

presented to the administrative authority for use in possible enforcement proceedings. Any complainant who provided the information prompting the investigation shall be notified of its results.

2. The administrative authority shall have access to and be allowed to copy any records that the department or its representative finds necessary for the enforcement of these regulations. For records maintained in either a central or private office that is open only during normal office hours and is closed at the time of the inspection, the records shall be made available as soon as the office is open, but in no case later than noon the next working day.

D. Enforcement Action. When the administrative authority determines that a violation of the act or these regulations has occurred or is about to occur, he shall initiate one or more of the actions set forth in R.S. 30:2025, or as otherwise provided by appropriate rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), (15), and 2025.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:979 (October 1996).

Subpart 5. Voluntary Environmental Self-Audit Program

Chapter 70. Voluntary Environmental Self-Audit Regulations

§7001. Authority

A. Regulations for establishing a program for voluntary environmental self-audits are hereby established by the Louisiana Department of Environmental Quality by order of the administrative authority and in accordance with R.S. 30:2025(J), 30:2060(H), 30:2076(D), 30:2183(I), and 30:2044(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2044(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:0000 (December 2023).

§7003. Purpose

A. The purpose of this Chapter is to establish regulations for the voluntary environmental self-audit program. This Chapter:

1. identifies violations that are not eligible for relief under this program;
2. establishes procedures for conducting voluntary environmental self-audits;
3. establishes fees associated with this program; and
4. addresses prescription for violation(s) subject to this program.

B. The regulations established in this Chapter shall apply to environmental self-audits conducted on or after December 20, 2023.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2044(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:0000 (December 2023).

§7005. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

Audit or Environmental Audit—a systematic voluntary evaluation, review, or assessment of compliance with environmental statutes, regulations, permits, and/or permit requirements.

Audit Report or Environmental Audit Report—the documented analyses, conclusions, and recommendations resulting from an environmental audit.

Department—the Louisiana Department of Environmental Quality.

EPA—the United States Environmental Protection Agency.

Owner or Operator—any person(s) who owns, leases, operates, controls, or supervises a facility, building, structure, or installation.

Person—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.

Regulated Entity—any entity, including a federal, state, or municipal agency or facility, regulated under federal and/or state environmental laws.

Subtitle—the Louisiana Environmental Quality Act.

Violation—noncompliance with a requirement of a statute, regulation, permit, judicial or administrative order, or consent agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2044(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:0000 (December 2023).

§7007. Exclusions

A. Violations that are not eligible for relief under this program shall include, but not limited to violations:

1. that result in serious actual harm to the environment;
2. that may present an imminent or substantial endangerment to the environment or public health;

3. discovered by the department or EPA prior to written disclosure of the violation to the department;

4. detected through monitoring, sampling, or auditing procedures that are required by statute, regulation, permit, judicial or administrative order, or consent agreement;

5. subject to the chemical accident prevention provisions of 40 CFR Part 68 and LAC 33:III.5901;

6. that are deliberate or intentional; or

7. that are the same or closely related at the same facility within the past three years.

B. An employee of the department shall not request, review, or otherwise use an environmental audit report during a department inspection of a facility.

C. The department reserves the right to take enforcement action with respect to a violation that:

1. is excluded under LAC 33:I.7007.A; or

2. is not properly or adequately disclosed and/or corrected in accordance with this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2044(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:0000 (December 2023).

§7009. Program Scope

A. Procedures for Conducting Voluntary Environmental Self-Audits

1. Notice of Audit

a. The owner or operator shall notify the department prior to initiating a voluntary environmental audit in order to qualify for penalty mitigation.

b. The owner or operator shall use the department's most current version of the approved notice of audit form located on the department's public website.

c. A notice of audit shall be submitted in writing by certified mail or other means approved by the department.

d. The department shall acknowledge receipt of the notice of audit in writing.

2. Disclosure of Violation(s)

a. Disclosure of violation(s) shall be made by the owner or operator upon discovery of a violation as a result of the voluntary environmental audit. The violation(s) shall be properly disclosed and reported to the department by certified mail, or other means approved by the department, in order to qualify for penalty mitigation.

b. The owner or operator shall use the department's most current version of the approved disclosure of violation(s) form located on the department's public website.

c. The disclosure of violation shall include corrective actions, if applicable.

d. The department shall acknowledge receipt of the disclosure of violation in writing. The acknowledgement shall include a concurrence or rejection of the proposed corrective actions.

3. An environmental audit shall be completed within a reasonable time, not to exceed six months after the date the audit was initiated, unless the department grants an extension of time.

B. Requests for Extension of Time

1. Requirements for Requests for Extension of Time

a. If an audit cannot be completed within six months after the date of initiation, a request for extension of time shall be submitted in writing at least 30 calendar days prior to the expiration of the audit period with sufficient information to justify an extension. Justification for an extension of time shall be limited to factors beyond the control of the owner or operator. A request without sufficient information shall result in a denial.

C. Corrective Actions

1. Corrective actions must be completed within 90 calendar days from the date of discovery of the violation unless a specific period is required by statute, regulation, or permit requirement.

a. Corrective actions must include detailed actions implemented, or to be implemented, to prevent recurrence of the violation and a scheduled date of completion.

b. Corrective actions that will take longer than 90 calendar days to complete must be submitted in writing and receive written approval from the department.

c. After completion of all corrective actions, a final written report shall be submitted to the department. The final written report shall include:

i. notice of audit;

ii. disclosure of violation(s); and

iii. certification of completion of all corrective actions.

d. Failure to notify, implement, and/or complete all proposed corrective actions shall be considered a violation and subject to the appropriate enforcement action.

D. Environmental Audit Report

1. The full environmental audit report should not be submitted to the department unless specifically requested by the department in writing.

E. Penalty Mitigation

1. The following nine conditions shall be met to be eligible for a 100 percent reduction in penalties.

a. The violation was systematically discovered through an environmental audit.

b. The violation was voluntarily disclosed. The violation was not discovered through a federal, state, or local

requirement prescribed by statute, regulation, permit, judicial or administrative order, or a consent agreement.

c. The violation was disclosed in writing within 45 calendar days after discovery, unless an existing law or regulation required disclosure in fewer than 45 calendar days.

d. The violation was independently discovered and identified before the department would have identified the problem either through its investigation or through information from a third party. Discovery and disclosure will not be considered independent if:

- i. prompted by the initiation of a department or EPA investigation, or information request;
- ii. a notice of a citizen suit filed under federal or state law prior to the notice of an environmental audit;
- iii. a third party complaint has been filed;
- iv. or a whistleblower has reported the potential violation to the department.

e. The violation was corrected as expeditiously as possible, but no later than 90 calendar days from the date of discovery, unless an extension of time or compliance schedule was approved by the department.

f. The appropriate measure(s) to prevent a recurrence of the violation was implemented after the violation was disclosed.

g. The same or closely related violation has not occurred at the same facility within the past three years.

h. The violation is not excluded as listed in LAC 33:I.7007.A.

i. The owner or operator has cooperated by providing information as required by the department to determine eligibility.

2. If all of the conditions in LAC 33:I.7009.E.1 are met except systematic discovery, there will be a 75 percent reduction.

3. Failure to meet the required conditions will result in ineligibility for penalty reduction.

4. The department reserves the right to collect any monetary benefits realized through noncompliance.

F. Confidentiality

1. Disclosure of violation(s) or other documentation containing the results of a voluntary environmental self-audit authorized by R.S. 30:2044 shall be held confidential by the department, and be withheld from public disclosure until a final decision is made, or a period not to exceed two years from the receipt of the initial disclosure of violation, whichever occurs first. Any final decision made by the department shall be public and published on the department's website. However, nothing in this Paragraph shall prohibit a request for confidentiality pursuant to R.S. 30:2030(1)(b). Information that is required to be reported to a state or federal agency by statute, regulation, or permit, including but not limited to, notifications required by R.S. 30:2025(J),

30:2060(H), 30:2076(D), 30:2183(I), and 30:2204(A) shall not be held confidential.

2. All requests for confidentiality shall be submitted in accordance with LAC 33:I.Chapter 5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2044(C).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:0000 (December 2023).

§7011. New Owner

A. Definitions

1. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

Acquisition Closing Date—the date on which ownership of, or a direct or indirect majority interest in the ownership of a regulated facility or operation is acquired in an asset purchase, equity purchase, merger, or similar transaction.

New Owner—any person not responsible for environmental compliance at the facility that is the subject of the environmental audit, did not cause the violation being disclosed, and could not have prevented the occurrence.

B. The new owner shall comply with all requirements listed in LAC 33:I.7009 except as listed below.

1. The new owner shall notify the department in writing of the intention to continue an audit that was initiated by the previous owner.

2. An audit must be completed within six months after the acquisition closing date, if the new owner continues the audit.

3. Failure to request and receive written approval from the department for an extension of time to complete an audit may forfeit any penalty mitigation.

4. The new owner making the disclosure must certify in the disclosure that all of the following conditions were true before the acquisition closing date.

a. The new owner was not responsible for the environmental compliance at the facility or the operation that is subject to the audit.

b. The new owner did not have the largest ownership share of the seller.

c. The seller did not have the largest ownership share of the new owner.

d. The new owner and seller did not have a common corporate parent or a common majority interest owner.

5. A new owner is eligible for penalty mitigation if the following are met within nine months of the acquisition closing date:

a. prompt disclosure of the violations to the department; and

b. the conditions outlined in LAC 33:I.7011.B.4 are met.

6. The following nine conditions shall be met to be eligible for a 100 percent reduction in penalties.

a. The violation was systematically discovered through an environmental audit.

b. The violation was voluntarily disclosed. The violation was not discovered through a federal, state, or local requirement prescribed by statute, regulation, permit, judicial or administrative order, or a consent agreement.

c. The violation was disclosed to the department in writing within 45 calendar days after discovery, unless an existing law or regulation required disclosure in fewer than 45 calendar days.

d. The violation was independently discovered and identified before the department would have identified the problem either through its investigation or through information from a third party. Discovery and disclosure will not be considered independent if:

i. prompted by the initiation of a department or EPA investigation or request for information;

ii. a notice of a citizen suit filed under federal or state law prior to the notice of an environmental audit;

iii. a third party complaint has been filed; or

iv. a whistleblower has reported the potential violation to the department.

e. The violation was corrected as expeditiously as possible, but no later than 90 calendar days from the date of discovery, unless an extension of time or compliance schedule was approved by the department.

f. The appropriate measures to prevent a recurrence of the violation were implemented after the violation was disclosed to the department.

g. The same or closely related violation has not occurred at the same facility within the past three years.

h. The violation is not excluded as listed in LAC 33:I.7007.A.

i. The owner or operator has cooperated by providing information as necessary and required by the department to determine eligibility.

7. Penalty mitigation will not apply if any of the following are met.

a. The new owner who made the disclosure willingly or knowingly committed the violation or was responsible for the commission of the violation.

b. The new owner who made the disclosure recklessly committed the violation or was responsible for the commission of the disclosed violation and the violation

resulted in substantial injury or harm to one or more persons, property, or the environment on-site or off-site.

c. The violation was committed willfully or knowingly by a member of the new owner's management, or an agent of the new owner, and the new owner's policies or lack of prevention systems contributed materially to the occurrence of the violation.

d. The violation was recklessly committed by a member of the new owner's management, by an agent of the new owner, or if the new owner's policies or lack of prevention systems contributed materially to the occurrence of the violation resulting in substantial injury or harm to one or more persons, property, or the environment on-site or off-site.

e. The violation has resulted in a substantial economic benefit that gives the new owner a clear advantage over its business competitors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2044(C).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:0000 (December 2023).

§7013. Fees

A. Determination of Fee

1. All requests for reviewing environmental self-audits and corrective actions by the department shall be accompanied by an initial \$1,500 minimum fee.

2. The administrative authority shall keep an account of time spent by the department's civil service employee processing the review request. Every hour, or portion thereof, that the department's civil service employee works processing the request shall be multiplied by the maximum per-hour overtime salary of the department's civil service employee who performed the work, 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. If this amount exceeds the initial minimum fee charge pursuant to R.S. 30:2044, an additional fee shall be charged for the amount exceeding the initial minimum fee.

3. Invoices for any additional fee amount may be issued periodically while the audit and corrective actions are being conducted and/or implemented and a final invoice shall be issued once the review is complete.

B. Refunds

1. The fees in this Section are nontransferable and nonrefundable.

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

D. Methods of Payment

1. All payments made by check, draft, or money order shall be made payable to the Louisiana Department of Environmental Quality, and mailed to the department with a copy of the notice of audit. The original notice of audit shall be submitted as directed on the form.

2. Electronic Methods of Payment

a. Persons wishing to make payments using electronic pay method should access the department's website and follow the instructions provided on the website.

b. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

E. Late Payment

1. Payments not received within 15 days of the due date will be charged a late fee.

2. Any late payment fee shall be calculated from the due date indicated on the invoice.

3. Payments not received by the department within:

a. fifteen days from the due date will be assessed a five percent late payment fee on the original assessed fee;

b. thirty days from the due date will be assessed an additional five percent late payment fee on the original assessed fee; and

c. sixty days from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2044(C).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:0000 (December 2023).

§7015. Prescription

A. Prescription shall be suspended for all claims with violations under the subtitle or the regulations promulgated pursuant to this subtitle upon participation in the voluntary self-audit program. Suspension of prescription commences upon the department's receipt of the owner or operator's disclosure of violation(s) in accordance with LAC 33:I.7009.A.2. The suspension of prescription shall terminate upon a final decision under R.S. 30:2030(A)(2) or after a period of two years, whichever occurs first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030(A) and 30:2044(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:0000 (December 2023).