or recipient at the point of sale that the product contains mercury. This requirement shall apply to all transactions where the purchaser or recipient is unable to view the labels on the package or the product prior to purchase or receipt, including but not limited to catalogue, telephone, and Internet sales.

F. Responsibility for product and package labels required by this Section shall be on the manufacturer and not on the wholesaler or retailer unless the wholesaler or retailer agrees with the manufacturer to accept responsibility in conjunction with implementation of an alternative to the labeling requirements of this Section approved under R.S. 30:2578. In the case of a multi-component product the responsible manufacturer is the last manufacturer to produce or assemble the product or, if the multi-component product is produced in a foreign country, the responsible manufacturer is the importer or domestic distributor.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2578. Labeling for specific products

Notwithstanding the requirements of R.S. 30:2577, labeling of appliances which are sold in a store where the appliance is on display shall meet all requirements of this Chapter except that no package labeling is required. Labeling of fever thermometers and button cell batteries shall meet all requirements of this Section, except that no product labeling is required. Labeling of newly manufactured motor vehicles shall meet all requirements of this Section except that the mercury-added components are not required to be labeled. A doorpost label shall list the mercury-added components that may be present in the vehicle.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2579. Alternative methods of public notification

A. A manufacturer may apply to the Department of Environmental Quality for an alternative to the requirements of this Section where strict compliance with the requirements is not feasible or the proposed alternative would be at least as effective in providing pre-sale notification of mercury content and in providing instructions on proper disposal or federal law governs labeling in a manner that preempts state authority.

B. Applications for an alternative to the requirements under this Section must document the justification for the requested alternative; describe how the alternative ensures that purchasers or recipients of mercury-added products are made aware of mercury content prior to purchase or receipt; describe how a person discarding the product will be made aware of the need for proper handling to ensure that it does not become part of solid waste or wastewater; document the readiness of all necessary parties to implement the proposed alternative; and describe the performance measures to be utilized by the manufacturer to demonstrate that the alternative is providing effective pre-sale notification and pre-disposal notification.

C. The Department of Environmental Quality may grant, deny, modify, or condition a request for an alternative to the requirements of this Section and approval of such alternative. The grant of the application for the alternative method of public notification shall be for a period of no more than two years and may, upon continued eligibility under the criteria of this Section and compliance with the conditions of its prior approval, be renewed for two-year intervals. Prior to approving an alternative, the Department of Environmental Quality shall consult with neighboring states, provinces and regional organizations to ensure that its labeling requirements are consistent with those of other governments in the region.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2580. Disposal ban and proper management of mercury in scrap metal facilities

A. On and after January 1, 2007, mercury shall not be discharged to water, wastewater treatment, and wastewater disposal systems except when it is done in compliance with applicable local, state, and federal requirements.

B. No person shall crush a motor vehicle unless the person has made a reasonable effort to remove or verify that the mercury contained within convenience lighting switches and antilock braking system

components have been removed. Obtaining a certification by a duly authorized representative of the person delivering the scrap that the mercury contained within convenience lighting switches and antilock braking system components required to be removed have been removed and are not included with the scrap delivered, and conducting a visual inspection as practicable of the scrap delivered shall constitute verification that the mercury contained within convenience lighting switches and antilock braking system components have been removed.

C. No person shall shred an appliance unless the person has made a reasonable effort to remove or verify that the component mercury-added products have been removed. Obtaining a certification by a duly authorized representative of the person delivering the scrap that mercury-added products required to be removed have been removed and are not included with the scrap delivered and conducting a visual inspection as practicable of the scrap delivered shall constitute verification that all of the component mercury-added products have been removed.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2581. Collection of mercury-added products

A. On and after July 1, 2007, no mercury-added product containing more than ten milligrams of mercury shall be offered for final sale or use or distribution for promotional purposes in Louisiana unless the manufacturer either on its own or in concert with other persons has submitted a plan for a convenient and accessible collection system for such products when the consumer is finished with them and such a plan has received approval of the Department of Environmental Quality. The manufacturer of any automobile subject to the removal of the mercury contained within convenience lighting switches and antilock braking system components as provided in R.S. 30:2580(B) shall either on its own or in concert with other persons, submit a plan effective until January 1, 2017 for a convenient and accessible collection system for the mercury contained within convenience lighting switches and antilock braking system components when removed from end-of-life vehicles. Where a mercury-added product is a component of another product, the collection system shall provide for removal and collection of the mercury-added component. The department shall promulgate regulations that provide for the requirements of the collection plan. Those regulations shall provide that the collection system plan shall include all of the following elements:

(1) A public education program to inform the public about the purpose of the collection program and how to participate in it.

(2) A targeted capture rate for the mercury-added products or components.

(3) A plan for implementing the collection system.

(4) Documentation of the willingness of all necessary parties to implement the proposed collection system.

(5) A description of the performance measures to be utilized and reported by the manufacturer to demonstrate that the collection system is meeting capture rate targets and other measures of program effectiveness as required by the Department of Environmental Quality.

(6) A description of additional or alternative actions that will be implemented to improve the collection system and its operation in the event that the program targets are not met.

B. In developing a collection system plan, manufacturers are encouraged to utilize or expand on existing collection and recycling infrastructure.

C. Within a year of the Louisiana Department of Environmental Quality approval of the collection system plan, the manufacturer or entity that submitted the plan on behalf of the manufacturer shall ensure that a convenient and accessible recovery system for the users of those products is in full operation. Two years following the implementation of the collection system plan required under this Section and biennially thereafter, the manufacturer or entity that submitted the plan on behalf of the manufacturer shall submit a report on the effectiveness of the collection system. The report shall include an estimate of the amount of mercury that was collected, the capture rate for the mercury-added products or components, the results of the other performance measures included in the manufacturer's collection system plan, and such other information as the Department of Environmental Quality may require. Such reports shall be made available to the public by the Department of Environmental Quality.

D. Mercury-added formulated products intended to be totally consumed in use, such as reagents, cosmetics, pharmaceuticals, and other laboratory chemicals, shall be exempt from the requirements of this Section.

E. Manufacturers of mercury-added products may apply for an exemption from the collection requirements of this Section by forwarding an exemption request to the Louisiana Department of Environmental Quality. In considering the request, the secretary shall consider the amount of mercury in the mercury-added product, the total of the mercury-added product sold in Louisiana, the total amount of mercury-added product disposed of in Louisiana, the feasibility of a collection system, and the overall risk to human health and the environment posed by the mercury-added product. The secretary shall promulgate rules for the implementation of this Section.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2582. Disclosure for mercury-containing formulated products used in health care facilities

On and after July 1, 2007, the manufacturers of formulated mercury-added products that are offered for sale or use to a health care facility in Louisiana shall provide both the Department of Environmental Quality and the recipient health care facility a notice of the mercury content of the product, down to a 1 part per million level. The notice shall report the result of an analysis performed for mercury on the specific batch or lot of that product offered for sale. The batch or lot number of the product shall be clearly identified on the product and on the notice.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2583. Limitations on the use of elemental mercury

A. On and after July 1, 2007, no person shall offer for sale or distribute for promotional purposes or provide elemental mercury without providing a Material Safety Data Sheet, as defined in 42 U.S.C. 11049, and the seller, distributor, or provider shall require the purchaser or recipient at the time of receipt of any elemental mercury to sign a statement attesting the purchaser or recipient:

(1) Will use the mercury only for medical, dental, research or manufacturing purposes.

(2) Understands mercury is toxic and the purchaser will store, use, and otherwise handle exposure to such mercury in accordance with regulations promulgated by the department pursuant to the provisions of this Section. For qualified health care providers, those regulations shall incorporate best management practices in accordance with guidelines of the American Dental Association, the American Medical Association, and other nationally recognized professional health care organizations.

(3) Will dispose of the elemental mercury in accordance with state, federal, and local law and regulation.

B. The department shall promulgate regulations providing for the appropriate manner of disposal of mercury used for medical and dental purposes.

C. To facilitate compliance with the disposal ban, the Department of Environmental Quality may prepare and publish best management practice guidelines for dental offices and laboratories.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2584. Existing inventories

A. Mercury-added products with a code or date of manufacture indicating the products were manufactured prior to June 2, 2006, or that are meant to service products manufactured prior to June 2, 2006, are exempt from the provisions of R.S. 30:2575, 2576, 2578, 2581, and 2583 if there are no reasonable non-mercury alternatives. If the mercury-added product has a date of manufacture or the manufacturer can provide documentation that the product in question was manufactured prior to June 2, 2006, or the product is a service part for a product manufactured prior to June 2, 2006, it is exempt from the provisions of R.S. 30:2575, 2576, 2578, 2581, and 2583 if there are no reasonable non-mercury alternatives. Situations that are beyond the control of the manufacturer, such as old stock being held by retailers, shall be addressed on a case-by-case basis.

B. Medical equipment containing mercury-added products currently being used in a heath care facility and manufactured prior to June 2, 2006, may remain in service until replaced or refurbished. In the event a mercury-added product being used in a health care facility is refurbished, medical equipment containing a mercury-added product shall be refurbished with a non-mercury containing component, unless there is no reasonable non-mercury alternative or the mercury containing component has been exempted by the provisions of R.S. 30:2576.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2585. Public education and outreach

A. The Department of Environmental Quality shall, as funds are available, implement a comprehensive public education, outreach, and assistance program for households, hazardous waste generators, local and regional solid waste management agencies, small businesses, health care facilities, scrap metal facilities, dismantlers, institutions, schools, and other interested groups in concert with other relevant state agencies. Public education, outreach, and assistance programs should focus on the hazards of mercury; the requirements and obligations of individuals and manufacturers, and voluntary efforts that individuals, institutions, and businesses can undertake to help further reduce mercury in the environment. The Department of Environmental Quality shall cooperate with manufacturers of mercury-added products and other affected businesses in the development and implementation of public education and technical assistance programs.

B. The Department of Environmental Quality may develop an awards program to recognize the accomplishments of manufacturers, municipalities, solid waste management facilities, solid waste recycling facilities, household hazardous waste collection facilities, citizens, or others who go beyond the minimum requirements in this legislation and excel at reducing or eliminating mercury in air emissions, solid waste, and wastewater discharges.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2586. State procurement preferences for low or non-mercury-added products

Notwithstanding any law to the contrary or any rule or regulation promulgated pursuant thereto, for the procurement of equipment, supplies, and other products, all state agencies shall by July 1, 2007, revise their policies, rules, and procedures to implement the purposes of this Act. In purchasing decisions, state agencies shall give priority and preference to the purchase of equipment, supplies, and other products that contain no mercury-added compounds or components, unless there is no economically feasible non-mercury-added alternative that performs a similar function. In circumstances where a non-mercury-added product is not available, preference shall be given to the purchase of products that contain the least amount of mercury-added to the product necessary for the required performance. The division of administration is authorized to give a price preference of up to twenty percent for products that contain no mercury or less mercury than comparable mercury containing products. The procurement agent shall specify non-mercury or reduced mercury-added products, as applicable, in procurement bid documents. State dental insurance contracts negotiated after the effective date of this Act shall provide equal coverage for non-mercury fillings and dental amalgam fillings at no additional expense to the state employee.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2587. Water and wastewater system use prohibition

A. On and after August 1, 2006, no person shall install a mercury switch or mercury containing device in any drinking water system or waste water system including, but not limited to level indicators, float switches, pump control, and pressure sensing systems.

B. On and after July 1, 2009, all mercury devices shall be removed from drinking water systems or wastewater systems where the installed switch may release mercury into the water, if damaged, broken or otherwise malfunctions. Mercury-added devices external to drinking water and wastewater systems are exempted from this provision.

C. Owners and operators of drinking water and wastewater management facilities shall implement the following mechanisms:

(1) Posting of signs at the facility providing notice of the prohibition of the introduction of mercury-added products at the facility.

(2) Development of written purchasing procedure to prohibit the purchasing of mercury or mercury containing products that will risk the introduction of mercury into drinking or waste waters.

Acts 2006, No. 126, §1, eff. June 2, 2006.

§2588. Enforcement

A violation of any of the provisions of this Chapter or of any rule or regulation promulgated pursuant thereto shall be punishable as provided in R.S. 30:2025 and any other law providing for the protection of human health and the environment.

Acts 2006, No. 126, §1, eff. June 2, 2006.