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EPA AMENDS NEW SOURCE REVIEW PROGRAM

By: Andrew Harrison, Jr. and Arnold Reitze, Jr.

On November 22, 2002, the United States Environmental Protection Agency ("EPA") made sweeping changes to the New Source Review ("NSR") program and proposed significant changes to the regulatory definition of "routine maintenance, repair and replacement." EPA stated that "[t]hese actions will offer facilities greater flexibility to improve and modernize operations in ways that will reduce energy use and air pollution, provide incentives to install state-of-the-art pollution controls and more accurately calculate actual emissions of air pollution." The new NSR rule will "remove perverse and unintended regulatory barriers to investments in energy efficiency and pollution control projects, while preserving the environmental benefits of the NSR program."

EPA worked on these regulations for ten years and published a proposed regulation on July 23, 1996. *See* 61 Fed. Reg. 38, 250. Thereafter, on November 17, 1998, EPA released its *Guidance on the Appropriate Injunctive Relief for Violations of Major New Source Review Requirements.* The NSR Guidance was a response to a weakness the Agency perceived in the Clean Air Act (CAA) concerning the interplay of the construction permit program and the operating permit program. EPA asserted that violations of the CAA could subject an offending major source to NSR requirements as well as to more traditional sanctions. An aggressive enforcement effort followed. For instance, on November 3, 1999, EPA initiated NSR enforcement actions against American Electric Power, Cinergy, Illinois Power, Southern Indiana Gas and Electric, Alabama Power, Ohio Edison and TVA for alleged violations at thirty-six Midwestern and Southeastern electric power plants. Other actions have also been filed that generally allege physical changes triggered the application of NSR.

EPA's NSR enforcement quickly became a political issue as the regulated community claimed these actions by EPA rose to the level of changing the law that should be based on notice and comment rulemaking. Subsequently, President Bush's National Energy Policy Development Group issued findings and key recommendations for a National Energy Policy that together with an EPA background analysis helped contribute to the new changes in the NSR program.

When the CAA of 1970 was enacted, Congress provided that new sources would be subject to more stringent requirements than were imposed on existing sources. The expectation was that as existing sources were retired, the replacement facilities would be subject to the more stringent standards and overall emissions to the atmosphere would decrease. However, the cost of meeting CAA requirements and the overall difficulty in obtaining approval for new facilities has led to many existing facilities, especially fossil-fueled electric power plants, being maintained beyond the useful life originally anticipated by Congress.

New sources are subject to a number of costly and time consuming requirements. In areas that meet the CAA's National Ambient Air Quality Standards ("NAAQS"), known as, prevention of significant deterioration ("PSD") areas, atmospheric modeling may be required to assure the facility does not exceed prescribed atmospheric impact limits and the facility must be constructed to meet EPA's best available control technology ("BACT") standard. In areas that have not attained the NAAQS, even more stringent standards are imposed including the need to offset emissions and to construct the facility to meet EPA's most stringent lowest available emissions rate ("LAER") standard.

NSR is triggered by new sources that exceed a potential to emit threshold amounts that make them a major source. In PSD areas, a major source threshold is 100 tons per year of any criteria pollutant from 28 listed categories. 42 U.S.C. §7479(1). Other sources not included in the list, however, do not trigger major source status unless they potentially emit 250 tons per year. In nonattainment areas, the major source threshold ranges from 100 tons per year down to 10 tons per year depending upon the pollutant and the severity of the nonattainment. 42 U.S.C. §7511a(e). Sources proposed to be constructed that are truly new rarely become the subject of controversy con-

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Features

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cerning whether NSR applies because NSR applicability is obvious. The problems in applying NSR usually involve existing sources that are treated as new sources by the CAA if they are deemed to have been modified.

A modification that triggers NSR occurs if a major source has a significant net emissions increase of a criteria pollutant. 40 C.F.R. §51.165(a)(1)(iii). Significance is determined on a pollutant specific basis and is forty tons per year for nitrogen oxides, sulfur dioxide, and volatile organic compounds ("VOCs"). 40 C.F.R. §51.165(a)(9)(x). In serious or worse ozone nonattainment areas, the increase in VOCs is limited by the CAA to twenty-five tons when aggregated with all other new increases in emissions from the source over any period of five consecutive years. 42 U.S.C. §7511a(c)(6). In nonattainment areas, a significant increase must be offset. Generally, a determination of whether there is a projected increase is based on a comparison of past actual to future potential emissions. Rather than using an actual-to-future-potential emissions test, electric utilities determine emissions increases based on an actual-to-future-actual test known as the WEPCO rule. *See Wisconsin Electric Power Co. v. Reilly* (WEPCO), 893 F.2d 901 (7th Cir. 1990).

Even if emissions increase, NSR can be avoided if the annual increases are the result of one or more of the exceptions found in 40 C.F.R. §§51.165(a)(1)(v)(C), 52.21(b)(2). The most important exclusions from "physical or operational change", include routine maintenance, repair and replacement and changes in hours of operation or in the production rate. The issue of what constitutes a routine repair has been very controversial as EPA began to question many expenditures by the regulated community that the Agency believed were designed as facility life extension projects, not repairs. For a more detailed coverage of this subject, see Arnold W. Reitze, Jr., *State and Federal Command-and-Control Regulation of Emissions From Fossil-Fuel Electric Power Generating Plants*, 32 ENVTL. L. 369 (2002).

EPA's November 22, 2002 final rule for the NSR program and the proposed rule defining routine maintenance, repair and replacement are long and complex. At this writing, these have not been published in the Federal Register, but the NSR rule on EPA's web site is over 600 pages and the proposal for the changes to routine maintenance, repair and replacement definition is 151 pages. Interpreting and implementing these changes should keep lawyers busy for some time. The changes found in the final rule are intended to provide greater certainty to the regulated community concerning what activities are covered by the NSR program, to remove barriers to environmentally beneficial projects, and to provide incentives for industry to improve its environmental performance when changes are made to facilities. The rule has four major provisions while the proposed rule (that still must go through the rulemaking process) has three major provisions.

The following is a short summary of the four major changes in the rule:

First, pollution control and prevention provisions ("PCPs") are designed to encourage the installation of pollution control technologies. The rule contains a list of technologies with environmental benefits that outweigh the environmental impact of any new emissions. Installation of these devices will not constitute a major modification if they will not cause or contribute to violation of a NAAQS or a PSD increment. A few examples of PCPs include electrostatic preciptitators, baghouses, high efficiency multiclones and scrubbers for control of particulates. Other environmentally beneficial projects not listed also may be considered on a case-by-case basis. EPA established a simplified process for installation; if the project is a listed PCP, then the source need only submit a notice to the permitting authority before commencing construction; if it is not listed, then the source must submit an application for a case-by-case determination. However, facilities may not use reductions created by PCPs for netting or to generate offsets unless the unit further reduces emissions below that necessary to qualify for the PCP.

Second, plantwide applicability limits (PALs) will allow facilities greater flexibility to change their operations if the facility agrees to operate within an emission cap called a PAL. If a source maintains its total emissions below the PAL level and complies with any PAL permit requirements, it is not a major modification for the PAL pollutant and does not trigger NSR. Facilities are required to obtain a PAL permit, valid for 10 years, that contains a PAL expressed in tons per year which is enforceable "as a practicable matter." Thereafter, the facility must comply with the PAL through a twelve month rolling average, though for the first eleven months, it must have emissions less than the month prior to establishment of the PAL. The PAL is the sum of baseline actual emissions plus an amount equal to the significance level for the PAL pollutant. However, unfortunately, PALs may be adversely affected by future rules, such as NO_x Reasonably Available Control Technology (RACT). Like PCPs, reductions occurring as a consequence of changes relying upon PALs cannot be used as creditable reductions for offsets. The use of PALs requires monitoring and semi-annual reporting; the failure to monitor renders a PAL invalid.

Third, clean unit provisions allow plants that install state-of-the-art air pollution controls to have substantial operational flexibility if they stay within the permitted limits. Clean units must use the best air pollution control technologies. This is essentially a new approach to operational changes that allows a facility to make changes to a unit using BACT or LAER as part of its NSR compliance if the project does not cause a need for a change in emissions limits or work practice requirements and it does not alter any physical or operational requirements that formed the basis for BACT or LAER. If it does, the unit loses its Clean Unit status. Nevertheless, the facility may still proceed with the project if the increase in emissions is not significant. Units that do not undergo NSR may also gain Clean Unit status, which is valid for ten years, if the facility can show that the unit's emissions controls are as "substantially as effective as," BACT or LAER. Note, Clean Unit status does not eliminate consideration of increases associated with physical changes or changes in method of operation; rather, it only changes the method of calculation. The bottom line is that if the

change complies with Clean Unit status, there is no increase in emissions for purposes of the applicability of NSR.

Fourth, the proposed rule makes several changes for calculating emissions increases. A significant emissions increase of a regulated NSR pollutant occurs if the sum of the difference between the "projected actual emissions" and the "baseline actual emissions" is significant for that pollutant when the change involves only existing units. Therefore, for changes only at existing units, the new test is "actual-to-projected-actual" emissions. This provision extends the actual-to-actual test, or WEPCO rule, used by electric power plants, to all facilities. However, facilities, other than electric power plants, will have the added benefit of being able to use as their baseline any consecutive twenty-four-month period in the previous decade, as long as all current control requirements are taken into account, while electric power plants may only look back five years. For new units, the applicability test is "actual-to-potential" for all sources, including electric power plants. When the major modification is of multiple units, the hybrid test is used and involves summing the emissions increases from the test applicable to each unit for which there is a change. For instance, one could propose a change at an existing unit where NSR applicability is determined using the actual-to-projected-actual test, while a Clean Unit uses the test assigned to those units. The end result of these changes is that EPA has created the opportunity for increased flexibility in permitting in the future while ensuring environmental protection.

The proposed routine maintenance regulation seeks to more clearly define what constitutes a repair. First, EPA is proposing guidelines for industries to use to determine what activities will be considered repairs. Second, EPA is proposing a rule to be used to deal with changes in an operation that allows other parts of the operation to increase production. The current rules concerning "debottlenecking" are difficult to use, and EPA wants to simplify them. Third, EPA is proposing to change its approach to multiple maintenance projects at a facility to specify how it will deal with aggregation. When multiple projects are to be implemented in a short time, the issue arises concerning whether the projects should be considered in the aggregate in order to trigger NSR. The proposed regulation establishes two criteria to be used for this determination.

The present NSR program can add a year or more to the time needed to review a proposed change that modifies a facility and can cost over a million dollars. The new final regulation and the proposed regulation only affect a small portion of the NSR program. EPA will have to issue additional regulations and the states will have to change their regulations to conform to the NSR reforms. States, of course, are free to make or maintain their rules more restrictive than the federal rules; therefore, states, such as Louisiana, are not required to adjust their provisions to incorporate the federal changes. Nevertheless, the regulated community should encourage the Louisiana Department of Environmental Quality to seriously consider these changes. Moreover, during this transition period, enforcement actions may be more likely to depend on federal interpretations of the applicable NSR law. This means that the regulated community and their attorneys must continue to be vigilant if they wish to avoid an involuntary imposition of NSR requirements.

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INSIDE DEQ

by Chris Ratcliff

RULE-MAKING UPDATE

Air Quality

AQ222 - Permit Procedures Insignificant Activities List (LAC 33:III.501) *(La. Register 5/20/02)* The regulated community had asked for an expansion of the "Insignificant Activities List" under LAC 33:III. Chapter 5. Permit Procedures. and the amended rule adds ten activities to the "Insignificant Activities List." These activities (LAC 33:III.501.B.5) are approved by the permitting authority as insignificant on the basis of size, emission or production rate, or type of pollutant. By such listing, the permitting authority exempts certain sources or types of sources from the requirement to obtain a permit under LAC 33:III. Chapter 5, unless it is determined by the permitting authority on a site-specific basis that any such exemption is not appropriate. Currently, the list includes approximately 45 activities or emission sources that produce air pollutants in such small amounts that they are exempted from the requirement to obtain a permit under Chapter 5. This addition will benefit existing permitted sources in reducing the number of temporary variances or minor permit modifications they are required to obtain from the DEQ. For example, a variance is now required to bring in a small portable gasoline tank used to fuel mobile equipment for a maintenance project. Under the expanded list, this would not require a permit action, provided the tank emissions from the temporary tank met the insignificant standard specified in the regulation. Also, small businesses would be aided by reducing the requirements to obtain an air emissions permit or temporary variance, particularly when bringing in equipment on a temporary basis for construction or maintenance activities, provided such equipment met all the standards defining an insignificant emission source. For example, an existing small business not otherwise required to have an air emissions permit would not have to obtain a permit to add a permanent standby electrical generator for use only during power outages, provided such use met the standards defining the insignificant emissionsource.

OS043E – Incorporation by Reference of Amendments to the National Emission Standards for Hazardous Air Pollutants (LAC 33:III.5122.A) *(La. Register 5/20/02)* (Emergency Rule). Adopts by reference the EPA rule entitled National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j), promulgated on April 5, 2002, in the Federal Register. This action is necessary to ensure consistency between the state rule and the revised federal rule. The 40 CFR 63 Subpart B provisions as currently incorporated into state rule require a major source with a source category for which MACT has not been promulgated by May 15, 2002, to submit a Title V permit application by May 15, 2002, which includes a case-by-case MACT determination. The 40 CFR 63 Subpart B revisions as noticed in the Federal Register/ Vol.67/ No. 66/Friday, April 5, 2002 [16582-16611], require a facility to submit only a Part 1 permit application. A complete (Part 2) permit application will be submitted 24 months later. Title V permit applications are complex, and their completion and submittal by May 15, 2002, would put these regulated facilities at a competitive disadvantage with other similar facilities in the nation. Rule OS043, which incorporates by reference this EPA rule, became final on May 20, 2002.

AQ224 - Revision to Control of Emissions of Nitrogen Oxides (LAC 33:III.2201*) (La. Register 7/20/02)* Lowers the regulatory threshold for lean-burn internal combustion engines in the Baton Rouge Nonattainment Area from 1500 to 320 horsepower. Revises the definitions for "peaking service" and "cap" and ensures that the allowance trading program is consistent with LAC 33:III.605 and 607. The regulatory threshold for lean-burn internal combustion engines located in the Baton Rouge Nonattainment Area is being revised in order to meet Reasonably Available Control Technology (RACT) requirements for NOx emissions in the ozone nonattainment parishes. This rule is also being proposed as a revision to the Louisiana State Implementation Plan (SIP).

AQ219A - Control of Emission of Organic Compounds - Calcasieu Parish (LAC 33:III.2103, 2104, 2115, 2122, 2123, 2125, 2143, and 2153) *(La. Register 8/20/02)***.** Affects Calcasieu Parish by lowering applicability thresholds in selected sections of Chapter 21. These sections regulate storage of volatile organic compounds, crude oil and condensate, waste gas disposal, fugitive emission control for ozone nonattainment areas, organic solvents, vapor degreasers, graphic arts (printing) by rotogravure and flexographic processes, and VOC emissions from wastewater. Calcasieu Parish experienced ozone exceedance days during the years 1998, 1999, and 2000. Four or more exceedances during any consecutive 3-year period constitute a violation of the ozone National Ambient Air Quality Standard (NAAQS). In accordance with activated contingency measures established in the approved air quality Maintenance Plan for Calcasieu Parish, a control strategy must be developed and appropriate control measures implemented in an effort to maintain Calcasieu's current attainment designation and to protect air quality in the area. This rule is also being proposed as a revision to the Louisiana State Implementation Plan (SIP).

AQ227 - Definition of Major Source (LAC 33:III.502) *(La. Register 9/20/02)* The revised definition of "major source" in LAC 33:III.502 removes the provisions that Louisiana must require that sources in categories subject to standards under Section 111 or 112 of the Clean Air Act (Act), which were promulgated after August 7, 1980, include fugitive emissions in determining major source status under Section 302 or Part D of Title I of the Act. It also removes the phrase "but only with respect to those pollutants that have been regulated for that category," which previously existed in the definition of "major source". On November 27, 2001, the EPA promulgated revisions to its definition of "major source" in 40 CFR 70.2. These changes are effective November 27, 2001. As provided at 66 FR 59162 and at 40 CFR 70.4(i)(1), states whose program includes the language "but only with respect to those pollutants that have been regulated for that category" must revise and submit their program revisions by November 27, 2002.

AQ229 - Correction to 2001 IBR of 40 CFR Parts 60, 61, and 63 (LAC 33:III.3003, 5116, 5122, and 5311) *(La. Register 10/20/02)* Corrects inadvertent errors made in earlier rulemaking to update the incorporation by reference (IBR) of 40 CFR Parts 60, 61, and 63. Earlier IBR rulemaking did not list new additions to the Code of Federal Regulations, July 1, 2001. Additional changes are included to follow the IBR rulemaking procedure.

Hazardous Waste

HW080 - RCRA XI Authorization (LAC 33:V.109, 321, 2213, 2215, 2236, Chapter 22.Appendix.Tables 2, 7, 9, and 11, 3105, 4201 – 4243, 4901, and 4909) *(La. Register 5/20/02)*
Includes changes to the Hazardous Waste regulations on the following topics that are required by the Environmental Protection Agency for continued authorization of the RCRA program in the state of Louisiana: NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Deferral of Phase IV Standards for PCB's as a Constituent Subject to Treatment in Soil; Storage, Treatment, and Disposal of Mixed Waste; and Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived From Rules.

HW081 - Corrective Action Management Units (LAC 33:V.109, 2601, 2602, 2603, 2605, and 2607) *(La. Register 6/20/02)* Corrective Action Management Units (CAMUs) are special units created under the Resource Conservation and Recovery Act (RCRA) to facilitate treatment, storage, and disposal of hazardous wastes managed for implementing cleanup, and to remove the disincentives to cleanup that the application of RCRA to these wastes can sometimes impose. The original CAMU regulations were promulgated on February 16, 1993. The state is adopting the federal amendments verbatim. The previous LAC 33:V.2603.Temporary Units (TU) is

moved to Section 2604. Text remains the same. Section 2603 is now titled "Corrective Action Management Units (CAMUs)." This rule amends the 1993 CAMU rule in six ways. It establishes a specific definition, distinct from the definition of remediation waste, to govern the types of wastes that are eligible for placement in CAMUs. More detailed minimum design and operating standards are established for CAMUs in which waste will remain after closure, with opportunities for the administrative authority of an authorized state to approve alternate design standards under certain circumstances. Treatment requirements are established for wastes that are placed in CAMUs, including minimum treatment standards, with opportunities to adjust treatment requirements under certain circumstances. More specific information is required for CAMU applications, and there shall be public notice and a reasonable opportunity for public comment before final CAMU determinations are made. New requirements are established for CAMUs that will be used only for treatment and storage. Certain types of existing CAMUs will be "grandfathered" and allowed to continue to operate under the 1993 rule.

The rule also amends the regulations for "staging piles" to expressly allow for mixing, blending, and other similar physical operations intended to prepare wastes for subsequent management or treatment. It also adds a new provision allowing offsite placement of hazardous CAMU-eligible waste in hazardous waste landfills, if the waste is treated to meet CAMU treatment standards (somewhat modified).

HW082 - Corrections to Organization Citations (LAC 33:V.4201, 4205, 4211, and 4241) *(La. Register 10/20/02)* Makes a minor correction for clarification and corrects errors in the use of the term, "administrative authority," by replacing the term with the correct office and division for submittals or notification requirements. This action is being taken to encourage and assist the regulated entities in the proper submittal of information and notification to the department.

Inactive and Abandoned Sites

IA004 - Notification Procedures for Inactive or Uncontrolled Sites (LAC 33:VI.201) *(La. Register 8/20/02)* Revises the procedures for notifying the department of the discovery of a discharge or disposal of any hazardous substance at an inactive or uncontrolled site to be consistent with the notification procedures required by all other department regulations. The proposed regulation will require reporting to the department's Single Point of Contact. This action will make the Inactive and Abandoned Hazardous Waste and Hazardous Substance Site Remediation regulations consistent with all other department regulations with regard to release/discharge reporting.

Office of the Secretary

OS043 - Incorporation by Reference of 2001 Amendments to Federal Air, Hazardous Waste and Water Regulations (LAC 33:I.3931; 33:III.507, 1432, 3003, 5116, 5122, and 5311; 33:V.Chapter 30.Appendices A-L; 33:IX.2301, 2531, and 2533; and 33:XV.1517) *(La. Register 5/20/02)* Incorporates by reference into LAC 33:I, III, V, IX, and XV the corresponding regulations in 10 CFR 71 and 40 CFR Parts 60, 61, 63, 70.6, 93, 117.3, 122.29, 136, 144.63, 266, 302.4, 401, and 405-471, July 1, 2001. In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be adopted into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc., granted to Louisiana by EPA. This incorporation by reference package is being proposed to keep Louisiana's regulations current with their federal counterparts. The basis and rationale for this proposed rule are to mirror the federal regulations in order to maintain equivalency.

OS041E - Fee Increases for FY 02-03 (LAC 33:I, III, V, VII, IX, XI, and XV) *(La. Register 6/20/02)* **(Emergency Rule)** Act 134 of the First Extraordinary Session of the 2002 Legislative Session authorized a 20 percent increase in fee collections by the department. In order to invoice these authorized fee increases at the beginning of the next fiscal year (July 1, 2002), this Emergency Rule is being implemented.

OS039E2 - Commercial Laboratories Pending Accreditation (LAC 33:I.4501 and 4719) – Emergency Rule, Effective 14-Jul-02 (La. Register 7/20/02) This is a renewal of Emergency Rule OS039E, which was effective November 16, 2001, and renewed effective March 16, 2002. The renewal was published in the Louisiana Register on March 20, 2002. The department is drafting a rule (Log #OS039) to promulgate this regulation. The Department relies on analytical data submitted both directly and indirectly to the Department to determine compliance with both state and federal regulations. As a result of deadlines established in current Louisiana regulations, the Department is prohibited from accepting data from commercial laboratories that have not received departmental accreditation. This rule will allow the Department to accept data from laboratories that have submitted complete applications and supporting documents, have submitted documentation verifying certification/accreditation by a department-approved accreditation program or supporting documentation showing the quality assurance and quality control program used to generate analytical data by the laboratory, and have paid all appropriate fees. A finding of imminent peril to public health, safety, and welfare is based on the inability to accept and review analytical data. Furthermore, the environmental analytical laboratory industry could suffer a loss of jobs. The Department is adding an exemption for personnel monitoring services and those activities specifically licensed in accordance with LAC 33:XV.Chapter 3.Subchapter B, equivalent agreement state regulations, and the Nuclear Regulatory Commission regulations, Title 10 Code of Federal Regulations, due to the fact that they are licensed under other department regulations and to prevent an additional economic burden and duplication of effort by the department. The Depart-

ment relies on the analytical data to determine permit compliance, enforcement issues, and effectiveness of remediation of soils and groundwater. Permit issuance and compliance are effective means of determining the impact on human health and the environment. The Department must have access to accurate, reliable, precise analytical data in order to meet its mandate to protect human health and the environment.

OS042E - Public Notification of Contamination (LAC 33:I.Chapter 1) – Emergency Rule, Effective 10-Jul-02 *(La. Register 7/20/02)* In accordance with the emergency provision of the Administrative Procedure Act, R.S. 49:953.B, and under the authority of R.S. 30:2011, the secretary of the Department of Environmental Quality declares that an emergency action is necessary to comply with the Governor's October 1, 2001, Executive Order No. MJF 2001-46, entitled "Environmental Contamination Notification." The order states, "the health, safety, and welfare of the people of Louisiana would be improved, and the government would better fulfill its public trust obligations, if those executive branch agencies notified people who may be exposed to environmental contamination when such agency has sound scientific knowledge of environmental contamination that exceeds the applicable federal and state health standards and that may cause adverse health effects."

OS041E1 - Fee Increases for FY 02-03 (LAC 33:I, III, V, VII, IX, XI, and XV) *(La. Register 10/20/02)* **Emergency Rule.** Act 134 of the First Extraordinary Session of the 2002 Legislative Session authorized a 20 percent increase in fee collections by the department. In order to invoice these authorized fee increases during the current fiscal year, this Emergency Rule is being implemented. The department will propose a rule that reflects the provisions of this Emergency Rule. This is a renewal of Emergency Rule OS041E that was effective on July 1, 2002. This Emergency Rule is effective on October 29, 2002, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first.

Radiation Protection

RP029 - Respiratory Protection Amendments Required by the Nuclear Regulatory Commission (LAC 33:XV.403, 443, and Appendix A) *(La. Register 5/20/02)* Amendments to LAC 33:XV addresses respiratory protection and controls to restrict internal exposures. Included are the definitions of air purifying respirator, atmosphere-supplying respirator, assigned protection factors (APF), demand respirator, disposable respirator, fit factor test, fit test, filtering facepiece (dust mask), helmet, hood, loose-fitting facepiece, negative pressure respirator, positive pressure respirator, powered air-purifying respirator, pressure demand respirator, qualitative fit test, quantitative fit test, self-contained breathing apparatus, supplied-air respirator, tight-fitting facepiece, and user seal check (fit check). Also included are the addition of application for the use of higher assigned protection factors and the modification of Appendix A to include assigned protection factors for respirators. As a Nuclear Regulatory Commission Agreement State, in accordance with the NRC Agreement signed on May 1, 1967, Louisiana has accepted the responsibility for promulgating regulations that satisfy the compatibility requirement of Section 274 of the Atomic Energy Act of 1954, as amended. In certain areas defined by the NRC, state regulations must be the same as NRC regulations. The extent to which the regulation must be identical, whether in content or in effect, is determined by the NRC. All amendments in this package are mandated by the NRC to comply with recent NRC regulation changes.

RP030 - Radiation Protection Amendments in Chapters 4, 5, 6, 13, and 20 (LAC 33:XV.455, 573, 575, 577, 587, 588, 590, 605, 1329, and 2013) *(La. Register 9/20/02)* Amendments to clarify the Radiation Protection regulations in LAC 33:XV.Chapters 4, 5, 6, 13, and 20. Amendments to Chapters 4 and 13 correct references. Amendments to Chapter 5 clarify the minimum number of qualified or approved crew that must be present when performing industrial radiographic operations, require annual refresher safety training of all radiographers and radiographer assistants and trainees, require all crew members to wear personal monitoring devices and designate when personal monitoring devices must be replaced, require that a physical radiation survey be performed on radiation machines or sealed sources immediately upon exposure, and require maintenance of records of daily checks of equipment. Amendments to Chapter 6 correct an error concerning a unit of measure for exposure rates. Chapter 20 is amended to require that calibrated operable radiation survey equipment is maintained at a temporary job site.

Waste Tires

SW033 - Fraudulent Takings (LAC 33:VII.10505, 10519, 15025, and 10537) *(La. Register 9/20/02)* Act 134 of the 2002 Extraordinary Session of the Legislature added language to the Environmental Quality Act, at R.S. 30:2418.M, to require penalties for "fraudulent takings" in the Waste Tire Program. This rule adds definitions and provides descriptions of and penalties for fraudulent takings. "Fraudulent takings" refers to the value gained from processing waste tires that are not eligible for the Waste Tire Program. Waste tires are coming from out-of-state into the Waste Tire Program. No fees are collected on these tires, but they enter the system and make their way to waste tire processors who are paid for the processing and marketing of these out-of-state tires. This rule will place the new wording from the Act into the Solid Waste Regulations to make it conspicuous to departmental staff and the regulated community, who are accustomed to referring to the department's regulations for waste tire requirements.

Water Quality

WQ044 - Revised Dissolved Oxygen Criteria for Bayou Courtableau (LAC 33:IX.1123.C.3.Table 3) *(La. Register 8/20/02)* The numerical dissolved oxygen criteria for Water Quality Management Subsegment 060204, Bayou Courtableau, in the Vermilion-Teche Basin, is being revised. A Use Attainability Analysis of this subsegment has determined that criti-

cal periods for dissolved oxygen occur during parts of each year. While Bayou Courtableau exhibits naturally occurring seasonal variations in dissolved oxygen, no changes in designated uses are proposed. The recommended dissolved oxygen criteria changes are: 3.0 mg/L May through September, and 5.0 mg/L October through April. As part of the Louisiana Water Quality Management Plan, the State publishes a list of priority water bodies biennially under the Clean Water Act, Section 305(b). In accordance with the Clean Water Act, Section 303(d), water bodies are placed on a list of priority water bodies when assessment methodology indicates that they do not meet applicable water quality standards. After further review and assessment, some of these water bodies may be prioritized for fieldwork, Use Attainability Analyses, and Total Maximum Daily Load development. Until a Use Attainability Analysis is conducted to determine attainable uses and criteria, a Total Maximum Daily Load based upon national criteria may be inappropriate for many water bodies. Bayou Courtableau (060204) has been classified as the highest priority on Louisiana's 303(d) list. A Use Attainability Analysis has been conducted for this water body to determine the appropriate dissolved oxygen criteria. The Use Attainability Analysis presents the required information for a site-specific dissolved oxygen water quality standards revision in accordance with state and federal water quality regulations, policies, and guidance.

WQ045 - Cooling Water Intake Structures for New Facilities (LAC 33:IX.2331, 2361, 2415, and 2519 - 2528) *(La. Register 8/20/02)* Will add requirements applicable to cooling water intake structures for new facilities under the Louisiana Pollutant Discharge Elimination System (LPDES) regulations in LAC 33:IX.Chapter 23. Changes have been made to the federal regulations that are required to be adopted by authorized programs such as Louisiana's.

CASE LAW UPDATE

Dump Site Ordered Cleaned, but Penalty Trashed.
In the Matter of A.J. Schorling/Fred Casey Unauthorized Dump Site, Docket #95-145-EQ (La. Dept. of Civil Service, Division of Admin. Law, 6/17/02). E. Vaughan, ALJ. DEQ issued a compliance order to the owner of land in New Orleans, citing him with allowing the unpermitted disposal of garbage and other solid waste thereon, through the operation of a garbage dump. DEQ also assessed a civil penalty of $24, 806 against the landowner for those violations. The tribunal upheld the compliance order, but vacated and remanded the penalty, finding that DEQ failed to properly consider five of the nine factors set forth in La. R.S. 30:2025(E). The ALJ found that DEQ's explanation of its consideration of the "nature and gravity of the violation" was deficient because it lacked "case specific facts." He found that DEQ failed to consider the gross revenues of the respondent, stating only that the respondent had not submitted any information to DEQ, but DEQ did not offer any evidence on its efforts to obtain that information. DEQ also did not accurately assess the monetary benefits of noncompliance, the ALJ concluded, because it (a) did not quantify any avoided costs, and (b) incorrectly calculated the rent paid to the respondent by the operator of the dump. DEQ's consideration of the risk to human health or property was flawed because its explanation was "generic and apparently boilerplate," with "no connection at all to this site," the judge stated. Lastly, the ALJ found that DEQ failed to quantify the damages caused by the violations, before concluding that the respondent failed to mitigate those damages, and failed to consider certain evidence that was relevant to that factor.

DEQ's penalty assessment was vacated and remanded for reassessment by DEQ, and the ALJ ordered DEQ to submit its reassessment with written reasons within six weeks.

One Man's Treasure is Still Trash, ALJ Holds *In the Matter of Terry Lee/Josie Parnell Unauthorized Dump*, Docket # 2002-0738-EQ (La. Dept. of Civil Service, Division of Admin. Law, 6/23/02). E. Vaughan, ALJ. Respondent landowner stipulated to using his property to store old batteries, tanks, tires, scrap metal, white goods, barrels, a bus, and over 20 old cars. He claimed that he occasionally salvages auto parts and other items for various uses, and argued that the materials were therefore not solid waste. DEQ disagreed, and issued a compliance order, citing violations of LAC 33:VII.315 A & E. The ALJ found that the materials were waste, and Respondent's salvage activities did not render them otherwise. He pointed out that La. R.S. 30:2153(5) defines "solid waste disposal facility" to include land used for storing and salvaging solid waste, and that respondent lacked the required permit. The compliance order was upheld.

CWA §316(b): Cooling Water Intake Structures

Why Louisiana's Industrial Facilities May Soon Be Investing in Fish Hatcheries, Estuaries and Wetlands

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Abstract:

Historically, EPA's NPDES permitting system has been used to control the effluent discharged from an industrial site. However, EPA's recently promulgated CWA §316(b) regulation (Fed. Reg., Dec. 18, 2001) and two other related regs to be issued in the near-term future will use the NPDES permitting process to control the withdrawal of water at industrial facilities in the US.

Section 316(b) requires that the location, design, construction and capacity of cooling water intake structures (CWIS) reflect the best technology available (BTA) for minimizing *adverse environmental impact*. More than 48,500 industrial facilities use large volumes of cooling water from lakes, rivers, estuaries or oceans to cool their plants, including steam electric power plants, pulp and paper makers, chemical manufacturers, petroleum refiners, and manufacturers of primary metals like iron and steel and aluminum. Collectively, industrial facilities in the US withdraw more than 279 billion gallons of cooling water a day from waters of the US.

Why is EPA issuing regulations to control the withdrawal of water from a waterbody? Cooling water intake structures cause adverse environmental impact by pulling large numbers of fish and shellfish or their eggs into a power plant's or factory's cooling system (*entrainment*). There, the organisms may be killed or injured by heat, physical stress, or by chemicals used to clean the cooling system. Larger organisms may be killed or injured when they are trapped against screens at the front of an intake structure (*impingement*). These new rules establish requirements that will help preserve aquatic organisms and the ecosystems they inhabit.

Is this a serious problem? Perhaps. EPA cites dozens of studies in the preamble to their December 18, 2001 regulation. A typical example is their study of water intake at the Coleman Power Plant on the Ohio River in Henderson, Kentucky. Studies[1] indicate this power plant has combined average impingement and entrainment losses of 702,630,800 fish per year. Many other studies cite similarly large losses of aquatic species including those on a threatened or endangered list. (Facilities located on waterbodies inhabited by endangered species should be especially wary of this regulation).

This paper will:

1) Review EPA's mandates in the newly promulgated CWA §316(b) regulations regarding the water intake structures for industrial facilities,
2) Discuss the applicability of this new rule to local Louisiana facilities, and
3) Discuss the probable impact of the rule on Louisiana facilities

Introduction and Background

CWA §316(b) requires that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

The federal Water Pollution Control Act, also known as the Clean Water Act (CWA)[2] seeks to "restore and maintain the chemical, physical, and biological integrity of the nation's waters[3]." Historically, most of the attention has been paid to industrial discharges from the facilities to the receiving water bodies, via NPDES discharge permits, and little attention was paid to withdrawals of water from those same waterbodies. Conditions implementing §316(b) will be included in NPDES permits and will continue to be included in NPDES permits under the next two §316(b) rules being promulgated and proposed by USEPA.

First 316(b) Regulation Issued in 1977

In April 1976, EPA published a rule under §316(b) that addressed cooling water intake structures[4]. In 1977, fifty-eight electric utility companies challenged these regulations, arguing that EPA had failed to comply with the requirements of the Administrative Procedure Act (APA) in promulgating the rule. The United States Court of Appeals for the Fourth Circuit agreed and, without reaching the merits of the regulations themselves, remanded the rule. Since the Fourth Circuit remanded EPA's §316(b) regulations in 1977, NPDES permit authorities have made decisions implementing §316(b) on a case-by-case, site-specific basis. In 1977, EPA published draft guidance[5] addressing §316(b) implementation but never re-issued a new version of the 1977 proposed §316(b) regulations.

Riverkeeper Inc. et al. v. Whitman

Since 1977, CWA §316(b) has been implemented on a case-by-case basis under the NPDES permitting umbrella. However, a coalition of individuals and environmental groups sued EPA in 1993 in the United States District Court, Southern District of New York (*Riverkeeper Inc. et al. v. Whitman*, No. 93 Civ 0314 (AGS)) asking the court to force EPA to again develop implementing regulations. A consent decree was entered into by the parties on October 10, 1995, which provided that EPA propose regulations implementing §316(b) by July 2, 1999, and take final action with respect to those regulations by August 13, 2001. Since 1995, there have been at least half a dozen changes to the promulgation schedule with the most recent coming within the last month (October 2002) when some of the final issuance dates were extended to 2006.

In the consent decree, EPA agreed to promulgate the §316(b) regulations in three phases:

- **Phase 1**—new ("Greenfield") facilities including P&P, chem, refining, iron/steel, and manufacturing industries etc., that employ a cooling water intake structure
- **Phase 2**— large existing utility and nonutility power producers (≥ 50 MGD)
- **Phase 3**— small existing utility and nonutility power producers and existing manufacturers (≥ 2 MGD)

Applicability

The §316(b) rule will apply to approximately 48,500 facilities in the US according to the EPA. More specifically, the rule applies to the following types of facilities[6], as a minimum:

- Petroleum & Coal Products
- Chemical & Allied Products
- Utilities – Steam Electric
- Non-Utility Steam Electric
- Primary Metal Industries
- Paper & Allied Products

According to EPA, these six categories account for 99% of the cooling water withdrawals in the US.

The regs will apply to the above types of facilities if they meet all criteria below

- Employs a cooling water intake structure that with draws cooling water from a water of the US
- Has or requires an NPDES permit
- Has a design intake flow of 2 MGD or more, and
- Uses at least 25% of water withdrawn for cooling purposes.

The rules will not apply to facilities that do not meet all four of the above criteria.

CWA §316(b) Promulgation Schedule

Last December 18th, EPA promulgated the first of three regulations (Phase 1 of 3) that will regulate the withdrawal of water from waterbodies in the US. The last of the three regulations will not be finalized until mid-2006. These three regulations will, collectively, implement §316(b) of the CWA for industrial facilities that use water withdrawn from rivers, streams, lakes, reservoirs, estuaries, oceans or other waters of the US for cooling purposes.

Last December's Phase 1 regulation is only applicable to new "Greenfields" facilities that withdraw more than 2 million gallons per day from a water of the US. The next rule, Phase 2, applicable to large electric power plants that withdraw more than 50 MGD from a water of the US, was proposed earlier this year on February 28, 2002.

The Phase III rule, applicable to most of the petrochemical, pulp & paper, and refineries in Louisiana, was supposed to be proposed by June 2003, but all the litigants to the consent decree have recently agreed to a postponement of that deadline until November 1, 2004, an 18-month extension. Similarly, the previously proposed date for final promulgation of the Phase III rule was extended from December 15, 2004 until June 1, 2006.

Upon final action by the EPA on the Phase III rules, state agencies (LDEQ, in this case) will have up to one year to adopt the rules. (A one year extension will be given by EPA in "hardship" cases.) However, EPA experts warn that facilities should expect to see §316(b) permit requirements appearing in their NPDES/LPDES permits within 6 months of final promulgation by the EPA. Thus, any facility expecting to receive their NPDES/LPDES permit renewal in late 2006, and anytime after 2007 should expect to see new permit conditions addressing the §316(b) regulations.

While Phase III facilities (most of the refining, chemical and paper plants in Louisiana), will not have to comply with the rule until 2006-07, there are activities that should be considered prior to receipt of a permit. For example, if a facility plans to comply with the less-expensive Track II pathway (discussed later), the facility will likely need to collect several years of "fish data" spanning multiple spawning seasons.

So What Does The 316(b) Rule Require?

The final rule from December 2001 and the two rules following will establish national technology-based performance requirements applicable to the location, design, construction, and capacity of cooling water intake structures at industrial facilities. The national requirements will establish the best technology available (BTA), based on a two-track approach, for minimizing adverse environmental impact associated with the use of these structures.

Based on size, Track I establishes national intake capacity and velocity requirements as well as location- and capacity-based requirements to reduce intake flow below certain proportions of certain waterbodies (referred to as "proportional-flow requirements"). It also requires the facility to select and implement design and construction technologies under certain conditions to minimize impingement mortality and entrainment.

Track II allows facilities to conduct site-specific studies to demonstrate that alternatives to the Track I requirements will reduce impingement mortality and entrainment for all life stages of fish and shellfish to a level of reduction comparable to the level the facility would achieve at the cooling water intake structure if it met the Track I requirements.

Phase III Facilities Will Likely Have Three Basic Options…

Essentially, the typical facility is faced with three options:

1) Modify the cooling water intake structure to meet the performance specification (to be discussed later), or
2) Conduct restorative operations (fish hatchery, constructed wetlands, etc.) to offset the deleterious effect of the cooling water structure, or
3) Do nothing if the cooling water intake structure already meets the performance specifications.

For those facilities that must modify their cooling water intake structure, the USEPA has offered a two-track approach in the Phase I and Phase II rules. It is expected that a similar two track approach will be offered in Phase III:

- ***Track I ("Fast Track")*** – Specifies minimum uniform requirements. This pathway allows the facility's project to progress faster but will likely be much more expensive since the facility will have to design the cooling water intake structure to minimum standards that may be overly protective of the affected waterbody.

- ***Track II (Slower "Demonstration" Track)*** - Requirements based on site-specific studies. This pathway is likely less expensive but the lengthy "fish" studies can require multiple years of background biological data! Don't wait to get started.

Track I Requirements

The Track I "Fast Track" Standards are designed to be "highly protective":

- Reduce water intake to be equivalent to closed-cycle cooling system

  Typically this specification will result in an 80-90% reduction in water withdrawal rates from the affected waterbody. The reduction in withdrawal rates will result in a corresponding reduction in entrainment levels.

  Installation of wet or dry cooling towers will generally be required to meet this spec.

- < 0.5 fps intake velocity

  Fish studies have shown that reducing the velocity across the intake screen to 0.5 fps allows most fish to escape from being impinged on the screen.

Typically, this specification equates to a 25-95% reduction in the velocity of the intake water across the screen. This specification will generally result in an eight to twenty-fold enlargement of the intake screens.

- Meet proportional flow requirements for waterbody type (river, lake, estuary, coastal, ocean, etc.)

  For fresh water rivers or streams, intake flow must be less than or equal to 5% of the mean annual flow.

  For lakes or reservoirs, intake flow may not disrupt natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency (ies).

  For estuaries or tidal rivers, intake flow must be less than or equal to 1% of the tidal excursion volume.

  For oceans, there are no proportional flow requirements.

- Design/construct to meet impingement/entrainment (I/E) performance standards

  I/E performance specifications for streams and rivers are presented below. The reader is advised to consult the rule for most other waterbody types.

While the Track I pathway to compliance is the fastest way to comply, it is also the most expensive due to the more restrictive design standards.

Track II Requirements

Facilities that choose Track II "Demonstration" Standards must comply with the following:

- Demonstrate that the technologies employed in the approach will reduce adverse environmental impact to a level comparable to that which would be achieved using Track I designs

- Restorative measures (fish hatcheries, wetlands construction, etc.) can be used to achieve net environmental impact

- Design and construct CWIS to meet proportional flow standards based on waterbody type. The proportional flow requirements were discussed above under the Track I Requirements.

A third alternative is also a possibility: demonstrate that the facility meets compliance cost criteria and get a site-specific determination of Best Technology Available (BTA) for minimizing adverse environmental impact.

Impingement/Entrainment Performance Standards

For freshwater rivers and streams where the intake flow of the cooling water intake structure is less than 5% of the annual mean flow of the waterbody, impingement must be reduced by 80 - 95%. There is no requirement to reduce entrainment.

For freshwater rivers and streams where the intake flow of the cooling water intake structure is greater than 5% of the annual mean flow of the waterbody, impingement must be reduced by 80 - 95% and entrainment must be reduced by 60 - 90%.

In addition to streams and rivers, EPA has suggested I/E performance standards for the following other waterbody types::

- Lakes or reservoirs
- Great Lakes
- Tidal rivers and estuaries
- Oceans

Summary and Conclusions

EPA's §316(b) program needs to be on the RADAR scope of every environmental professional in Louisiana. This rule has already had a profound impact on the electric generating industry and it will have an equally profound impact upon the rest on industry within Louisiana in the coming years. This rule will be here before we know it and it will likely require the partial to complete re-design and replacement of 90% of the cooling water intake structures in Louisiana.

Thanks to a very recent, but as yet unpublished agreement between all parties to the *Riverkeeper v. Whitman* consent decree, almost every Louisiana facility will be given a 2-year reprieve from 316(b) since the final reg was moved from about 2 years away to 4 years away!

But don't wait till the ink is dry on the regulation to begin preparation. There are multiple paths to compliance and every path has a greater or lesser cost of compliance. EPA is building less expensive compliance alternatives into the rules but these cheaper options will require years of planning and data gathering. The reader is advised to study the rule, consider auditing affected cooling water structures for compliance and positioning facilities for the least expensive approach.

[1] Hicks, D.B. 1977. Statement of findings for the Coleman Power Plant, Henderson, Kentucky
[2] **33 U.S.C. 1251 et seq.**
[3] **33 U.S.C. 1251(a).**
[4] **41 FR 17387 (April 26, 1976), proposed at 38 FR 34410 (December 13, 1973)**
[5] Draft Guidance for Evaluating the Adverse Impact of Cooling Water Intake Structures on the Aquatic Environment: §316(b) P.L. 92-500 (U.S. EPA, 1977).
[6] Note: These rules do not apply to offshore and coastal subcategories of the oil and gas extraction point source category (may be considered under Phase III rule).

Legislative Update
by Tyler McCloud

2002 1st Extraordinary Session

Act 93 (HB 99 by Damico)

This Act authorizes the use of monies from the Hazardous Waste Site Cleanup Fund for costs associated with cleanups of non-hazardous waste sites and removes the restriction that expenditures shall not exceed 35% of the fund balance. It provides for greater flexibility in prioritizing cleanups in relation to a site's danger to the public rather than whether the site fit into the hazardous category in RCRA. This bill will allow the department to use the fund to cleanup petroleum spills, medical waste sites, and PCB sites. The removal of the expenditure cap will allow the department to spend the full $6 million annually. Previously, any amount over 35% was deposited at the end of the fiscal year into the Environmental Trust Fund.

Act 101 (HB 143 by Damico)

This act sought to reduce the fraudulent taking of funds from the highly successful Waste Tire Program. The primary target of this legislation is the large number of tires coming into the state and being passed off as waste tires generated in Louisiana. The influx of out-of-state tires became a problem after the failure of the waste tire program in Texas. The law defines fraudulent taking, program eligible waste tires, and waste tire generation. Fraudulent taking is prohibited and provides for penalties identical to those found in the theft statute in Title 14.

Act 14 (SB 10 by Hoyt, duplicate of HB 131 by Thompson)

This legislation establishes a Right-to-Know law for medical waste similar to that for hazardous waste found in Title 30. The Act requires landowners, lessees, or occupants who store infectious medical waste or those who have been identified as doing so by the Department of Health and Hospitals to file a notice in the conveyance records. Once such notice is filed the clerk of court is required to notify local law enforcement and emergency agencies. The law exempts hospitals, medical education programs, small health facilities, and residences. The law also provides for removal of the notice and penalties for failure to file the notice.

Act 134 (HB 97 by Damico)

This law authorizes the Department of Environmental Quality to increase fees paid for all permits, licenses, registrations, or variances over a two-year period. Beginning July 1, 2002, existing fees may be increased up to 20% in the first fiscal year and an additional 10% in the following fiscal year. The law also authorizes a two-year increase in fees paid by commercial laboratories and a one-time increase in the annual registration of underground storage tanks. This legislation is expected to raise approximately $7.2 million the first year and an addition $4 million the second year. The increase in revenue to the department generated from the fee increase was accompanied by a one-time boost from the state general fund of $7.5 million.

In conjunction with the passage of Act 134, Gov. Foster issued Executive Order MJF 2002-012 creating the Advisory Task Force on Funding and Efficiency of the Louisiana Department of Environmental Quality. On December 31, 2002 the task force submitted a draft report of recommendations. The recommendations are categorized into the two areas the task force was charged with examining, funding and efficiency. Some of the recommendations to improve the funding structure of the department include: increase in the amount the department receives from the state general fund on a annual basis; assure the department collects fees for all services rendered; equitably adjust the fees paid for name and ownership changes; and reduce dependency on fees based on emissions. The recommendations to improve efficiency include: altering the department's requirement to conduct annual inspections on facilities; authorize field investigators to issue citations; and improve the Beneficial Environmental Project (BEP) process, permitting, and access to information.

Public comments and suggestions are requested during the finalization of the recommendations, which are to be completed by March 1, 2003. The final recommendations may be implemented through the rule making process or find their way into the 2003 Regular Legislative Session.

2002 Regular Legislative Session

SCR No. 14 (Gautreaux)
Commission to Study Global Climate Change
Creates a study commission to evaluate and recommend changes to state policies to mitigate the impacts of global climate changes. The study request is in response to President George W. Bush's February 14, 2002 announcement urging response to the challenges of global climate change. The President's plan touches on a wide range of policies, such as, tax incentives for renewable energy, congeneration and new technology, business challenges to reduce emissions and improve their greenhouse gas intensity, promotion of fuel-efficient motor vehicles and trucks and cleaner fuels and enhancing the natural storage of carbons. The resolution notes Louisiana's unique environmental and economic vulnerabilities to global change, due to sea-level rise, drought and heat waves. The resolution creates a 25-person commission reflecting government interests, academia, non-profit environmental and resource groups and industry representatives. The commission is tasked with a number of specific assignments, which must be completed and reported on no later than January 15, 2003.

Act No.69, (HB 197 by Swilling)
Levy of Taxes on Trash and Other Material Dumped in Violation of Law or Ordinance
Enacts R.S. 33:2746.36
Provides for the governing body of a business and industrial district located in a municipality with a population greater than four hundred fifty thousand person, may levy and collect a tax on trash dumped in the business and industrial district in violation of any ordinance or law prohibiting the dumping of trash. The definition of trash provides that, " items inadvertently lost from duly licensed commercial vehicles engaged in

the collecting and hauling of solid waste, when such vehicles are in the course of servicing scheduled pick-up routes...or are en route to an authorized pick-up station, transfer station or disposal facility," are not included in the definition of trash. The tax rate to be paid by the trash dumper will be established by ordinance and shall not exceed ten dollars per dry-weight pound of dumped material. Written notice and a date due for the tax to be imposed will be mailed to the trash dumper. Failure to pay or remit the tax will result in the addition of interest at the rate of one and one-half percent per month. All taxes and interest collected will be paid over to the treasurer or other appropriate financial officer of the business and industrial district and credited to the district's general fund. The illegally dumped trash will be collected and properly disposed of by the business and industrial district upon the determination of the taxes due. Anyone who has such a tax levied against them has the right to a hearing by filing an appeal with the governing body. A formal hearing may be sought with the appropriate state district court within 30 days after a decision is rendered by the governing body. The taxes and any interest or penalties must be paid in full under protest in order to exercise this right. These monies shall remain sequestered and invested by the district.

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