NOTICE OF INTENT

Department of Environmental Quality

Office of the Secretary

Legal Affairs and Criminal Investigations Division

Closure Requirements for Surface Impoundments

(LAC 33:VII.115 and 713.E) (SW064)

 Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Solid Waste regulations, LAC 33:VII.115 and 713.E (SW064).

 This Rule creates and defines risk-based closure standards for solid waste surface impoundments using the LDEQ Risk Evaluation/Corrective Action Program (RECAP). The proposed definitions and rule changes will allow for the closure of solid waste surface impoundments under RECAP equivalent to and in lieu of clean closure. This Rule also amends the definition of clean closure for solid waste surface impoundments.

LDEQ initiates this rulemaking pursuant to two rulemaking petitions from stakeholders. The current regulations only allow facilities to clean close impoundments or close with waste in place. This revision to the regulations will allow facilities to close surface impoundments utilizing risk-based closure standards in accordance with RECAP.

 This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Family Impact Statement**

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

This Rule has no known impact on poverty as described in R.S. 49:973.

**Provider Impact Statement**

This Rule has no known impact on providers as described in HCR 170 of 2014.

**Public Comments**

 All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by SW064. Such comments must be received no later than December 5, 2018, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of SW064. These proposed regulations are available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

**Public Hearing**

A public hearing will be held on November 28, 2018, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

 These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

 Herman Robinson

 General Counsel

ENVIRONMENTAL QUALITY

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 1. General Provisions and Definitions

§115. Definitions

 A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless the context of use clearly indicates otherwise.

\* \* \*

 *Clean Closure*—the act of closing a solid waste unit or facility whereby all solid waste is removed, ~~including contamination that results from soild waste placement~~and the constituent of concern concentrations in soil and groundwater meet background conditions.

\* \* \*

 *Risk-Based Closure*—the act of closing a surface impoundment whereby solid waste is removed and managed as approved by the department, and the concentrations of the constituents of concern in soil and groundwater comply with LAC 33:I.Chapter 13 (RECAP).

\* \* \*

 AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2154.

 HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2514, 2609 (November 2000), amended by the Office of Environmental Assessment, LR 31:1576 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1019 (June 2007), LR 34:1023 (June 2008), LR 34:1399 (July 2008), LR 37:1563 (June 2011), LR 37:3233 (November 2011), LR 38:46 (January 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

Chapter 7. Solid Waste Standards

Subchapter A. Landfills, Surface Impoundments, Landfarms

§713. Standards Governing Surface Impoundments (Type I and II)

 A. — E.1.a. …

 b. ~~changes, if any, requested in the approved~~an updated closure plan, if applicable; and

 c. …

 2. Preclosure Requirements. The following standards apply to preclosure requirements for any surface impoundments ~~with on-site closure~~ seeking closure.

 a. ...

 b. The runoff-diversion system shall be maintained and modified to prevent overflow ~~of~~from the facility to ~~adjoining~~ off-site areas.

 3. Closure Requirements. Surface impoundments may be closed pursuant to a clean-closure, risk-based closure, or closure with waste in place.

 a. For all closures, s~~S~~urface liquids and sludges containing free liquids shall be dewatered or removed from the surface impoundment.

 b. ~~If a clean closure is achieved, there are no further post-closure requirements.~~ For a clean closure or risk-based closure, t~~T~~he closure plan shall reflect a method for determining that all waste has been removed and such a plan shall, at a minimum, include the following:

 i. identification (waste analysis of total constituent concentrations; not toxicity characteristic leaching procedure (TCLP)) of the wastes that have ~~entered the facility~~been disposed of or managed in the surface impoundment;

 ii. ~~selection~~identification of the ~~indicator parameters~~constituents of concern ~~to be sampled~~ that are intrinsic to the wastes that have ~~entered the facility~~been disposed of or managed in the surface impoundment~~in order to establish~~ ~~clean-closure criteria~~. Justification of the ~~parameters selected~~ constituents of concern shall be provided in the closure plan;

 iii. ~~sampling and analyses of the uncontaminated soils in the general area of the facility for a determination of background levels using the indicator parameters selected.~~collection of soil and groundwater samples to:

 (a). establish site-specific background levels for the constituents of concern and to document that post-excavation constituent of concern concentrations in groundwater and the bottom and side wall soils of the impoundment are consistent with background levels; or

 (b). documentation that the post-excavation consitutent of concern concentrations in groundwater and the bottom and side wall soils of the impoundment are less than or equal to the applicable RECAP standards in accordance with LAC 33:I.Chapter 13.~~A diagram showing the location of the area proposed for the background sampling, along with a description of the sampling and testing methods,~~

 iv. documentation regarding the sampling and testing methods (i.e., including a plan view of the facility, a diagram of sampling locations, and sampling quality-assurance/quality control programs) shall be provided and the Office of Environmental Services shall be notified at least five days prior to any sampling event;

 ~~iv. a discussion of the sampling and analyses of the "clean" soils for the selected parameters after the waste and contaminated soils have been excavated. Documentation regarding the sampling and testing methods (i.e., including a plan view of the facility, sampling locations, and sampling quality-assurance/quality-control programs) shall be provided;~~

 ~~v. a discussion of a comparison of the samples from the area of the excavated facility to the background samples, or applicable RECAP standards. Concentrations of the selected parameters of the bottom and side soil samples of the facility shall be equal to or less than the background samples or applicable RECAP non-industrial standards to meet clean closure criteria;~~

 ~~vi~~v. analyses to be sent to the Office of Environmental Services confirming that clean closure or risk-based closure has been achieved;

 ~~vii~~vi. identification of the facility to be used for the disposal of the excavated waste; and

 ~~viii~~vii. a statement from the permit holder indicating that, after the closure requirements have been met, the permit holder will file a request for a closure inspection with the Office of Environmental Services before backfilling takes place. The administrative authority shall determine whether the facility has been closed properly.

 c. Except as otherwise provided in Clause E.3.b of this Section, when determining what site investigation is required for clean closure or risk-based closure, the department shall consider existing data on the site and the surface impoundment in the department’s electronic document management system and shall not require duplication or redevelopment of that data.

 d. If concentrations of constituents of concern in soil and groundwater at the time of closure meet background or comply with LAC 33:I.Chapter 13, the requirements of Subsection F of this Section shall not apply.

 i. For surface impoundments that achieve risk-based closure for industrial/commercial land use and/or groundwater meeting the definition of Groundwater Classification 2 [where constituent concentrations in groundwater exceed the GW2 RECAP standard (without the application of a dilution and attuenuation factor) within the property boundaries], the permit holder shall comply with the conveyance notification requirements of LAC 33:I.Chapter 13 within 90 days after the surface impoundment is closed. The conveyance notice shall be approved by the department prior to filing the notice in the records of the parish in which the property is located. Upon submittal of the conveyance notification and filing with the parish, the department will approve closure of the impoundment.

 ~~c~~e. If solid waste remains at the facility, a final cover shall be required that meets the following standards.

 i. Final cover shall be a minimum of 24 inches of recompacted clay with a permeability of less than 1x10-7 cm/sec overlain with an approved geomembrane covering the entire area. Areas that are steeper than 4:1 slope do not require geomembrane overlay. Final slopes shall not be less than four percent nor greater than 3(H):1(V). ~~Alternate~~Alternative final slopes may be approved by the administrative authority. ~~Geotechnical calculations prepared by a registered professional engineer shall be provided if required by the administrative authority for all facilities whose closure plans have not been approved as of November 20, 2011.~~

 ii. The Office of Environmental Services shall be notified after the final cover is applied.

 iii. A minimum of 6 inches of topsoil shall be placed on top of the soil cover to support vegetative growth to prevent erosion.

 iv. Other covers that satisfy the purposes of minimizing infiltration of precipitation, fire hazards, odors, vector food and harborage, as well as discouraging scavenging and limiting erosion, may be submitted for consideration and approval by administrative authority.

 v. Alternate final cover used in accordance with Clause E.3.~~c~~e.iv of this Section must provide performance equivalent to or better than the final cover requirements in Clauses E.3.~~c~~e.i and iii of this Section.

 vi. The finished grade shall be sufficiently sloped for proper maintenance and drainage.

 vii. All facilities with a potential for gas production or migration shall provide a gas collection/treatment or removal system.

 ~~d~~f. After a closure inspection and approval, the permit holder shall plant a ground cover to prevent erosion and to return the facility location to a more natural appearance.

 ~~e~~g. Surface impoundments shall be closed in a manner that minimizes the need for further maintenance and minimizes the post-closure release of leachate to groundwaters or surface waters to the extent necessary to protect human health and the environment. Quality-assurance/quality-control procedures shall be developed and implemented to ensure that the final cover is designed, constructed, and installed properly.

 ~~4. Alternate Closure Standards. The administrative authority may allow alternative closure under the following conditions.~~

 ~~a. If levels of contamination at the time of closure meet non-industrial standards as specified in LAC 33:I.Chapter 13 and approval of the administrative authority is granted, the requirements of Subparagraph E.4.b and Subsection F of this Section shall not apply.~~

 ~~b. If levels of contamination at the time of closure meet industrial standards as specified in LAC 33:I.Chapter 13 and approval of the administrative authority is granted, the requirements of this Paragraph and Subsection F of this Section shall apply.~~

 ~~5. With the exception of those sites clean closed or closed in accordance with Subparagraph E.4.a of this Section, within 90 days after a closure is completed, the permit holder shall have entered in the mortgage and conveyance records of the parish in which the property is located, a notation stating that solid waste remains at the site and providing the indicator levels obtained during closure.~~

 ~~46~~. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder. The permit holder shall submit a request for the release of this fund to the Office of Management and Finance.

 F. Facility Post-Closure Requirements

 ~~1. The post-closure period begins when the Office of Environmental Services approves closure. The length of the post-closure care period for surface impoundments may be:~~

 ~~a. decreased by the administrative authority if the permit holder demonstrates that the reduced period is sufficient to protect human health and the environment in accordance with LAC 33:I.Chapter 13 and this demonstration is approved by the administrative authority (Any demonstration must provide supporting data, including adequate groundwater monitoring data.); or~~

 ~~b. increased by the administrative authority if the administrative authority determines that the lengthened period is necessary to protect human health and the environment in accordance with LAC 33:I.Chapter 13.~~

 ~~2~~1. The following standards regarding post-closure requirements apply to surface impoundments closed with waste in place or surface impoundments that did not achieve clean closure or risk-based closure.~~with on-site closure and alternative closure standards.~~

 a. Post-Closure Care Length

 i. Facilities that receive solid waste on or after October 9, 1993, must remain in post-closure care for 30 years after closure of the facility.

 ii. Existing facilities that do not receive waste on or after October 9, 1993, must remain in post-closure care for three years after closure of the facility.

 iii. However, if the facility received waste on or after October 9, 1991, the final cover must be maintained as specified in Subparagraph F.2.b of this Section for 30 years after closure.

 b. The post-closure care, except as otherwise specified above, must consist of at least the following:

 i. maintaining the integrity and effectiveness of the final cover (including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events), preventing run-on and runoff from eroding or otherwise damaging the final cover; and providing annual reports to the Office of Environmental Services on the integrity of the final cap;

 ii. maintaining and operating, if applicable, the leak-detection system;

 iii. maintaining and operating the gas collection/treatment or removal system and the gas-monitoring system; and

 iv. maintaining the groundwater-monitoring system and monitoring the groundwater in accordance with LAC 33:VII.805.

 2. The post-closure period begins when the Office of Environmental Services approves closure. The length of the post-closure care period for surface impoundments may be:

 a. increased by the administrative authority if the administrative authority determines that the lengthened period is necessary to protect human health and the environment in accordance with LAC 33:I.Chapter 13; or

 b. decreased by the administrative authority if the permit holder demonstrates that the reduced period is sufficient to protect human health and the environment in accordance with LAC 33:I.Chapter 13 and this demonstration is approved by the administrative authority (Any demonstration must provide supporting data, including adequate groundwater monitoring data.)

 AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

 HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2524 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:1676 (August 2004), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2493 (October 2005), LR 33:1053 (June 2007), LR 33:2146 (October 2007), LR 36:1241 (June 2010), LR 37:1564 (June 2011), LR 37:3250 (November 2011), repromulgated LR 37:3511 (December 2011), amended by the Office of the Secretary Legal Affairs and Criminal Investigations Division, LR 44: