NOTICE OF INTENT

Department of Environmental Quality

Office of the Secretary

Legal Affairs and Criminal Investigations Division

Incorporating Test Results

(LAC 33:III523.A and LAC 33:III.537.A) (AQ382)

 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 Air regulations, LAC 33:III523.A and LAC 33:III.537.A (AQ382).

 This Rule amends Louisiana General Condition I to 1.) specify that if testing reveals emissions are greater than those allowed by a permit, an application to modify the permit must be submitted no later than 90 days after the permittee receives the final test results; 2.) clarify that discovery of excess emissions does not necessarily compel the permittee to suspend operations of the subject emissions unit(s), provided the excess emissions do not cause an emergency condition and the permittee reports the excess emissions in accordance with applicable regulations; and 3.) reaffirm that noncompliance with any term or condition of a permit constitutes a violation and is grounds for enforcement action.

This Rule also aligns the deadline to submit an application to modify a permit where required by LAC 33:III.523.A with that proposed for Louisiana General Condition I (i.e., 90 days after the permittee receives the final test results.)

Louisiana General Condition I of LAC 33:III.537.A requires a permittee to submit an application to modify its permit if “emissions are determined to be greater than those allowed by the permit (e.g., during the shakedown period for new or modified equipment) or if proposed control measures and/or equipment are not installed or do not perform according to design efficiency.” However, General Condition I is silent with respect to when any such application must be submitted. This Rule will specify that the application to modify the permit must be submitted no later than 90 days after the permittee receives the final test results.

In addition, this Rule clarifies that discovery of excess emissions does not necessarily compel the permittee to suspend operations of the subject emissions unit(s), provided the excess emissions do not cause an emergency condition and the permittee reports the excess emissions in accordance with applicable regulations. However, neither the submittal of an application to modify the permit not the reporting of excess emissions precludes the department from taking appropriate enforcement action, as noncompliance with any term or condition of a permit constitutes a violation of LAC 33:III.Chapter 5, the Louisiana Environmental Quality Act, and, if the term or condition is federally enforceable, the Clean Air Act. See, for example, LAC 33:III501.C.4, LAC 33:III.507.B.2, and Louisiana General Condition II of LAC 33:III.537.A.

A similar provision, LAC 33:III.523.A, also addresses the incorporation of test results into a permit where such results indicate that the terms and conditions of the permit are inappropriate or inaccurate, but only where the testing is “required or approved by the permitting authority.” In order to maintain consistency with General Condition I, LAC 33:III.523.A will be amended to require the requisite permit amendment or modification to be submitted within 90 days of obtaining the relevant test results. The basis and rationale for this Rule are to amend Louisiana General Condition I as described above and to align the deadline to submit an application to modify a permit where required by LAC 33:III.523.A with that proposed for Louisiana General Condition I (i.e., 90 days after the permittee receives the final test results.) 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 AQ382. Such comments must be received no later than July 4, 2019, 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 DEQ.Reg.Dev.Comments@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 AQ382. 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 June 27, 2019, 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

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§523. Procedures for Incorporating Test Results

 A. Permit Amendments or Modifications. The owner or operator of any facility permitted under this Chapter shall request a permit amendment or modification to reflect the results of any testing required or approved by the permitting authority, if such testing demonstrates that the terms and conditions of the existing permit are inappropriate or inaccurate. The request, together with all information necessary to process such request, shall be submitted within ~~45~~90 days of obtaining the relevant test results.

 A.1. – B.5. …

 AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

 HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1903 (September 2008), LR 37:1146 (April 2011), amended by the Office of the Secretary, Legal Division, LR 38:2750 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45

§537. Louisiana General Conditions

 A. The Louisiana general conditions listed in the table in this Section (numbered as historically designated in a permit) apply to each source that requires an air permit according to LAC 33:III.501 upon issuance of the initial air permit for the source and shall continue to apply until such time as the permit is terminated or rescinded. These Louisiana general conditions shall supersede any previous versions of such conditions contained in air permits.

| **Table 1. Louisiana Air Emission Permit General Conditions** |
| --- |
| I. Permits are issued on the basis of the emissions reported in the application for approval of emissions and in no way guarantee that the design scheme presented will be capable of limiting the emissions to the type and quantities stated. Failure to install, properly operate, and/or maintain all proposed control measures and/or equipment as specified in the application and supplemental information shall be considered a violation of the permit and LAC 33:III.501. If the emissions are determined to be greater than those allowed by the permit (e.g., during the shakedown period for new or modified equipment, during a performance test, or during testing conducted for any other purpose) or if proposed control measures and/or equipment are not installed or do not perform according to design efficiency, an application to modify the permit must be submitted no later than 90 days after the permittee receives the final test results. Discovery of excess emissions does not necessarily compel the permittee to suspend operations of the subject emissions unit(s), provided the excess emissions do not cause an *emergency condition,* as defined in LAC 33:I.3905.A and the permittee reports the excess emissions in accordance with LAC 33:I.Chapter 39, Part 70 General Condition R of LAC 33:III.535, Louisiana General Condition XI of LAC 33:III.537, LAC 33:III.919, and LAC 33:III.5107, as applicable. Noncompliance with any term or condition of the permit shall constitute a violation of LAC 33:III.501 and shall be grounds for enforcement action. All terms and conditions of the permit shall remain in effect unless and until revised by the permitting authority. |
| II. - XX. …**\* \* \*** |

 AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 2054.

 HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:660 (April 2009), amended LR 37:1146 (April 2011), amended by the Office of the Secretary, Legal Division, LR 38:2750, 2769 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45

FISCAL AND ECONOMIC IMPACT STATEMENT

 FOR ADMINISTRATIVE RULES LOG #: AQ382

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| PersonPreparingStatement: | Bryan D. Johnston |  | Dept.: | Environmental Quality |
| Phone: | (225) 219-3450 |  | Office: | Environmental Services |
|  | bryan.johnston@la.gov |  |  |  |
| Return Address: | 602 North Fifth Street |  | Rule Title: | Incorporating Test Results |
|  | Baton Rouge, LA 70802 |  |  | (LAC 33:III.523.A and 537.A) |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  | Date Rule Takes Effect: | Upon Promulgation |

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no anticipated implementation costs or savings to the Department of Environmental Quality (DEQ) or local governmental units. The proposed rule change specifies that if a performance test, or testing conducted for any other purpose reveals the discovery of excess emissions that are greater than those allowed by a permit, an application to modify the permit must be submitted no later than 90 days after the permittee receives the final test results. Furthermore, the proposed change specifies that the discovery of excess emissions does not necessarily compel the permittee to suspend operations of the subject emissions unit(s), provided the excess emissions do not cause an emergency condition, and that noncompliance with any term or condition of the permit shall constitute a violation and shall be grounds for enforcement action.

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

There is no anticipated impact on revenue collections of state or local governmental units as a result of the proposed rule change.

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

All owners or operators of facilities that require an air permit will be directly affected by the proposed action. However, because the proposed action only serves to establish the due date for the application already required by General Condition I (if emissions are determined to be greater than the permit allows), there will be no costs, including workload adjustments or additional paperwork, or economic benefits as a result of the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed action will have no impact on competition or employment.

 a

Signature of Agency Head or Designee Legislative Fiscal Officer or Designee

Herman Robinson, General Counsel

Typed Name and Title of Agency Head or Designee

 a

Date of Signature Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT

FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This rule amends Louisiana General Condition I to 1.) specify that if testing reveals emissions are greater than those allowed by a permit, an application to modify the permit must be submitted no later than 90 days after the permittee receives the final test results; 2.) clarify that discovery of excess emissions does not necessarily compel the permittee to suspend operations of the subject emissions unit(s), provided the excess emissions do not cause an emergency condition and the permittee reports the excess emissions in accordance with applicable regulations; and 3.) reaffirm that noncompliance with any term or condition of a permit constitutes a violation and is grounds for enforcement action.

This rule also aligns the deadline to submit an application to modify a permit where required by LAC 33:III.523.A with that proposed for Louisiana General Condition I (i.e., 90 days after the permittee receives the final test results).

1. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

Louisiana General Condition I of LAC 33:III.537.A requires a permittee to submit an application to modify its permit if “emissions are determined to be greater than those allowed by the permit (e.g., during the shakedown period for new or modified equipment) or if proposed control measures and/or equipment are not installed or do not perform according to design efficiency.” However, General Condition I is silent with respect to when any such application must be submitted. This rule will specify that the application to modify the permit must be submitted no later than 90 days after the permittee receives the final test results.

In addition, this rule clarifies that discovery of excess emissions does not necessarily compel the permittee to suspend operations of the subject emissions unit(s), provided the excess emissions do not cause an emergency condition and the permittee reports the excess emissions in accordance with applicable regulations. However, neither the submittal of an application to modify the permit nor the reporting of excess emissions precludes the department from taking appropriate enforcement action, as noncompliance with any term or condition of a permit constitutes a violation of LAC 33:III.Chapter 5, the Louisiana Environmental Quality Act, and, if the term or condition is federally enforceable, the Clean Air Act. See, for example, LAC 33:III.501.C.4, LAC 33:III.507.B.2, and Louisiana General Condition II of LAC 33:III.537.A.

A similar provision, LAC 33:III.523.A, also addresses the incorporation of test results into a permit where such results indicate that the terms and conditions of the permit are inappropriate or inaccurate, but only where the testing is “required or approved by the permitting authority.” In order to maintain consistency with General Condition I, LAC 33:III.523.A will be amended to require the requisite permit amendment or modification to be submitted within 90 days of obtaining the relevant test results.

C. Compliance with Act 11 of the 1986 First Extraordinary Session

(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No, the proposed rule will not result in any increase in the expenditure of funds.

(2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) Yes. If yes, attach documentation.

(b) No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

No costs or savings to state agencies are anticipated as a result of the proposed action.

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COSTS FY 18-19 FY 19-20 FY 20-21

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PERSONAL SERVICES -0- -0- -0-

OPERATING EXPENSES -0- -0- -0-

PROFESSIONAL SERVICES -0- -0- -0-

OTHER CHARGES -0- -0- -0-

EQUIPMENT -0- -0- -0- a

TOTAL -0- -0- -0-

MAJOR REPAIR & CONSTR.

POSITIONS (#) -0- -0- -0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

This question is not applicable.

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

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SOURCE FY 18-19 FY 19-20 FY 20-21

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STATE GENERAL FUND -0- -0- -0-

AGENCY SELF-GENERATED -0- -0- -0-

DEDICATED -0- -0- -0-

FEDERAL FUNDS -0- -0- -0-

OTHER (Specify) -0- -0- -0- a

TOTAL -0- -0- -0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

No additional funds are required to implement the proposed action.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

 No impact on local governmental units is anticipated.

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

 There will be no costs or savings to local governmental units, so no funding sources will be affected.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

No increase or decrease in revenues to state and local governmental units will be realized.

REVENUE INCREASE/DECREASE FY 18-19 FY 19-20 FY 20-21

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE GENERAL FUND -0- -0- -0-

AGENCY SELF-GENERATED -0- -0- -0-

RESTRICTED FUNDS\* -0- -0- -0-

FEDERAL FUNDS -0- -0- -0-

LOCAL FUNDS -0- -0- -0- a

TOTAL -0- -0- -0-

\*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

No increase or decrease in revenues will be realized.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

1. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

All owners or operators of facilities that require an air permit will be directly affected by the proposed action. However, because the proposed action only serves to establish the due date for the application already required by General Condition I (if emissions are determined to be greater than the permit allows), there will be no costs, including workload adjustments or additional paperwork, associated with the proposed action.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

No impact on receipts or income of the affected persons or non-governmental groups is expected.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There will be no effect on competition or employment in the public or private sector.