

House Resolution 231 Regular Session of the Legislature 2019

Stakeholders Session
Wednesday August 7, 2019



LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

LDEQ Current/Existing Mechanism

- LDEQ does not have an official Self-Audit Policy as EPA and some other states.
- However, the Louisiana Environmental Quality Act (La. R.S. 30:2001, et. seq.), particularly:
 - La. R.S. 30:2011(D)(6) empowers the Secretary (or his designee) “To issue orders or determinations as may be necessary to effectuate the purpose of this Subtitle..”
 - La. R.S. 30:2011(D)(14) empowers the Secretary “To exercise all incidental powers necessary or proper to carry out the purposes of this Subtitle.”

Current Mechanism

Administrative Order on Consent (AOC)

- ▶ Utilizing powers under the Environmental Quality Act, the Department issues various types of orders.
- ▶ As it relates to House Resolution 231, the Department entered into Administrative Orders on Consent (AOCs) with companies to conduct Environmental Audits (Self-Audits).
- ▶ The next three (3) slides are applicable to New Owners.

Process-New Owners

- Company/Respondent requests a meeting with the Department.
- During the meeting, the potential or proposed new owner verbally informs the Department of an intent to purchase a facility and/or facilities and discuss circumstances which warrant authority/approval from the Department to conduct an Audit (can be self or third-party):
 - Based on preliminary information, facility/facilities might not be in compliance with applicable rules, regulations and/or requirements.
- The parties discuss a mechanism which allows the Company/Respondent to conduct a Self-Audit, identify deficiencies, identify corrective measures, develop and submit a compliance schedule, report the findings to the Department and a reasonable timeframe to correct the findings (Compliance Schedule/Schedule of Compliance).

Process-New Owners

- After the meeting, Company/Respondent submits a written request for an Administrative Order on Consent (AOC) to the Department.
- Written Request contains:
 - Media/program to be audited (can be single media/program or multi-media/program)
 - Timeframe to conduct Audit (initiation and completion dates)
 - The timeframe to conduct audit varies, depending on the number of facilities and scope of the audit.
 - Requirement to submit Findings to the Department with a Schedule of Compliance (if necessary);
 - Usually findings and schedule will be submitted to the Department 60 days of completion of the audit.
- Written request is reviewed and if acceptable, the Department prepares a Draft AOC.
 - If not acceptable, the Department will meet or communicate with the Company to develop an acceptable schedule.
- When Compliance Schedule is acceptable, the Department drafts an AOC, which is shared with the Company/Respondent for review and concurrence (since it's an enforceable consent document/agreement).

Process-New Owners

- Once agreed to, both parties sign the document, which becomes effective upon signature of both entities.
- AOC is the document approving the terms and conditions of the audit.
- After the audit is complete, the audit findings, corrective measures and a Schedule of Compliance/Compliance Schedule is submitted to the Department.
- The submittal is reviewed and if measures and timeframe are acceptable to correct the findings, the measures and timeframe (i.e., Compliance Schedule) is incorporated into an Amended AOC or into a new order.
 - Corrective measures can include submitting permit applications, installing equipment, etc.
- The amended or new action will contain a requirement to submit periodic reports to the Department and a final report (with a certification of completion).
- Periodic reports are reviewed to determine if the Respondent is on schedule to achieve compliance.
 - Throughout process, the AOC can/may be amended to extend deadlines/completion dates due to delays encountered beyond the Respondent's control.
 - Request for extension has to be submitted to the Department and the Department has to approve the request.

Process-New Owners

- Upon reviewing the Final Report, inspections are requested (if necessary) and file reviews are performed.
- If goals/commitments are met, a Memo-to-File is prepared administratively closing the AOC.
- Civil penalties/fines are not assessed if schedule is fully implemented and further enforcement action isn't pursued for violations discovered during the Audit.
- The Department does not have authority to allow audits of programs that are not within its jurisdiction (i.e., drinking water).
- The AOC/Audit does not protect the Company/Respondent from any Notice of Intent to Sue (NOI) or other third-party litigation.
- All correspondence/documents submitted to the Department are filed in the Department's Electronic Management Data System (EDMS).
- The Department utilize(s) current/existing staff to process requests and prepare AOCs.

Process-Existing Owners

- As a Settlement Agreement component, third-party environmental audits are allowed/approved as a Beneficial Environmental Project (BEP).
 - Can be single media/program or multi-media/program.
- The Department has to approve the Scope of the Audit and the Auditor.
- After the audit is complete, the audit findings, corrective measures and a Schedule of Compliance/Compliance Schedule is submitted to the Department.
 - Corrective measures can include submitting permit applications, installing equipment, etc.
- Periodic reports are reviewed to determine if the Respondent is on schedule to achieve compliance.
 - If additional time is warranted, an extension can/may be granted.

Process-Existing Owners

- Upon reviewing the Final Report, inspections are requested (if necessary) and file reviews are performed.
- If goals/commitments are met, a Memo-to-File is prepared administratively closing the Settlement Agreement.
- Civil penalties/fines are not assessed if schedule is fully implemented and further enforcement action isn't pursued for violations discovered during the Audit.
- The Department does not have authority to allow audits of programs that are not within its jurisdiction (i.e., drinking water).
- The Audit does not protect the Company/Respondent from any Notice of Intent to Sue (NOI) or other third-party litigation.
- All correspondence/documents are submitted to the Department's Electronic Management Data System (EDMS).
- The Department utilize(s) current/existing staff to review reports, process documents, etc.

Partnership with EPA

- The Department also communicates and/or partners with EPA on Disclosures submitted to EPA in accordance with EPA's Audit Policy, "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations".
- The Department exercises enforcement discretion not to pursue violations/findings of the Self-Audit.
 - Exception will be for violations above and beyond those already reported to, identified and/or addressed by the Department.
 - The Department will delay resolution of the state's enforcement actions until the Self-Audit (under EPA's policy) is completed.
- The Department works with EPA and the Company on submittals:
 - If documents submitted to the Department contain information that does not comply with the Department's Confidentiality regulations, the documents will be submitted to the Department's Electronic Management Data System (EDMS).
 - EPA's Policy allows documents to remain confidential until findings have been corrected/schedule implemented.
 - LDEQ regulations do not allow this.