

Interim Comment Summary Response
Regulation and Licensing of Naturally Occurring Radioactive Material (NORM)
(LAC 33:XV.1403, 1404, 1407, 1408, 1409, 1410, 1411, 1412, 1416, 1417, 1418,
1420, 1421, and 1499) (RP067)

COMMENT 1: Louisiana Chemical Association (LCA) submits that proposed LAC 33:XV.1410.D.1.a and b should be revised to read as follows:

- "D. Requirements for the Issuance of Specific Licenses
1. A license application will be approved if the department determines that:
 - a. the applicant is qualified by reason of training and experience to handle the material or waste in question for the purpose requested, according to this Section, and in a manner that minimizes danger to public health and safety, property, **and** ~~or~~ the environment;
 - b. the applicant's proposed buildings, structures, equipment, and procedures are adequate to minimize danger to public health and safety, property, **and** ~~or~~ the environment;"

FOR/AGAINST: The department agrees with the comment; no arguments are necessary.

RESPONSE 1: The department agrees with the comment. The change from "or" to "and" has been made to the proposed rule.

COMMENT 2: LCA does not understand the requirements in proposed LAC 33:XV.1410.D.3.c.ii for disposal facility applications. How can an applicant address "the results of groundwater and stormwater analytical testing"? What testing? Should this section be revised to read: "procedures for groundwater and stormwater testing and addressing the results thereof as necessary"?

FOR/AGAINST: The department agrees with the comment; no arguments are necessary.

RESPONSE 2: The department has clarified LAC 33:XV.1410.D.3.c.ii. in the proposed rule. The proposed regulation now states "procedures for groundwater and stormwater analytical testing."

COMMENT 3: In proposed LAC 33:XV.1412.E.1, the Department should specially address non-Louisiana generators who send NORM waste to Louisiana for disposal. Are out-of-state generators general licensees under LAC 33:XV.1408? Must they comply with LAC 33:XV.1408 requirements to dispose of NORM waste in Louisiana?

FOR/AGAINST: The department agrees with the comment; no arguments are necessary.

RESPONSE 3: The department has clarified LAC 33:XV.1412.E.1 in the proposed rule to address out-of-state generators. The proposed regulation has been changed to the following:

E. Notifications

1. Prior to receipt of NORM waste, the disposal facility shall verify that the generator of the waste is registered with the department or equivalent out-of-state agency and has a NORM general or specific license number or equivalent.

COMMENT 4: Under proposed LAC 33:XV.1412.E.3, if a shipment is rejected for "elevated activity levels," the disposal facility shall notify the Department within three business days.

- a. What does the Department mean by "elevated activity levels"? What is the standard here?
- b. How is the disposal facility supposed to notify the Department? Is this a telephone notification to SPOC under LAC 33:I.3923.A.4 or something else? Will the Department have a form for this type of notification and will that form indicate the process for notification (telephone, online incident report, U.S. mail, overnight delivery service, etc.)?
- c. To determine whether material/equipment sent for disposal contains "elevated activity levels," the material/equipment may have to be sampled and further analyzed. Such sampling and analysis may take more than three business days. LCA assumes that the "three business days" allowed for the required notice under proposed LAC 33:XV.1412.E.3.a only commences once the disposal facility has actually confirmed (e.g., through sampling and analysis) that the material/equipment contains "elevated activity levels." Please let us know if this is incorrect.

FOR/AGAINST: The department agrees with the comment; no arguments are

necessary.

RESPONSE 4: The department has removed LAC 33:XV.1412.E.3. along with the reference of "elevated activity levels" from the proposed rule. The department changed LAC 33:XV.1412.E.2 to the following:

2. The disposal facility shall notify the department if a shipment is rejected after its occurrence becomes known to the licensee. Notification shall be made by telephone at (225) 765-0160 in accordance with LAC 33:I.3923. Within 30 days after making the telephone report, make a written report to the Office of Environmental Compliance using the procedures provided in LAC 33:I.3925.B.

Changing LAC 33:XV.1412.E.2 allows for more consistency with notifications.

COMMENT 5: Under proposed LAC 33:XV.1412.E.3.b, if a generator is not registered with the Department as a NORM general licensee, the waste disposal facility shall request Department approval to temporarily store the rejected waste on-site for less than 90 days.

- a. LCA submits that Department approval to store rejected waste on-site for 90 days or less should not be required. See, e.g., LAC 33:XV.1408.A.6.a, which authorizes a generator to store NORM waste for 90 days. The disposal facility should only have to request Department approval if the rejected waste must be stored on-site for more than 90 days. Proposed LAC 33:XV.1412.E.3.b should be revised accordingly.
- b. At a minimum, even if the Department rejects LCA's Comment No. 6.a above, proposed LAC 33:XV.1412.E.3.b should be revised to read: "If the generator is not registered with the department as a NORM general licensee, the disposal waste facility shall request department approval to temporarily store the waste on-site for less than 90 days or less."
- c. What happens after 90 days if the generator is still not a NORM general licensee? What is the waste disposal facility supposed to do with the NORM waste? (Under proposed LAC33:XV.1412.E.3.a, if the generator is not a registered NORM general licensee, the disposal facility is prohibited from returning the NORM waste to

the generator.)

FOR/AGAINST: The department agrees with the comment; no arguments are necessary.

RESPONSE 5: The department has removed LAC 33:XV.1412.E.3.b from the proposed rule.

COMMENT 6: 1410.A. – “Unless otherwise exempted in accordance with LAC 33: XV.1404, persons receiving NORM waste from other persons for storage, disposal, or processing, or persons who process NORM for other persons at temporary job sites shall be specifically licensed in accordance with the requirements of this Section.”

1. With respect to disposers, it is unclear whether the Department intends for the specific licensing requirements to apply only to persons receiving "NORM waste" (as defined by LAC 33: XV.1403) from other persons for disposal. The proposed regulation does not reference the disposal of NORM or waste containing NORM.
2. The exception to the specific licensing requirement of 1410.A. should be expanded to include disposal by alternative methods that are authorized by the Department pursuant to LAC 33:XV.1412.B.2. As discussed above, CWM is already authorized to dispose of NORM pursuant to LDEQ's Section 1412.B.2. authorization. The Section LAC 33:XV.1412.B.2. authorization issued by LDEQ to CWM provides for procedures for compliance with applicable requirements of LAC 33:XV.Chapter 4 and includes specific sampling and analysis requirements. The imposition of the requirement for a specific license under proposed Section 1410 is unnecessary, duplicative and burdensome. Accordingly, the first clause of proposed Section 1410.A. should be amended to read as follows: “Unless otherwise exempted in accordance with LAC 33: XV.1404 or authorized in accordance with LAC 33:XV.1412.B.2., persons .” (Underlined language added)
3. Alternatively, if persons authorized by LAC 33:XV.1412.B.2. are not excluded from the specific licensing requirements of Section 1410, then proposed

Section 1410.A. should provide a period of time for such persons to make application pursuant to proposed Section 1410.C., and for the continuation of any existing LAC 33:XV.1412.B.2. authorization until such time as the Section 1410.C. application is acted upon by the Department and final. Specifically, a new sentence to read as follows should be added to the end of proposed Section 1410.A.: "Persons who are authorized to treat or dispose of NORM waste and/or waste containing NORM in accordance with Section 1412.B.2. shall submit an application for a specific license pursuant to Section 1410.C. within 180 days of the effective date of this rule and such Section 1412.B.2 authorization shall remain in effect until such time as the Section 1410.C. specific license application is acted upon by the Secretary and the Secretary's permit decision on the specific license application is final in accordance with law." (Underlined language added)

FOR/AGAINST: The department agrees with the comment; no arguments are necessary.

- RESPONSE 6:
1. The department has changed the definition of "NORM Waste" in the proposed rule to the following:
~~NORM Waste—the radioactive residue from any operation where the purpose is to remove NORM from soil, materials, or equipment~~ any solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material and by-product material, that:
 - a. in its natural physical state emits radiation;
 - b. is discarded or unwanted;
 - c. prior to treatment or processing that reduces the radioactivity concentration, exceeds exemption criteria specified in LAC 33:XV.1404.
 2. The department has clarified LAC 33:XV.1410.A to address LAC 33:XV.1412.B.2. in the proposed rule to the following:
 - A. Unless otherwise exempted in accordance with LAC 33:XV.1404, persons receiving NORM waste from other persons for storage, disposal, or processing, or persons who process NORM for other persons at temporary job sites shall be specifically licensed in accordance with the requirements of this Section. Persons who are authorized to treat or dispose of NORM waste and/or waste containing NORM in accordance

with Section 1412.B.2 shall submit an application for a specific license pursuant to Section 1410.C within 365 days of the effective date of this rule.

3. The above change to LAC 33:XV.1410.A. addresses the time frame for a specific license application.

COMMENT 7: 1410.C.6. – “Each application for a specific license shall be accompanied by the fee prescribed in LAC 33:XV.2599.”

1. By Act 405 (2021), the Legislature amended La. R.S. 30:2014 (the Fee Statute) of the Louisiana Environmental Quality Act (LEQA) to authorize the Department to establish certain fees, including application and annual fees for "commercial naturally occurring radioactive materials waste disposal." See La. R.S. 30:2014.D.5.c.(ii)(dd) and (ee). Although the Legislature amended the Fee Statute to authorize the Department to establish commercial NORM waste disposal fees, the Department has not yet promulgated a final rule or even given any notice of its intent to do so. Because the regulations, particularly LAC 33:XV.2599 (Appendix A - Radiation Protection Program Fee Schedule), have not been amended in response to the Fee Statute, there is currently no fee for commercial NORM waste disposal. Proposed rule RP067 should not be promulgated until such time as a rule to amend the regulations to establish a fee for commercial NORM waste disposal pursuant to the Fee Statute is proposed and finalized.
2. CWM further notes that the "Radioactive waste disposal license: commercial waste disposal involving burial" fee listed in the current Radiation Protection Program Fee Schedule ("the Radioactive Waste Burial Fee") is not applicable to the commercial disposal of NORM, NORM waste, or waste containing NORM for multiple reasons:

The LEQA addresses "NORM waste" distinctively from "radioactive wastes." Cf. La. R.S. 30: 2015 with La. R.S. 30:2116. See also La. R.S. § 30:2117. Further, "radioactive waste" excludes exploration and production (E&P) waste with NORM. La. R.S. 30:2103(11). "Naturally occurring radioactive waste material" or "NORM waste" excludes "source material, special nuclear material, and byproduct material." La. R.S. § 30:2103(7).

Likewise, the "Radiation Protection" regulations (LAC 33:XV) distinguish radioactive waste from NORM. Chapter 13 ("Licensing Requirements for Land Disposal of Radioactive Waste") addresses requirements of radioactive waste disposal. No reference is made to NORM. Under Section 1303.A, "No person may receive, possess, and dispose of radioactive waste containing source, special nuclear or byproduct material at a land disposal facility unless authorized by a license issued by the department pursuant to this Chapter, and Chapter 3 of these regulations." (Emphasis added.) This is the basis for the radioactive waste disposal license and the Radioactive Waste Burial Fee. On the other hand, Chapter 14 ("Regulation and Licensing of Naturally Occurring Radioactive Material (NORM)") addresses the regulation of NORM and Section 1412 in Chapter 14 specifically addresses the "Treatment, Transfer, and Disposal" of NORM.

The Radiation Protection Program Fee Schedule (§2599.A., Appendix A) addresses NORM separately from "radioactive wastes." Within Section I ("Radioactive Material Licensing"), Category "D" ("Industrial radioactive material licenses") includes: (17) NORM decontamination/maintenance . . . ; (18) Commercial NORM storage; and (20) Commercial NORM treatment. (However, there is currently no section for "commercial NORM disposal" or "commercial NORM waste disposal.") On the other hand, Section "E" ("Radioactive waste disposal licenses") including the Radioactive Waste Burial Fee ("Commercial waste disposal involving burial") makes no mention of NORM whatsoever. Section III. "General Licenses" includes several NORM categories; however, none are specific to NORM disposal. Thus there is no current provision in the Radiation Protection Program Fee Schedule applicable to the disposal of NORM, NORM waste or waste containing NORM, and Act 405 authorized the Department to establish commercial NORM waste disposal fees because none existed.

Any purported application of the Radioactive Waste Burial Fee to the landfilling or disposal of NORM, NORM waste or waste containing NORM would not only serve to prohibit the viable operation of a NORM disposal facility in Louisiana, it would be an unlawful tax

because the "fee" would "clearly and materially exceed[] the cost of regulation or conferring special benefits upon those assessed." Audubon Ins. Co. v. Bernard, 434 So. 2d 1072, 1074 (La. 6/27/83) (citations omitted). Notably, the Department's Fiscal and Economic Impact Statement, particularly Section III., as proposed, obviously does not contemplate the application of the Radioactive Waste Burial Fee to commercial NORM disposal; otherwise, it would be inaccurate as stated.

In summary, the proposed rule, including 1410.C.6., is deficient because there is no applicable fee prescribed in LAC 33:XV.2599.

FOR/AGAINST: No arguments are necessary.

RESPONSE 7: Act 405 of the 2021 Regular Legislative Session authorized certain fee increases, establishment of new fees, and other changes to the regulations pertaining to fees. The department is currently working to integrate the new fees into the existing regulations.

COMMENT 8: 1410.D. "Requirements for the Issuance of Specific Licenses."

- a. Section 1410.D.1.d.: "A license application will be approved if the department determines that: . . . the applicant has met the financial security requirements of LAC 33:XV.1420;...."

Section 1410.C.1.d., regarding financial security requirements, references LAC 33:XV.1420 and requires that "the applicant [meet] the financial security requirements of LAC 33:XV.1420." It is noted that LAC 33:XV.1420 addresses certain NORM treaters and storers only and is tied to general licenses. See, e.g., 1410.A.3. In addition to being inapplicable to disposal facilities, the referenced §1410 provisions are not relevant or appropriate for disposal facilities permitted under the Louisiana Hazardous Waste Regulations (LHWR), i.e., a RCRA Subtitle C permitted facility. Financial security requirements are already provided for and imposed upon such hazardous waste TSD facilities like the CWM facility under the LHWR. See LAC 33:V, Chapter 37 and the Hazardous Waste Permit.

- b. Section 1410.D.3.: "An application for a specific license for persons who receive NORM waste from other persons for processing or disposal, or persons who process NORM for other persons at temporary job sites in accordance with LAC

33:XV.1410.A. will be approved if:"

Additionally, the applicant has adequately addressed the following items in the application if the applicant is a disposal facility: ii. the results of groundwater and stormwater analytical testing;:

This provision is vague and unclear. It presupposes that testing is required and/or exists but does not account for facility-specific wastewater and storm water practices or permitting under the LHWR or Water Quality (LPDES) regulations. For example, in accordance with the LDEQ NORM authorization, CWM already conducts annual groundwater monitoring for radium and reports results to the Department. Storm water is managed in accordance with the CWM-LC Facility's LPDES permit. The proposed regulation should be revised as follows to recognize and provide for facility-specific facts and circumstances to be reviewed by the Department in the context of an individual facility's application: "c. additionally, the applicant has adequately addressed the following items in the application if the applicant is a disposal facility: ii. facility groundwater and storm water management practices and permitting for the protection of the environment; : (Underlined language added)

- c. Section 1411 - "Protection of Workers during Operations" – "A. Each person subject to . . . a specific license shall conduct operations in compliance with each of the standards for radiation protection set forth in LAC 33: XV. Chapters 4 and 10."

Chapter 10 does not apply to the disposal of waste containing NORM. See LAC 33: XV.1001. See also Sections 201 and 301. This section should be revised to read as follows: "A. Each person subject to . . . a specific license shall conduct operations in compliance with each of the applicable standards for radiation protection set forth in LAC 33: XV.Chapter 4." (Underlined language added)

FOR/AGAINST: The department agrees with the comment; no arguments are necessary.

RESPONSE 8: a. In the comment CWM references Section 1410.C.1.d. This Section does not exist. Assuming CWM means Section 1410.D.1.d, the department has clarified LAC 33:XV.1420 and LAC 33:XV.1420.A in the proposed rule to the following:

**§1420. Financial Security Requirements for NORM
Treaters—Treatment, Storage, or
StorersDisposal**

- A. Each general or specific licensee that stores NORM or NORM waste for greater than 90 days, and each specific licensee that leases or owns a physical location and that physically or chemically treats or stores NORM or NORM waste shall post with the department financial security to ensure the protection of the public health and safety and the environment in the event of abandonment, default, or other inability or unwillingness of the licensee to meet the requirements of the Act and these rules. Financial security shall:

NORM is not considered hazardous waste and therefore not addressed in the Hazardous Waste financial assurance.

- b. The department has clarified LAC 33:XV.1410.D.3.c.ii. in the proposed rule. The proposed regulation now states “procedures for groundwater and stormwater analytical testing.”
- c. The department has changed LAC 33:XV.1411.A. in the proposed rule to the following:

§1411. Protection of Workers during Operations

- A. Each person subject to the general license requirements in LAC 33:XV.1408 or 14109 or a specific license shall conduct operations in compliance with each of the radiation protection standards for radiation protection set forth in LAC 33:XV.Chapters 4 and 40LAC 33:XV.1499 Appendix B.

COMMENT 9: 1412.E. – “Notifications.”

- a. New section 1412.E. requires the disposal facility to verify that the generator is registered with the Department and has a NORM general license and, if the generator is not registered, the disposal facility must notify the Department within three business days if the shipment is rejected for elevated activity levels. It further mandates that the disposal facility shall not return the waste to an unregistered generator but shall request department approval to temporarily store the waste on-site for less than 90 days. This proposed provision is unclear, problematic and impractical in many ways:

The trigger for notification to the Department and further action, i.e.,

the rejection of a shipment due to "elevated activity levels," is undefined. Due to the lack of definition or explanation of the meaning of "elevated activity levels," the provision is unlawfully vague and insufficient to notify the regulated community of the basis of and/or criteria for the requirement.

With respect to notification to the Department, the proposed regulation fails to specify the content and manner of notice. This deficiency should be addressed.

Additionally, the regulation goes further than requiring a notification (the basis of which is not properly defined). It bars a disposal facility from rejecting a nonconforming load back to the generator if the generator is not registered. Instead, it requires that the disposal facility retain the shipment and seek approval from the Department to temporarily store the waste on-site at the disposal facility for less than 90 days.

If a load were to be temporarily stored at a disposal facility that is authorized or licensed in accordance with the Department's regulations, obtaining approval from the Department should not be required. The Department's regulatory scheme should recognize, provide for and authorize the temporary storage of nonconforming wastes at licensed/authorized disposal facilities to facilitate proper management of waste. Notification to the Department is sufficient.

Further, no criteria is given for the approval of temporary storage or the timing within such approval will be given. Significantly, nothing in the proposed rule addresses the inevitable gap period between the making of a request for approval of temporary storage and the Department's issuance of an approval of such request.

Nor is any direction given or provision made in the event of a disapproval by the Department of a request for temporary storage or inaction by the Department.

This proposed provision is impractical, unworkable and unduly burdensome for the disposal facility. It is also contrary to and inconsistent with well-established waste regulatory protocols and procedures for incoming waste loads and rejections. Cf. LHWR, Chapters 11 & 15.

If it is determined during the receipt and monitoring of an incoming waste load containing NORM that it does not meet the NORM

acceptance criteria for the disposal facility, the better approach is for the disposal facility to manage the load as a discrepant load and consult the generator prior to forwarding the waste to a facility that can manage it or return it to the generator with notice to the Department under either scenario. The Department can take appropriate steps with respect to unregistered generators upon receipt of notice. In the event that a load that has not been previously manifested as containing NORM arrives and it is determined during receipt and monitoring that NORM is present, then the disposal facility should either (1) return it to the generator with notice to the Department; or (2) hold the load for radiological testing to confirm NORM isotopes and levels for potential acceptance in accordance with the NORM acceptance criteria for the disposal facility.

Full re-consideration of proposed Section 1412.E. by the Department is necessary.

FOR/AGAINST: The department agrees with the comment; no arguments are necessary.

RESPONSE 9: The department has changed LAC 33:XV.1412.E. in the proposed rule to the following:

E. Notifications

1. ~~Prior to receipt of NORM waste, the disposal facility shall verify that the generator of the waste is registered with the department and has a NORM general license number. The disposal facility shall notify the department if a shipment is rejected, based on rejection procedures approved by the department during application process, after its occurrence becomes known to the licensee. Notification shall be made by telephone at (225) 765-0160 in accordance with LAC 33:I.3923. Within 30 days after making the telephone report, make a written report to the Office of Environmental Compliance using the procedures provided in LAC 33:I.3925.B.~~
2. ~~If the generator of the waste is not registered with the department, the generator shall submit a Form RPD-36 to the department within three business days.~~
3. ~~The disposal facility shall notify the department within three business days if a shipment is rejected for elevated activity levels.~~
 - a. ~~The disposal facility shall not return the waste to the generator if the generator is not a registered NORM general licensee.~~
 - b. ~~If the generator is not registered with the department as a NORM general licensee, the~~

~~waste facility shall request department approval to temporarily store the waste on site for less than 90 days.~~

Changing LAC 33:XV.1412.E. allows for more consistency with notifications.

COMMENT 10: Section 1417. "Release for Unrestricted Use."

CWM understands that this provision does not apply to the management or landfilling of solid and hazardous waste containing NORM at a hazardous waste TSD facility. Please confirm.

FOR/AGAINST: The department agrees with the comment; no arguments are necessary.

RESPONSE 10: CWM is correct. LAC 33:XV.1417. applies to facilities that are requesting that a location be released for unrestricted use.

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1420, 1421, and 1499) (RP067)**

<u>COMMENT #</u>	<u>SUGGESTED BY</u>
01 – 05	Toksha Collins-Wright, Louisiana Chemical Association
06 – 10	Anne J. Crochet, Law Firm Taylor Porter on behalf of Chemical Waste Management, Inc.

Comments reflected in this document are repeated verbatim from the written submittal.

Total Commenters: 02
Total Comments: 10