

**STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF  
2012 LOW RIVER STAGES AND  
RESULTANT SALT WATER INTRUSION INTO  
THE MISSISSIPPI RIVER**

**AGENCY INTEREST NO. #183531**

**DECLARATION OF EMERGENCY  
AND ADMINISTRATIVE ORDER**

Pursuant to the authority granted to me by Louisiana Revised Statutes 30:2001 *et seq.*, and particularly La. R.S. 30:2033 and 2011(D)(6), I hereby make the following findings, declaration and order.

**FINDINGS AND DECLARATION**

1. Low water levels in the Mississippi River are allowing salt water from the Gulf of Mexico to migrate up the Mississippi River, are impeding the intake of cooling water, and are creating other problems for regulated facilities.
2. By State of Louisiana Proclamation No. 87 BJ 2012, Louisiana Governor Bobby Jindal declared on August 15, 2012 that a state of emergency exists statewide in Louisiana, as a result of the low river stages and salt water intrusion up the Mississippi River that threatens access to freshwater and therefore threatens the lives and property of the citizens of the State.
3. I find that the low river stages and salt water intrusion described above has created or will create conditions that require immediate action to prevent irreparable damage to the environment and serious threats to life or safety throughout the State.

WHEREFORE, I hereby declare that an emergency exists, and that the following measures are necessary to prevent irreparable damage to the environment and serious threats to life or safety throughout the State.

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## ORDER

### **§1. Wastewater Treatment Systems**

#### **a. Upset Provisions**

Permittees with Louisiana Pollutant Discharge Elimination System (LPDES) permits should consider invoking the upset provisions in their permits. LAC 33:IX.2701.N.1 defines upset as the following:

*An exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.*

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of LAC 33:IX.2701.N.3 are met. This Order extends upset provisions to include water quality based effluent limitations. For upsets caused by the low river stages in the Mississippi River, the 24-hour oral notification is waived unless the non-compliance may endanger human health.

#### **b. Inability to Sample or Monitor Discharges**

If a facility affected by the low river stage such that it is unable to take samples or monitor continuous parameters such as flow and pH as required by its LPDES permit, then sampling and monitoring requirements shall be suspended at the affected outfall(s). The facility owner/operator shall record the date upon which sampling and monitoring ceased and the date upon which sampling and monitoring commenced, the outfall(s) affected, and describe the situation as it pertains to the low river stage which caused the facility to be unable to take samples and conduct monitoring at the affected outfall(s), such as inaccessibility, safety issues, etc. The facility owner/operator shall provide a report on any



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inability to sample discharges and conduct monitoring to the Department as soon as possible, but no later than 30 days after monitoring and sampling capabilities have been restored. The facility owner/operator shall also note on its Discharge Monitoring Reports (DMRs) that sampling and monitoring were suspended as per this Order.

c. Changes in Methods of Waste Water Treatment

Methods of waste water treatment are generally not limited or dictated by LPDES permit terms, and may be changed as deemed necessary by the operator without approval of the LDEQ, as long as permit effluent limitations will not be exceeded. However, if in doubt, the operator may contact the LDEQ Water Permits Division at (225) 219-9371. If the operator expects that permit effluent limitations will be exceeded, the operator should consider invoking the upset provisions of its permit. See §1.a, above. If the upset provisions do not apply to a particular situation, LDEQ will consider the exercise of enforcement discretion on a case-by-case basis. See §8, below.

d. Increases in Flow of Waste Water Discharges

Flow rates of waste water discharges are generally not limited or dictated by LPDES permit terms, and may be increased as deemed necessary by the operator without approval of the LDEQ. However, if in doubt, the operator may contact the LDEQ Water Permits Division at (225) 219-9371.

e. Exceedance of Permit Effluent Limits

i. Operators who expect exceedances of permit limits on pH, total dissolved solids (TDS), total suspended solids (TSS), biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), or foam as a result of the low river stages should consider invoking the upset provisions of their permits. See §1.a, above. If the upset provisions do not apply to a particular situation, LDEQ will consider the exercise of enforcement discretion on a case-by-case basis. See §8, below.

ii. LDEQ will allow the exceedance of permit limits on effluent temperature when such exceedance is the direct result of the low river stages, and the operator uses best engineering practices to minimize effluent temperature. In such instances, the operator need not report the exceedance as such on its Discharge

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Monitoring Report, but shall state in the comments section of the DMR that it has invoked this subsection of the Administrative Order.

**§ 2. Air Pollution Sources**

a. In accordance with LAC 33:III.501.B.1.e, owners or operators may bring on site and utilize nonroad engines, including, but not limited to, temporary portable electrical power generators, firewater pumps, and air compressors, as necessary to respond to the low river stages. “Nonroad engine” is defined in LAC 33:III.502.A. Note that an internal combustion engine is not a nonroad engine if it remains or will remain at a location for more than 12 consecutive months. A location is any single site at a building, structure, facility, or installation. Any engine that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced shall be included in calculating the consecutive time period.

b. For permitted internal combustion engines operated in direct response to the low river stages, including, but not limited to, electrical power generators, firewater pumps, and air compressors, the Department suspends any limitations on operating time imposed by the applicable permit until such time as normal operations are restored or until the expiration of this Order, whichever is earlier. Emissions from the operation of such engines operated pursuant to this Order shall not count toward applicable ton per year limitations. All other provisions applicable to the engines shall continue to apply.

i) The owner/operator shall notify the Office of Environmental Services, Air Permits Division, in writing, by no later than thirty days after the effective date of this Declaration of Emergency and Administrative Order, that operation of permitted internal combustion engines in excess of permitted limits has occurred or is anticipated. Relevant emission point and permit numbers should be included in this correspondence.

ii) A report summarizing the operating time of permitted internal combustion engines in direct response to the Flood and the resultant criteria and toxic



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air pollutant emissions shall be submitted to the Office of Environmental Services, Air Permits Division by no later than thirty days after the effective date of this Declaration of Emergency and Administrative Order unless otherwise extended by the Department.

c. To accommodate the storage and/or distribution of liquid materials as necessary to respond to the low river stages, owners or operators may change the service of permitted storage vessels without prior approval of the department provided compliance with all applicable federal and state regulations pertaining to the storage of the material in question (e.g., LAC 33:III.2103, 40 CFR 60 Subpart Kb) is maintained. All changes of tank service effected pursuant to this paragraph shall be documented and reported to the Office of Environmental Services, Air Permits Division, by no later than thirty days after the effective date of this Declaration of Emergency and Administrative Order, and quarterly thereafter until the expiration of this Order, or any extensions or revisions thereof.

d. In order to provide for additional cooling capacity, the department authorizes the use of temporary cooling towers. Further, the department suspends the maximum hourly PM<sub>10</sub> and PM<sub>2.5</sub> limitations and any limitations on the maximum recirculation rates established by air permits for existing cooling towers.

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### **§ 3. General Conditions**

a. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

b. This Order only serves as relief for the duration of this Order from the regulatory and proprietary requirements of the Department, and does not provide relief from the requirements of other federal, state, and local agencies. This Order therefore does not negate the need for the property owner or facility operator to obtain any other required permits or authorizations, nor from the need to comply with all the requirements of those agencies.

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**§ 4. General Limitations**

The Department issues this Order solely to address the emergency created by the low Mississippi River stages. This Order shall not be construed to authorize any activity within the jurisdiction of the Department except in accordance with the express terms of this Order. Under no circumstances shall anything contained in this Order be construed to authorize the repair, replacement, or reconstruction of any type of unauthorized or illegal structure, habitable or otherwise.

**§ 5. Other Authorizations Required**

Nothing in this Order shall eliminate the necessity for obtaining any other federal, state, or local permits or other authorizations that may be required.

**§ 6. Extension of Time to Comply with Specified Deadlines**

For facilities regulated by the Department that are affected by the low Mississippi River stages, this Order extends the time for a period of thirty (30) days to comply with time deadlines to conduct or report periodic monitoring required by permits, other authorizations, enforcement actions, or settlement agreements, when such deadlines occur between the effective date of this Order, and ninety days thereafter. However, this section shall not apply to monitoring required by air permits issued under Title IV or V of the Clean Air Act or under the PSD program.

**§ 7. Completion of Authorized Activities**

All activities authorized under this Order must be commenced before the expiration of this Order unless otherwise provided in an authorization or permit. The deadline for commencement under any authorization or permit issued under this Order may be extended on a showing that contractors or supplies are not available to commence the work, or if additional time is needed to obtain any required authorization from the Federal Emergency Management Agency, the U.S. Army Corps of Engineers, or other local, state, or federal agencies.

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**§ 8. Enforcement Discretion**

The Department is vested by law with discretion as to the exercise of its enforcement authority to address violations of law, regulations, and permits. The Department will consider, on a case-by-case basis, requests for the exercise of this discretion with regard to violations that result from the the low Mississippi River stages.

**§ 9 Amendments**

This Order may be amended as required to abate the emergency.

**§ 10. Expiration Date**

This Declaration of Emergency and Administrative Order shall take effect immediately upon execution by the Secretary of the Department, and shall expire ninety days from the date of execution set forth below, unless modified or extended by further order.

**DONE AND ORDERED** on this 17<sup>th</sup> day of August, 2012, in Baton Rouge, Louisiana.

  
Peggy M. Hatch  
Secretary