

# Rules

## RULE

### Department of Economic Development Economic Development Corporation

#### Small Business Linked Deposit Loan Program (LAC 19:VII.Chapter 73)

The Department of Economic Development, Economic Development Corporation, hereby adopts the following rule in accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and in accordance with R.S. 51:2312.

#### Title 19

#### CORPORATIONS AND BUSINESS

#### Part VII. Economic Development Corporation

#### Subpart 7. Louisiana Small Business Linked Deposit Loan Program

#### Chapter 73. Procedures for Authorization and Administration

#### §7301. Definitions

*'But For' Statement*—a signed statement from the lending institution that 'but for' the additional cash flow from the Linked Deposit the lender would not have made this loan.

*Certified Disadvantaged Business*—any business which has received certification from the Division of Economically Disadvantage Business Enterprises.

*Corporation*—the Louisiana Economic Development Corporation of the Department of Economic Development.

*Eligible Lending Institution*—any bank located in this state and organized under the laws of this state and any national bank which is authorized to make commercial loans and which agrees to participate in the Linked Deposit program as defined herein.

*Eligible Small Business*—any business, that has all of the following characteristics:

1. is headquartered in this state;
2. maintains offices and operating facilities in this state and transacts business in this state;
3. employs fewer than 150 employees, the majority of whom are residents of this state;
4. is organized for profit;
5. is not a federally chartered or state chartered bank or savings and loan institution;
6. is not engaged in real estate purchasing, holding, renting, or leasing;
7. is not a professional business of doctors, dentists, chiropractors, certified public accountants, or attorneys.

*High Unemployment Area*—as defined by the third quartile of unemployment in the state by the latest semi-annual statistics from the Louisiana Department of Labor.

*Linked Deposit*—a certificate of deposit placed by the Treasurer (as defined herein) with an eligible lending institution at a percentage below existing investment rates, as determined and calculated by the Treasurer, provided the institution agrees to provide a loan to an eligible small

business at an equal percentage below the existing borrowing rate applicable to each specific business at the time of the deposit of state funds in the lending institution.

*Low Employment Area*—as defined to be in the lower two quartiles of the state by the latest semi-annual statistics from the Louisiana Department of Labor.

*Substantial Stockholders*—any person who owns more than 20 percent of a business applying for or currently participating in the *Link Deposit Loan Program* as outlined in LAC 19.VII.Subpart 7.Chapter 73.

*Treasurer*—the Treasurer of the State of Louisiana.

*Very High Unemployment Area*—as defined to be in the upper quartile of unemployment in the state by the latest semi-annual statistics from the Louisiana Department of Labor.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:412 (March 1999).

#### §7303. General Provisions

A. Priority for application approval and funding shall be given as follows.

1. An eligible Louisiana business located in a very high unemployment area which creates one or more jobs shall receive a maximum of a 4 percent interest rate buy down.

2. An eligible Louisiana business located in a high unemployment area which creates three or more jobs shall receive a 3 percent interest rate buy down.

3. An eligible Louisiana business, in a low unemployment area that creates four or more jobs shall receive a maximum of a 3 percent interest rate buy down.

4. An eligible Louisiana business in a low unemployment area creating a minimum of one to three jobs shall receive a maximum of a 1 percent interest rate buy down.

B. At no time shall the total amount of the dollars in the linked deposits in low unemployment areas exceed 33 percent of the total available for linked deposits, unless otherwise specified by the Treasurer.

C. Applications which provide a 'but for' statement shall be eligible for a 5 year term on the linked deposit. All others applications are eligible for 2 year terms only.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:412 (March 1999).

#### §7305. Linked Deposit Loan Program Authorization Lending Institution Requirements; Applicants Requirements and Conditions for Approval

A. The Treasurer may invest in Linked Deposits, as provided and defined by LA R.S. 51:2312 and also defined herein, provided that at the time of placement of any Linked Deposit, the total amount of such investments at any one time shall not exceed, in the aggregate, \$30,000,000. When deciding whether to invest in Linked Deposits, the Treasurer

shall give priority to the investment, liquidity, and cash flow needs of the state and a determination of the financial soundness of the eligible lending institution.

B. An eligible lending institution that desires to receive a Linked Deposit shall accept and review applications for loans from eligible small business. The eligible lending institution shall apply all usual lending standards to determine the creditworthiness of each eligible small business with the exception of a business the lending institution determines is eligible as a 'but for' application. The eligible lending institution shall not charge, levy or collect any loan application fee, processing fee, or other charges other than its normal loan application fee, processing fee, or other charges when handling a Link Deposit application.

C.1. Only one loan through the Linked Deposit program shall be made and shall be outstanding at any one time to any eligible small business, owner, or borrower.

2. The maximum amount of a Linked Deposit which may be made to any eligible small business at any one time shall be \$200,000.

3. No loan shall be made to any officer or director of the lending institution making the loan.

4. No loan shall be made for the sole purpose of refinancing previous debt held either by the lending institution or another lending institution. The maximum debt refinance allowed is 25 percent of the total loan amount for any eligible small business.

5. There shall be at least a one year moratorium from the time one Linked Deposit matures to time of application for any new Linked Deposit for any eligible small business.

6. The net jobs created by the linked deposit must be maintained by the business for a period of not less than the period of the linked deposit or the treasurer may, in his sole discretion, declare the deposit and interest earned thereon, or any part thereof, to become immediately due and payable, not withstanding any agreement or contract to the contrary.

D. An eligible small business shall certify on its loan application that the reduced rate loan will be used exclusively to create new jobs or preserve existing jobs and employment opportunities in the state. Job titles of all existing employees as well as job titles of new jobs to be created shall be forwarded with each application and reapplication. Whoever, knowingly files a false statement concerning such application shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in LA R.S. 14:133.

E. In considering which eligible small business to include in the Linked Deposit loan package for reduced rate loans, the eligible lending institution shall give priority to the economic needs of the area of the state in which the business is located, the number of jobs to be created in the state by the receipt of such loans, and such other factors as the eligible lending institution considers appropriate to determine the relative financial need of the eligible small business.

F. The eligible lending institution applying for a 5 year linked deposit shall forward to the Corporation a complete loan package as prepared for and presented to the institutions loan

committee which includes a statement 'but for the additional cash flow from this linked deposit, this loan will not be made under these terms and conditions'.

G.1. The eligible lending institution shall forward to the Corporation and the Treasurer for review, a Linked Deposit loan package in the form and manner prescribed by the Corporation. The package shall include such information as required by the Corporation including:

- a. the amount of the loan requested;
  - b. the number of jobs to be created in the state by each eligible small business;
  - c. the ratio of state funds requested to jobs created;
- and
- d. any reports, statements, or plans applicable to the business, the overall financial need of the business, and such other factors as the Corporation considers appropriate.

2. The eligible financial institution shall certify that each applicant is an eligible small business as defined herein and shall, for each eligible small business, certify the present borrowing rate applicable to each specific eligible small business. Within 45 days after receipt, the Corporation shall provide written recommendations to the Treasurer on each Linked Deposit loan package received from eligible financial institutions.

H.1. The Treasurer may accept or reject a Linked Deposit loan package or any portion thereof, based on:

- a. the Treasurer's review of the recommendations of the Corporation;
- b. the availability and amount of state funds to be deposited; and
- c. a determination of the financial soundness of the financial institution in which the deposit is to be made.

2. The Treasurer shall notify the Corporation and the eligible lending institution of acceptance or rejection of a Linked Deposit loan package within 15 days of receipt by the Treasurer of the recommendations of the Corporation.

I. Upon acceptance of the Linked Deposit loan package or any portion thereof, the Treasurer may place certificates of deposit with the eligible lending institution at a percentage below the current investment rates, as determined and calculated by the Treasurer.

J. The eligible lending institution shall enter into a deposit agreement with the Treasurer, which shall include the requirements necessary to carry out the purposes of LAC 19:VII.Chapter 73. The requirements shall reflect the market conditions prevailing in the eligible lending institution's lending area. The agreement shall specify the period of time in which the lending institution is to lend funds upon the placement of a Linked Deposit, and shall include provisions for the certificates of deposit to mature within a period not to exceed one year. The Treasurer may renew a certificate of deposit in one-year increments, but in no event shall the total period of time that a certificate of deposit is placed with any lending institution exceed five consecutive years. Interest shall be paid at the times determined by the Treasurer. However, upon placement of a Linked Deposit, the Treasurer will give priority to renewal of existing Linked Deposits prior to placement of new linked deposits. Prior to renewal of Linked Deposits, the Treasurer shall continue to give priority

to the investment, liquidity cash flow needs of the state and a determination of the financial soundness of the eligible lending institution.

K. The period of time for which each certificate of deposit is placed with an eligible lending institution shall be neither longer nor shorter than the period of time for which the Linked Deposit shall be used to provide loans at reduced interest rates. The agreement shall further provide that the state shall receive investment interest rates on any certificate of deposit or any portion thereof for any period of time for which there shall be no corresponding Linked Deposit loan outstanding to an eligible small business.

L. Upon placement of a Linked Deposit with an eligible lending institution, the institution shall lend such funds to the approved eligible small business listed in the Linked Deposit loan package. Each loan shall be at a fixed or variable rate of interest for a period of one year which shall be a percentage below the current borrowing rate applicable to each eligible small business. All records and documents pertaining to the linked deposit program shall be segregated by each lending institution for ease of identification and examination. A certification of compliance with §7305 in the form and manner prescribed by the Treasurer shall be completed by the lending institution and filed with the Treasurer and the Corporation.

M. If it is discovered that there is a Linked Deposit made for any purpose not authorized, the certificate may be matured and/or rewritten, if appropriate, without penalty to the State Treasurer. If this situation occurs, the eligible lending institution will pay the State Treasury the same terms and interest rate as if the deposit were placed without benefit of a Linked Deposit. If the eligible lending institution fails to pledge securities to the Treasurer or if such securities shall be unsatisfactory to secure the Deposit, in his sole discretion, the Treasurer may declare the Deposit and interest earned thereon, or any part thereof, to become immediately due and payable, notwithstanding any agreement or contract to the contrary.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:414 (March 1999).

### **§7307. Liability**

Neither the State, the Corporation, nor the Treasurer shall be liable to any lending institution in any manner for payment of the principal or interest on any loan to an eligible small business under §730. Any delay in payments or default on the part of a small business shall not in any manner affect the deposit agreement between the eligible lending institution and the Treasurer.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:414 (March 1999).

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Executive Director

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## **RULE**

### **Department of Economic Development Office of the Secretary**

#### **Substance Abuse and Drug-Free Workplace Program (LAC 13:V.Chapter 1)**

The Department of Economic Development, Office of the Secretary adopts the following rule in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with Executive Order MJF 98-38 and R.S. 49:1015 et seq.

#### **Title 13**

#### **ECONOMIC DEVELOPMENT**

#### **Part V. Office of the Secretary**

#### **Chapter 1. Substance Abuse and Drug-Free Workplace Program**

#### **§101. Philosophy**

A. The Department of Economic Development is totally committed to deterring substance abuse or use which imperils the health and well-being of our employees and the citizens of this State. To accomplish this, DED hereby adopts these Substance Abuse and Drug-Free Workplace Rules which will enhance the safety and welfare of our employees, increase overall productivity and the quality of our service to the public, preserve property and equipment, promote public safety, reduce absenteeism and job-related accidents which, in turn, will improve the image and reputation of our Department and employees.

B. DED's philosophy is consistent with the State of Louisiana's long-standing commitment to establishing a drug-free workplace. To deter the use of illegal drugs by employees of the State of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of drug testing programs for State employees. Further, the Governor of the State of Louisiana issued Executive Order MJF 98-38 providing for the promulgation, by executive agencies, of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees in accordance with Louisiana Revised Statute 49:1001, et seq. This Department fully supports these actions and is committed to a drug-free workplace.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:414 (March 1999).

#### **§103. Applicability**

A. These Rules apply to all employees and appointees of this Department, as well as potential employees, potential appointees (excluding appointed members of boards and commissions and individuals providing service to this Department through a contract with a third party employer, i.e., temporary agency employees), and all other persons having an employment relationship with the Department, whether classified, unclassified, student employees, student interns, full-time, part-time or temporary (hereinafter "employee(s)" unless otherwise noted).

B. These Rules do not apply to the Louisiana Racing Commission which will amend its current Rules to include the provisions set forth in Executive Order 98-38.

C. Following a job offer, potential employees and potential appointees will be required to submit to pre-employment drug testing. All employees are subject to post-accident/incident, reasonable suspicion and return-to-duty/rehabilitation monitoring drug and alcohol testing. Employees who occupy safety-sensitive positions and applicants who apply for safety-sensitive positions are subject to both random and pre-selection drug and alcohol testing. Finally, prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position, an employee is required to undergo drug and alcohol testing. A list of the safety-sensitive positions within this Department is attached as Appendix A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:415 (March 1999).

### §105. Requirements

A. To maintain a safe and productive work environment, all DED employees are required to:

1. report for duty in the physical and emotional condition which maximizes his/her ability to perform assigned tasks in a competent and safe manner;
2. promptly and cooperatively submit to drug/alcohol testing when required by a supervisor or appointing authority;
3. notify a supervisor on the first scheduled workday following any arrest or conviction for DWI, drug or drug-related offense which occurs on or off duty.

B. DED prohibits the use, abuse and presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in the bodies of its employees while on duty, scheduled on-call or engaged in DED business, on or off DED/State premises. The presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in a State vehicle while on or off duty is also prohibited.

1. The presence of alcohol is indicated by a confirmed blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.

2a. Illegal or unauthorized drugs include:

- i. any drug which is not legally obtainable;
- ii. any drug which is legally obtainable, but has been illegally obtained;
- iii. prescription drugs not being used in accordance with the prescription;
- iv. or any substance which affects the employee's ability to safely and competently perform assigned duties.

b. Controlled dangerous substances are listed in Schedule I, II, III, IV and V of La. R.S. 40:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:415 (March 1999).

### §107. Drug/Alcohol Testing

A. All employees may be required to submit to drug and/or alcohol testing as a condition of employment, as a condition of continued employment, or as a condition of promotion, demotion, reassignment or detail to a safety-sensitive position. Whether announced or unannounced, tests will be administered under the following circumstances.

1. Pre-Employment. Drug tests are required of all prospective employees and appointees of this Department. Each prospective employee/appointee shall be required to submit to drug screening at the designated time and place following a job offer. Pursuant to La. R.S. 49:1008, a prospective employee/appointee testing positive for the presence of a prohibited substance shall be eliminated from consideration for employment. Additionally, applicants for safety-sensitive positions listed in §121 shall be required to submit to alcohol testing. Applicants who test positive for the presence of alcohol shall be eliminated from consideration for employment.

2. Post-Accident/Incident. An employee may be subject to drug testing following an on-duty accident where there is reasonable suspicion that the employee was under the influence of drugs or alcohol. *Reasonable suspicion* is a belief, based upon reliable, objective and articulable facts derived from direct observation of specific physical and behavioral characteristics (behavior, speech, appearance, odor), which causes a prudent person to suspect that an employee has engaged in drug or alcohol use. Only an appointing authority shall require an employee to submit to post-accident/incident testing. Generally, this decision will be based upon the recommendation of supervisory personnel at the scene who have objectively and thoroughly reviewed the circumstances of the accident/incident. The supervisor will fully document the facts upon which the recommendation for testing is made. Any employee directly involved in an on-duty accident shall be required to submit to drug and alcohol testing if:

- a. the accident involves circumstances giving rise to a reasonable suspicion that the accident may have involved the employee's drug or alcohol use and the employee's action or inaction may have been a causative factor;
- b. the accident meets the criteria of paragraph (a) and results in or causes the release of hazardous waste as defined by La. R.S. 30:2173(2) or hazardous materials as defined by La. R.S. 32:1502(5); or
- c. the accident results in a fatality or serious bodily injury.

Note: When post-accident/incident testing is ordered, a Departmental representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

3. Random. Random alcohol and drug testing is required of all employees holding safety-sensitive positions as listed in §121. Such testing shall be periodic and unannounced, and employee selection therefor shall be by a computer-generated random selection process. All such

testing shall, unless impracticable, occur during the employee's normal work hours.

4. Promotion/Reassignment/etc. to Safety-Sensitive Position. Current employees are required to undergo drug and alcohol testing prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position as defined in §121. An offer of promotion, reassignment, detail or demotion will be withdrawn if a positive drug or alcohol test result is reported, and employees are further subject to disciplinary action as specified in these Rules.

5. Reasonable Suspicion. An employee shall be required to submit to drug and alcohol testing when he/she exhibits behavior or appearance that is characteristic of drug or alcohol use. The decision to test will be by a appointing authority based upon reliable, objective and articulable facts derived from direct observation of the employee's physical appearance, behavior, speech, body odor or physical manifestations. The observation must be made by supervisory personnel (two, if possible) who shall record, in writing, the observations leading to the recommendation for testing.

Note: When reasonable suspicion testing is ordered, a Departmental representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

6. Return-to-Duty/Rehabilitation Monitoring. Any employee who retains his/her job following a violation of these Rules shall be required, at his/her own expense, to undergo and complete any and all treatment recommended by a certified substance abuse professional. Any such employee shall be subject to periodic drug/alcohol testing. Further, any employee who voluntarily or, as a condition of continued employment, participates in an alcohol/substance abuse rehabilitation program, shall be subject to random drug/alcohol testing for a minimum of one year or longer as determined by the treating substance abuse professional. Any such employee shall be required to certify, in writing, his/her understanding and acceptance of such a rehabilitation agreement as a condition of returning to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:415 (March 1999).

### **§109. Drug Testing Procedures**

A. Drug testing pursuant to these Rules shall be for the presence of marijuana, opiates, cocaine, amphetamine/methamphetamine and phencyclidine (PCP) in accordance with La. R.S. 49:1001, et seq. Testing shall be performed by a contractor chosen by the Office of State Purchasing, Division of Administration. At a minimum, the testing procedure shall assure:

1. that all specimens for drug testing are collected, stored, transported and tested in compliance with United States Department of Health and Human Services (DHHS) guidelines (and applicable federal and state regulations) to ensure integrity of the testing process;

2. urine specimens will be collected with emphasis upon the privacy rights of the employee. Direct observation of the

employee during collection of the urine specimen will be allowed only under the following conditions:

a. when there is specific, articulable reason to believe that the individual may alter or substitute the specimen;

b. when the individual has provided a urine specimen which falls outside the acceptable temperature range;

c. when the last urine specimen provided by the individual was verified by the Medical Review Officer as adulterated; or

d. when collection site personnel observe conduct or behavior indicating an attempt to substitute/adulterate the sample or otherwise alter the integrity of the collection process;

Note: In all instances in which direct observation is deemed appropriate, the designated DED representative shall review and concur, in advance, with any decision by collection site personnel to obtain a specimen under direct observation. This representative shall maintain, in a confidential record, the full name of the reporting collection site personnel and the specific facts relied upon to approve the direct observation. The record shall be signed by the Department representative. All direct observations shall be conducted by same gender collection site personnel.

3. the split sample collection methodology must be used in accordance with LA R.S. 49:1006(D), with both the primary and split specimens properly stored and transported to the testing laboratory. The primary urine sample will be analyzed for the presence of marijuana, opiates, amphetamines/methamphetamine, cocaine and phencyclidine (PCP);

4. appropriate chain of custody forms shall be utilized to ensure the integrity of each urine specimen by tracking its handling, storage and transportation from point of collection to final disposition;

5. testing shall be performed by laboratories certified for forensic urine drug testing by the U.S. Department of Health and Human Services and in strict compliance with DHHS Guidelines;

6. the dual testing procedure shall be used for all samples. Each primary sample that tests positive for a prohibited substance shall be subject to an additional, more precise confirmatory test (gas chromatography/mass spectrometry);

7. all positive test results (those which exceed federally established cut-off levels as set forth in 49 CFR 40, Section 40.29), shall first be reported by the testing laboratory to DED's qualified Medical Review Officer (MRO). The MRO is a licensed physician knowledgeable of substance abuse who has received specialized training in interpreting and evaluating test results in conjunction with an individual's medical history and other relevant biomedical information. The MRO will review the collection procedure, chain of custody and testing methodology before contacting the employee/appointee/applicant to rule out the possibility of error or that medications, medical history or any other condition caused the positive test result;

8. if the test is confirmed to be positive by the MRO, the employee may, within 72 hours of notification from the MRO, request, in writing, directly to the MRO, that the split specimen (initially collected but separated and stored during the collection process) be tested in a different DHHS certified

laboratory. This split sample testing shall be allowed if timely requested and performed at the employee's expense;

9. once a positive test is confirmed and reported to DED by the MRO, an employee in a safety-sensitive position will be prohibited from performing safety-sensitive functions. A request for testing of the split sample will not delay any such employee's removal from performing safety-sensitive functions; and

10. if testing of the split specimen results in a negative result, the MRO will cancel the positive result of the initial test. All doubts shall be resolved in favor of the employee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:416 (March 1999).

### **§111. Alcohol Testing Procedures**

A. Evidential Breath Testing Devices (EBT) approved by the National Highway Traffic Safety Administration will be used by certified Breath Alcohol Technicians to determine the presence of alcohol in the employee's system.

B. The employee will be advised of the results of the breath screening test. No further testing will be required if the test results are negative. If the screening test is positive for the presence of alcohol, a confirmation test will be performed within twenty minutes, but not less than fifteen minutes of completion of the screening test. If the confirmatory test indicates a blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood, the results will be reported as positive to DED's designated representative.

C. An employee occupying a safety-sensitive position will be immediately removed from performing safety-sensitive functions in the event of a positive alcohol test.

D. Positive test results will also be reported to the appointing authority whenever an employee refuses to complete or sign the breath alcohol confirmation testing form, provide breath or an adequate amount of breath (excluding medical inability), or fails to cooperate with the testing procedure in any way that prevents completion of the test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:417 (March 1999).

### **§113. Enforcement**

A. The use of illegal drugs, unauthorized alcohol and other controlled or unauthorized substances will not be tolerated. Substance abuse endangers the health and well-being of our employees, prevents quality service to the public and is inconsistent with this Department's mission. While the Department's position is firm, we will resolve any reasonable doubt regarding the testing procedure or results in the employee's favor.

B. Disciplinary action will be taken after a complete and thorough review of the applicable data in accordance with Chapter 12 of the Civil Service Rules. Employees will be provided pre-deprivation notice and a meaningful opportunity to respond prior to the imposition of disciplinary action.

C. Penalty for a First Positive Test. A first positive test (drug or alcohol) will result in disciplinary action up to and including the possibility of termination. Factors to be considered in determining the appropriate sanction include, but are not limited to, the employee's work history, length of service, current job performance and the existence of prior disciplinary action. At a minimum, the first-time offender will remain off from work at least thirty calendar days. For any such period, the first ten workdays will be a suspension, without pay. For the remaining twenty days, the employee will be permitted to use annual, sick or compensatory leave, if available. During this thirty-day period, the employee shall obtain a substance abuse evaluation and commence any recommended rehabilitative treatment. Refusal to participate in the evaluation/treatment process, at the employee's expense, will result in termination.

D. Termination will be the recommended penalty for the following violations:

1. second positive drug test result or confirmed blood alcohol level above the applicable thresholds;

2. refusal to submit to a drug or alcohol test;

3. failure to cooperate in any way which prevents the completion of a drug or alcohol test;

4. submission of an adulterated or substitute sample for testing;

5. buying, selling, dispensing, distributing or possessing unauthorized alcohol or any illegal or unauthorized substance while on duty, in a State vehicle or on DED/State premises; and

6. operating a State vehicle or personal vehicle while on duty under the influence of drugs or alcohol where testing administered by an authorized official confirms a violation of these Rules.

E. Suspension will be the recommended penalty for the following violations:

1. failure to notify a supervisor of an off-duty arrest or conviction of DWI or drug-related offense at the beginning of the next scheduled workday.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:417 (March 1999).

### **§115. Confidentiality/Employee Rights**

A. All drug and alcohol testing results and records (including all information, interviews, reports and statements) are considered confidential communications, pursuant to La. R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in an administrative or disciplinary proceeding or civil litigation where drug use by the tested individual is relevant. Exceptions to these confidentiality provisions are limited to written employee consent; federal agencies when licensure or certification actions are required; to a decision-maker in arbitration, litigation or administrative proceedings arising from a positive drug test; and as otherwise required by law.

B. In compliance with La. R.S. 49:1011, any employee, upon learning of a confirmed positive test result, shall, upon

written request, have the right of access, within seven working days, to records and other documentation relating to the drug testing process and any records relating to the results of any relevant certification, review, suspension/revocation proceedings of the testing facility.

C. Employees should know that statistical records and reports of drug testing are maintained by DED, contract physicians and drug testing laboratories. This information is aggregate data and is used to monitor compliance and to assess the effectiveness of the drug testing program.

D. This Department has no interest in informing law enforcement authorities of a positive drug test. However, nothing contained in these Rules will be construed to preclude the delivery of any illegal drug, controlled dangerous substance, or other substance prohibited by these Rules, discovered in/on DED/State property, or upon the person of a DED employee, to law enforcement officials. Likewise, any employee engaged in the sale, attempted sale, distribution or transfer of illegal drugs or controlled substances while on duty or on DED/State property shall be referred to appropriate law enforcement authorities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:417 (March 1999).

#### **§117. Employee Assistance Program (EAP)**

A. Early recognition and treatment of drug abuse or dependency are essential to successful rehabilitation. Employees experiencing a substance abuse problem are encouraged to seek assistance from the Department's EAP Coordinator within the Human Resources Division. Any such involvement will be held in strict confidence, but employees should know that supervisors and appointing authorities (who need to know) will be kept abreast of the employee's treatment and leave needs.

B. Employees referred to the EAP Coordinator by supervisory personnel or who, as a condition of continued employment, participate in a substance abuse rehabilitation program will be subject to the Return-to-Duty/Rehabilitation Monitoring testing set forth in these Rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:418 (March 1999).

#### **§119. General Provisions**

A. DED reserves the right to have a licensed physician, of its own choosing and at its own expense, determine if use of prescription medication produces effects which impair the employee's performance or increase the risk of injury to the employee or others. In such case, DED will modify the employee's customary job duties or work activities for the period the employee is unable to safely perform his/her customary job duties. Alternatively, the employee may be required/permitted to use accrued leave.

B. Although the substance abuse testing defined in these Rules is restricted to five specified drugs and alcohol, DED reserves the right to require employees to submit to additional testing, if warranted. Such tests will only be administered

when post-accident or reasonable suspicion testing produce negative results and the employee's behavior clearly indicates impairment or other indicia of substance use. Separate samples will be collected for these additional tests and the testing process will fully comply with DHHS regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:418 (March 1999).

#### **§121. Appendix A**

No safety sensitive positions at this time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:418 (March 1999).

Kevin P. Reilly, Sr.  
Secretary

9903#019

### **RULE**

#### **Board of Elementary and Secondary Education**

Board Advisory Councils (LAC 28:I.105)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted the following revision to the structure of the Textbook and Media Advisory Council and the School Library Advisory Council. The Board merged the School Library Advisory Council into the Textbook and Media Advisory Council, which will now consist of fourteen members and will be named the Textbook and Media Advisory Council.

The responsibilities of the Council will be to advise the Board on issues relating to policies, procedures, and/or programs regarding the adoption of textbooks, library and reference materials, and all other materials of instruction.

#### **Title 28**

#### **EDUCATION**

#### **Part I. Board of Elementary and Secondary Education**

#### **Chapter 1. Organization**

#### **§105. Board Advisory Councils**

A. ...

1. - 7. ...

8. Special Education Advisory Council (R.S. 17:1954)

9. Teacher Certification Advisory Council (R.S. 17:31)

10. Proprietary School Commission (R.S. 17:3141.3)

11. Textbook and Media Advisory Council (R.S. 17:415.1)

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with Louisiana Constitution Article VII, §10.1; R.S. 17:6(9); R.S. 17:11; R.S. 17:24.4; R.S. 17:415.1; R.S. 17:1954; R.S. 17:3762; R.S. 17:3801; R.S. 42:4.1-12; 20 USC 1413 (§613) and 20 USC 3474 (§112).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 4:427 (November 1978), amended LR 5:137 (June 1979), LR 5:383 (December 1979); LR 14:10, 11, 146, 228, 229, 293, 702, 790, 862 (January, March, April, May, October, November, December 1988); LR 16:297 (April 1990); LR 19:1310 (October 1993); LR 21:550 (June 1995); LR 22:99-100 (February 1996), LR 24:1092 (June 1998), LR 25:418 (March 1999).

Weegie Peabody  
Executive Director

9903#068

**RULE**

**Board of Elementary and Secondary Education**

**Bulletin 741—Minimum Time Requirements  
(LAC 28:I.901)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education, adopted an amendment to Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The rule change requires that LEAs comply with R.S. 17:154.1. This Statute states that a school day shall include a full 360 minutes of instructional time and shall consist of a minimum of 175 days of instruction. The Statute allows school systems to change the number of minutes of instruction per day and the number of days per year, as long as the total minutes of instructional time per year equal at least 63,000 minutes (360 minutes per day x 175 days per year = 63,000 minutes per year). The Bulletin was revised to incorporate changes in state legislation as well as greater LEA flexibility in scheduling. School systems will implement the new policies beginning with the 1998-99 school session.

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education**

**Chapter 9. Bulletins, Regulations, and State Plans**

**Subchapter A. Bulletins and Regulations**

**§901. School Approval Standards and Regulations**

**A. Bulletin 741**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1541.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 24:1085 (June 1998), LR 25:419 (March 1999).

**Revise standard 1.009.16 to read:**

Each school system shall adopt a calendar for a minimum session of 182 days, of which at least 175 days shall be scheduled to provide the required instructional time.

**Revise a procedural block under standard 1.009.16 to read:**

Effective with the 1997-98 school year, the length of the school year shall consist of 182 days of which no fewer than 175 days, or the equivalent, shall be used to provide instruction to students; two (2) days shall be for staff development; the remaining days may be used for emergencies and/or other instructional activities.

**Add a new procedural block under standard 1.009.16 to read:**

Each school system may authorize some or all of its schools to modify the total number of instructional minutes per day and instructional days per year provided that 63,000 minutes of instructional time per year are met.

**Revise standard 1.010.02 to read:**

Each school system shall have policies and procedures that address, but are not limited to, the following items:

- C setting the number of school days, length of the school day, and other necessary guidelines for the operation of the schools;
- C providing special education and related services to exceptional students in accordance with the Individualized Education Program (IEP) for no fewer than 175 days or the equivalent during the normal 182-day school cycle;
- C operating special departments and special programs in each school;
- C admission to and dismissal from special education programs;
- C excluding students with communicable diseases and readmitting them following their recovery;
- C the controlling of communicable problems such as lice and scabies;
- C taking care of sick or injured students, including notification of parents, in cases of emergencies that occur while students are under the jurisdiction of the school;
- C the administering of medication in schools (including the procedures to be followed);
- C the operation of summer schools and extended school year programs for eligible exceptional students;
- C the discipline of handicapped students; and
- C a written personnel policy that requires the use of universal precaution when individuals have direct contact with blood or other body fluids and that provided sanctions, including discipline if warranted, for failure to use universal precautions.

**Add two new procedural blocks to standard 2.037.11 to read:**

**Secondary Schools**

It is strongly recommended that the additional instructional time as required by R.S. 17:154.1 (2), shall be dedicated to those subjects for which content standards have been adopted with emphasis on mathematics, reading or language arts.

Any high school class scheduled for a 90 minute block of instructional time, must meet for a minimum of one full semester or the equivalent in order to earn a Carnegie unit.

**Revise a procedural block under standard 2.037.11 to read:**

The schedule of subjects offered in the program of studies may be arranged by school principals in order to reduce or increase the number of class periods per week provided that the yearly aggregate time requirements are met.

**Revise standard 2.037.12 to read:**

The minimum instructional day for a full-day kindergarten program shall be 360 minutes.

Each school system may authorize some or all of its schools to modify the total number of instructional minutes per day and instructional days per year provided that 63,000 minutes of instructional time per year are met.

**Revise standard 2.037.13 to read:**

For grades K-12, the minimum school day shall include 360 minutes of instructional time exclusive of recess, lunch, and planning periods.

Each school system may authorize some or all of its schools to modify the total number of instructional minutes per day and instructional days per year provided that 63,000 minutes of instructional time per year are met.

**Add a new procedural block under standard 1.055.03 to read:**

Students attending high school classes operating in 90 minute blocks of instructional time, shall be in attendance 80 days, or its equivalent in order to be eligible to receive grades.

**Add a new procedural block under standard 2.055.03 to read:**

Students attending high school classes operating in 90 minute blocks of instructional time, shall be in attendance 80 days, or its equivalent in order to be eligible to receive grades.

**Revise standard 1.055.15 to read:**

School systems shall provide educational and related services to exceptional students in accordance with the Individualized Education Program (IEP) for no fewer than 175 days or the equivalent during the normal 182-day school cycle.

**Revise standard 2.055.15. to read:**

Schools shall provide educational and related services to exceptional students in accordance with the Individualized Education Program (IEP) for no fewer than 175 days or the equivalent during the normal 182-day school cycle.

**Revise standard 2.090.05 to read:**

Minimum Time Requirements for Kindergarten:

- Teacher directed activities (whole or small group) 40 percent
- Student initiated activities (learning center) 35 percent
- Snack and restroom time 10 percent
- Lunch
- Rest period and/or quiet activities 15 percent

The above minimum time requirements shall be flexibly scheduled to meet the developmental needs of young students.

**Revise standard 2.090.09 and add three new procedural blocks to read as follows:**

Each grade level, Grades 1-8, shall teach the following content subject areas ensuring strict adherence to the Louisiana Content Standards and locally developed curriculum.

Grades 1, 2, and 3		
	Suggested Minimum Minutes Per Week	Refer to Bulletin:
Language Arts	825	1965
Mathematics	300	1955
Science and Social Studies	225	1962 1964
	Required Minimum Minutes per Week	
Health and Physical Education	150	1597 1596
Music, Arts and Crafts	150	1963

The additional 150 minutes per week of instructional as required by R.S. 17:154.1(2), shall be dedicated to those subjects for which content standards have been adopted with emphasis on mathematics, reading or language arts.

It is strongly recommended that teachers integrate reading (skills and comprehension) throughout all content areas.

For students in Grades 1-4 who have been identified as reading below grade level, the minimum time requirements in Health and Physical Education and Music, Arts and Crafts are suggested in lieu of required.

Grades 4, 5, and 6		
	Suggested Minimum Minutes Per Week	Refer to Bulletin:
Language Arts	600	1965
Mathematics	300	1955
Science	225	1962
Social Studies	225	1964
	Required Minimum Minutes Per Week	
Health and Physical Education	150	1597 1596
Music, Arts and Crafts	150	1963

It is strongly recommended that the additional 150 minutes per week of instructional as required by R.S. 17:154.1(2), shall be dedicated to those subjects for which content standards have been adopted with emphasis on mathematics, reading or language arts.

It is strongly recommended that teachers integrate reading (skills and comprehension) throughout all content areas.

For students in Grades 5-8 who have scored below the *Basic* level on *LEAP for the 21st Century* in English/Language Arts or Mathematics, the minimum time requirements in Health and Physical Education, Music, Arts and Crafts or electives are suggested in lieu of required.

Grades 7 and 8 (6 Period Day Option)		
	Suggested Minimum Minutes Per Week	Refer to Bulletin:
Language Arts	550	1965
Mathematics Grade 8—Introduction to Algebra	275	1955
Social Studies Grade 7—American Studies Grade 8—Louisiana Studies	275	1964
Science	275	1962
	Required Minimum Minutes Per Week	
Health and Physical Education, Elective, Exploratory Studies	275	1596 1597

It is strongly recommended that the additional 150 minutes per week of instructional as required by R.S. 17:154.1(2), shall be dedicated to those subjects for which content standards have been adopted with emphasis on mathematics, reading or language arts.

Grades 7 and 8 (7 Period Day Option)		
	Suggested Minimum Minutes Per Week	Refer to Bulletin:
Language Arts	500	1965
Mathematics Grade 8—Introduction to Algebra	250	1955
Social Studies Grade 7—American Studies Grade 8—Louisiana Studies	250	1964
Science	250	1962
	Required Minimum Minutes Per Week	
Health and Physical Education	250	1596
Electives	250	1597

It is strongly recommended that the additional minutes per week of instructional time as required by R.S. 17:154.1(2), shall be dedicated to those subjects for which content standards have been adopted with emphasis on mathematics, reading or language arts.

For students in Grades 5-8 who have scored below the *Basic* level on *LEAP for the 21st Century* in English/Language Arts or Mathematics, the minimum time requirements in Health and Physical Education, Music, Arts and Crafts or electives are suggested in lieu of required.

**Revise standard 2.093.04 to read:**

Instructional time allotments for exceptional students are as follows:

Types of Classes	Time Allotments
A. Regular	Special education instruction and related services are provided outside of the regular classroom for less than 21 percent of the school day.
B. Resource	Special education instruction and related services are provided outside of the regular classroom for at least 21 percent but no more than 60 percent of the school day.
C. Self-contained/Self-contained Departmentalized	Special education instruction and related Departmentalized services are provided outside the regular classroom for more than 60 percent of the school day.
D. Gifted Resource Center	Minimum of 150 minutes per week.
E. Adapted Physical Education	Comparable with regular physical education requirements.

**Revise policy 1.119.00 to read:**

School systems shall provide eligible exceptional students special education and related services in excess of 175 school days or the equivalent, during the normal 182 day school cycle when stated in the Individualized Education Program (IEP).

**Revise standard 2.119.01 to read:**

The determination concerning the need or lack of need for an educational program beyond 175 school days or the equivalent, during the normal 182 day school cycle made by the participants in an Individualized Education Program (IEP) meeting shall be reviewed annually to ascertain any changes in the student's needs.

**Revise standard 2.119.02 to read:**

The Individualized Education Program (IEP) shall include special education and related services in excess of 175 school days or the equivalent during the normal 182 day school cycle when the multi-source data indicate that the student's exceptionality is of such severity that, without instruction in excess of 182 days, a significant loss of educational skills shall occur.

**Revise the procedural block under standard 2.119.03 to read:**

A program ranging from 182 up to 240 school days shall be available when appropriate.

**Revise standard 3.037.11 to read:**

All students in special schools shall receive a comparable instructional day (as noted in the LEA Pupil Progression Plan) as their non-disabled peers.

**Revise standard 3.037.13 to read:**

The Individualized Education Program (IEP) Committee shall determine when a student shall receive less than the minimum time required during a school systems instructional day.

Weegie Peabody  
Executive Director

9903#067

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 746—Applicants with Foreign Credentials  
(LAC 28:I.903)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted an amendment to Bulletin 746, Louisiana Standards for State Certification of School Personnel, referenced in LAC 28:I.903.A. The amendment expands the current policy to allow applicants who hold foreign credentials to present an evaluation from the American Association of Collegiate Registrars and Admissions Officers, Office of International Education Services, for teacher certification purposes.

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education**

**Chapter 9. Bulletins, Regulations, and State Plans**

**Subchapter A. Bulletins and Regulations**

**§903. Teacher Certification Standards and Regulations**

**A. Bulletin 746**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10),(15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 435, 541 (April, July, September, October, December 1975), amended LR 24:283 (February 1997), LR 24:1091 (June 1998), LR 25:422 (March 1999).

**Bulletin 746—Teacher  
Certification Standards and Regulations**

\* \* \*

**Applicants with Foreign Credentials**

The Department of Education does not translate foreign credentials or evaluate transcripts from colleges and universities outside the United States unless the institution is accredited by one of the U.S. regional accrediting agencies. Teachers who hold a bachelor’s degree from a regionally accredited institution may follow the guidelines for out-of-state applicants prescribed on pages 4-5 of this bulletin.

Other applicants with foreign credentials may follow one of the following options:

Colleges/universities in Louisiana are not obligated to evaluate foreign credentials/transcripts. If a college/university within Louisiana chooses to evaluate a foreign transcript or credential for a candidate, the following procedure will apply.

The applicant shall submit the credentials to a regionally accredited institution for evaluation. If the institution is located in Louisiana, the dean of education must recommend the applicant for certification based on the requirements set forth in this bulletin. If the institution is located in another state/country, the guidelines for out-of-state applicants prescribed on pages 4-5 of this bulletin must be followed.

OR

The applicant shall submit the credentials to the American Association of Collegiate Registrars and Admissions Officers (AACRAO), Office of International Education Services, at the following address:

One Dupont Circle, NW  
Suite Number 520  
Washington, D.C. 20036-1135  
(202) 293-9161  
FAX (202) 872-8857

The original evaluation from AACRAO on “Script Safe” paper must be submitted to the Department of Education, Certification and Higher Education, and must include a statement verifying the comparability of the baccalaureate degree in the field of education with a course-by-course evaluation.

Weegie Peabody  
Executive Director

9903#069

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 746—PRAXIS/National Teacher  
Examination Scores (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted a revision to LAC 28:I.903.B.

The proposed revision adopts the scores required for teacher certification on the new PRAXIS tests which will replace certain parts of the NTE in September, 1999. It also allows persons who have achieved the required NTE scores prior to September, 1999, to use those scores for certification. Effective September, 1999, all newly adopted PRAXIS scores must be sent directly from ETS to the State Department of Education. A review of the new test scores shall be conducted by September, 2002 for reevaluation purposes, and

revalidation studies on each test adopted shall be conducted every five years. The proposed rule will be effective September 1, 1999.

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education  
Chapter 9. Bulletins, Regulations, and State Plans**

**§903. Teacher Certification Standards and Regulations**

A. Bulletin 746

1. - 2. ...

B. PRAXIS/National Teacher Examinations

PRAXIS/National Teacher Examinations scores required for initial certification in Louisiana are:

**PRAXIS/NTE SCORES**

Area Examinations	Area Score	*PPST:R	*PPST:W	*PPST:M	PLT K-6	PLT 7-12
Administration and Supervision (0410)	620	---	---	---	---	---
Agriculture **	---	172	171	170		161
Art Education **	---	172	171	170	161 or	161
Biology and General Science (0030)	580	172	171	170		161
Business Education (0100)	540	172	171	170		161
Chemistry/Physics/General Science (0070)	530	172	171	170		161
Early Childhood Education (0020)	510	172	171	170	161	
Elementary Education:						
Curriculum, Instruction, and Assessment (0011)	156	172	171	170	161	
Content Area Exercises (0012)	137	172	171	170	161	
Education of Mentally Retarded	540	172	171	170	161 or	161
English Language, Literature, and Composition:						
Content Knowledge (0041)	160	172	171	170		161
Pedagogy (0043)	130	172	171	170		161
French (0170)	520	172	171	170		161
German (0180)	500	172	171	170		161
Home Economics Education (0120)	510	172	171	170		161
Industrial Arts Education **	---	172	171	170		161
Mathematics (0060)	550	172	171	170		161
Media Specialist/Library/A-V (0310)	560	172	171	170	161 or	161
Music Education (0110)	530	172	171	170	161 or	161
Physical Education (0090)	550	172	171	170	161 or	161
Social Studies:						

Content Knowledge (0081)	149	172	171	170		161
Interpretation of Materials (0083)	152	172	171	170		161
Spanish (0190)	540	172	171	170		161
Speech Communications **	---	172	171	170		161

PPST:R—Pre-Professional Skills Test: Reading (0710)  
 PPST:W—Pre-Professional Skills Test: Writing (0720)  
 PPST:M—Pre-Professional Skills Test: Mathematics (0730)  
 PLT K-6—Principles of Learning and Teaching K-6 (0522)  
 PLT 7-12—Principles of Learning and Teaching 7-12 (0524)

\*Computer-Based PPSTs are also available. Scores are: Reading (0711) - 319; Writing (0721) - 316; Mathematics (0731) - 315  
 \*\*Area examination is not required.

C. - K. ...

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 399, 435, 541(April, July, September, October, December 1975), amended LR 24:283 (February 1997), LR 24:1091 (June 1998), amended LR 25:423 (March 1999).

Marlyn Langley  
 Deputy Superintendent

9903#071

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 746—Total Quality Management (TQM) Certification (LAC 28:I.903)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the State Board of Elementary and Secondary Education adopted an amendment to Bulletin 746, referenced in LAC 28:I.903.A. The amendment is to the associate degree general education instructor's certification requirements to certify them to teach the Total Quality Management (TQM) course in the Technical College System.

**Title 28**

**EDUCATION**

**Part I. Board of Elementary and Secondary Education  
 Chapter 9. Bulletins, Regulations, and State Plans  
 Subchapter A. Bulletins and Regulations  
 §903. Teacher Certification Standards and Regulations  
 A. Bulletin 746**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.  
 HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 25:424 (March 1999).

**Associate Degree—General Education Instructor  
 Chapter XXXVIII. Associate Degree General Education  
 Instructors: Full-Time T.O. Positions**

A.1. - 4. ...

5. Special certification is required to teach the Total Quality Management (TQM) Course. The instructor must have a minimum of a bachelor's degree and have completed the 25-hour Train the Trainer course or have a minimum of a bachelor's degree and successfully completed Psychology 200 (Total Quality Management), 3 credit hours, with a minimum grade of C.

6. In exceptional cases, outstanding professional experience and demonstrated contributions to the teaching discipline may be presented in lieu of formal academic preparation. Such exceptions must be justified by the institution on an individual basis, and

\* \* \*

**Chapter XXXIX. Associate Degree General Education  
 Instructor: Full Time T.O. (JTPA, Carl Perkins, etc.),  
 Extension, Part-Time, and Substitute**

A.1. - 4. ...

5. Special certification is required to teach the Total Quality Management (TQM) Course. The instructor must have a minimum of a bachelor's degree and have completed the 25-hour Train the Trainer course or have a bachelor's degree and have successfully completed Psychology 200 (Total Quality Management), 3 credit hours, with a minimum grade of C.

6. In exceptional cases, outstanding professional experience and demonstrated contributions to the teaching discipline may be presented in lieu of formal academic preparation. Such exceptions must be justified by the institution on an individual basis, and

\* \* \*

Weegie Peabody  
 Executive Director

9903#065

**RULE**

**Board of Elementary and Secondary Education**

Vo-Tech Senior Citizen Tuition  
 Exemption (LAC 28:I.1523)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary

Education amended LAC 28:I.1523.E. The amendment adds guidelines to allow Louisiana's senior citizens to obtain training in the Louisiana Technical College System tuition free.

**Title 28**

**EDUCATION**

**Part I. Board of Elementary and Secondary Education**

**Chapter 15. Vocational and Vocational-Technical Education**

**Subchapter B. Vocational-Technical Education**

**§1523. Students**

A. - E.22. ...

23. Senior Citizen Tuition Exemption Policy. A *senior citizen* is defined as any person 60 years of age or older.

a. Senior citizens may enroll in a training program/course tuition free on a space available basis each quarter.

b. At the time of application, the senior citizen will provide proof of age through any legal document (birth certificate, driver's license, etc.).

c. The senior citizen will be responsible for application fees, books and supplies, and any other fees assessed by the campus.

d. The senior citizen enrollment count in any program/course cannot be applied to the minimum number of students required to start a new program or to keep a program/course open.

e. The senior citizen will follow the same policies and procedures established for all other students.

f. The senior citizen enrollment status shall be indicated on a separate section of the technical college data collection system.

g. This policy does not apply to senior citizens who are receiving financial assistance which covers the cost of tuition.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 3:404 (October 1977), amended LR 4:240 (July 1978), LR 6:650 (November 1980), LR 8:323 (July 1980), LR 9:209 (April 1983), LR 10:7 (January 1984), LR 10:200 (March 1984), LR 11:617 (June 1985), LR 11:1065 (November 1985), LR 11:1138 (December 1985), LR 12:14 (January 1986), LR 12:92 (February 1986), LR 12:667 (October 1986), LR 12:830 (December 1986), LR 13:84 (February 1987), LR 13:160 (March 1987), LR 14:11 (January 1988), LR 14:12 (July 1988), LR 14:409 (October 1988), LR 14:704 (October 1988), LR 14:790 (November 1988), LR 16:297 (April 1990), LR 16:768 (September 1990), LR 17:589 (June 1991), LR 17:957 (October 1991), LR 18:29 (January 1992), LR 19:1550 (December 1993), LR 20:464 (May 1995), LR 22:809 (September 1996), LR 25:424 (March 1999).

Weegie Peabody  
Executive Director

9903#066

**RULE**

**Department of Environmental Quality  
Office of Air Quality and Radiation Protection  
Air Quality Division**

Chemical Accident Prevention  
(LAC 33:III.5901)(AQ187\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division regulations, LAC 33:III.5901 (AQ187\*).

This rule is identical to a federal regulation found in 64 FR 979-980, Number 3, January 6, 1999, which is applicable in Louisiana. For more information regarding the federal requirement, contact the Investigations and Regulation Development Division at the address or phone number given below. No fiscal or economic impact will result from the rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

The rule amends the Chemical Accident Prevention rule to include the recently adopted revisions to EPA's Risk Management Rule (40 CFR 68). These revisions replace SIC codes with NAICS codes; make minor changes to the Compliance Audit Section; establish items that may not be considered confidential; and add additional information required for registration, off-site consequence analysis, prevention program for Program 2 and 3, and emergency response program. Without this rule subject facilities would be required to comply with different sets of rules promulgated by the state and EPA and also would be required to submit different information in the Risk Management Plan. The basis and rationale for this rule are to make those provisions of the Chemical Accident Prevention Program rule that adopts the federal rules by reference identical to the revised federal rule.

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

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 59. Chemical Accident Prevention and  
Minimization of Consequences**

**Subchapter A. General Provisions**

**§5901. Incorporation by Reference of Federal  
Regulations**

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR Part 68 (July 1, 1997), and as amended in 62 FR 45129-45132 (August 25, 1997), 63 FR 639-645 (January 6, 1998), and 64 FR 979-980 (January 6, 1999).

\* \* \*

[See Prior Text in B-C.5]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998), LR 25:425 (March 1999).

Gus Von Bodungen, P.E.  
Assistant Secretary

9903#010

## RULE

### Department of Environmental Quality Office of the Secretary

#### Late Payment Fees

(LAC 33:I.1413, 1415; III.217, 219; V.5129, 5131; VII.529; IX.1309; XI.307; XV.2510, 2511)(OS030)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Environmental Quality regulations, LAC 33:I.1413 and 1415; III.217 and 219; V.5129 and 5131; VII.529.E-F; IX.1309.H-I; XI.307.C-D; XV.2510 and 2511 (Log #OS030).

The rule will revise the existing procedure for calculation of late payment fees on past due invoice balances. The late fee will change from 10 percent per month to 5 percent per month up to 15 percent and establishes a time table for late fee charges. These fees will apply to any non-payment of fees to the department by the invoice due date. The basis and rationale for the rule are to put a cap on the amount of late fee charges.

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

### Title 33

## ENVIRONMENTAL QUALITY

### Part I. Office of the Secretary

#### Chapter 14. Groundwater Fees

##### §1413. Late Payment Fee

A. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:730 (July 1992), amended LR 21:797 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:426 (March 1999).

##### §1415. Failure to Pay

Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the Louisiana Environmental Quality Act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:730 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:426 (March 1999).

### Part III. Air Quality

#### Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs

##### §217. Late Payment Fee

A. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:612 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:706 (July 1992), LR 19:1373 (October 1993), LR 21:781 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:426 (March 1999).

##### §219. Failure to Pay

Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the Louisiana Environmental Quality Act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy,

Air Quality Division, LR 13:741 (December 1987), amended LR 14:612 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1373 (October 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:426 (March 1999).

**Part V. Hazardous Waste and Hazardous Materials**  
**Subpart 1. Department of Environmental Quality—Hazardous Waste**

**Chapter 51. Fee Schedules**

**§5129. Late Payment Fee**

A. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice. 1.

Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:676 (October 1986), LR 18:725 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), LR 25:427 (March 1999).

**§5131. Failure to Pay**

Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:321 (May 1986), LR 12:676 (October 1986), LR 13:433 (August 1987), LR 18:725 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:427 (March 1999).

**Part VII. Solid Waste**

**Chapter 5. Solid Waste Management System**

**Subchapter D. Solid Waste Fees**

**§529. Annual Monitoring and Maintenance Fee**

\* \* \*

[See Prior Text in A - D]

E. Late Payment Fee. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional

five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

F. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

\* \* \*

[See Prior Text in G]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), LR 25:427 (March 1999).

**Part IX. Water Quality Regulations**

**Chapter 13. Louisiana Water Pollution Control Fee System Regulation**

**§1309. Fee System**

\* \* \*

[See Prior Text in A - G]

H. Late Payment Fee. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

I. Failure to Pay. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the Louisiana Environmental Quality Act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

\* \* \*

[See Prior Text in J - M]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 14:626 (September 1988), LR 18:731 (July 1992), LR 21:798 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), amended by the Office of Water Resources, LR 24:326 (February 1998), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:427 (March 1999).

**Part XI. Underground Storage Tanks**

**Chapter 3. Registration Requirements, Standards, and Fee Schedule**

**§307. Fee Schedule**

\* \* \*

[See Prior Text in A - B.5]

C. Late Payment Fee. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

D. Failure to Pay. Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, shall constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), LR 25:427 (March 1999).

## **Part XV. Radiation Protection**

### **Chapter 25. Fee Schedule**

#### **§2510. Late Payment Fee**

A. Payments not received within 15 days of the due date will be charged a late payment fee. Any late payment fee shall be calculated from the due date indicated on the invoice.

1. Payments not received by the department by the fifteenth day from the due date will be assessed a five percent late payment fee on the original assessed fee.

2. Payments not received by the department by the thirtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

3. Payments not received by the department by the sixtieth day from the due date will be assessed an additional five percent late payment fee on the original assessed fee.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:719 (July 1992), amended LR 21:791 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:528 (March 1999).

#### **§2511. Failure to Pay**

Failure to pay the prescribed application fee or annual fee as provided herein, within 90 days after the due date, will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:719 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), LR 25:428 (March 1999).

J. Dale Givens  
Secretary

9903#007

## **RULE**

### **Department of Environmental Quality Office of the Secretary**

#### **Procedures for Public Record Requests (LAC 33:I.Chapter 23)(OS025)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has adopted the Office of the Secretary regulations, LAC 33:I.Chapter 23 (Log Number OS025).

The rule will establish a uniform fee schedule and standardize the procedure for processing requests for copies of public records maintained by the Department of Environmental Quality. The Office of the Governor, Division of Administration, established a 25 cents per page fee (see LAC 4:I.301.B) to be charged by all state agencies. This rule reduces the Division of Administration fee to 5 cents per page for persons who complete DEQ Form FSD-0005-02. The Division of Administration has approved the uniform fee schedule and procedure provided in this rule, in accordance with LAC 4:I.301.G. The department's ultimate goal is to make all of its public records available for free through Internet access; viewing of some records may be possible beginning in March 1999. The basis and rationale for this rule are to prescribe the procedure that the public must follow to obtain copies of DEQ public records.

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

## **Title 33**

### **ENVIRONMENTAL QUALITY**

#### **Part I. Office of the Secretary**

##### **Subpart 1. Departmental Administrative Procedures**

#### **Chapter 23. Procedures for Public Record Requests**

##### **§2301. Purpose**

It is the purpose of this Chapter to give notice of the standard department procedures for receiving and processing requests for copies of public records and to establish a department copy fee schedule in compliance with the Uniform Fee Schedule for Copies of Public Records (LAC 4:I.301), the Administrative Procedure Act (R.S. 49:950 et seq.), and the Louisiana Public Records Law (R.S. 44:1 et seq.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:428 (March 1999).

### **§2303. Policy**

A. The department shall implement the fee schedule in LAC 33:I.2309 when providing copies of public records requested by the public.

B. The department reserves the right to deny any request that is so burdensome as to interfere with the operation of the constitutional and legal duties of the custodian of records.

C. No copies shall be provided to any requester who appears on the Accounts Receivable Past Due report until all past due amounts have been paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:429 (March 1999).

### **§2305. Standard Operating Procedures**

A. All requests for copies of public records, including subpoenas duces tecum for production of original public records, shall be made using DEQ Form FSD-0005-01. A certification on DEQ Form FSD-0005-02 shall be submitted with the request if free or reduced rate copies are requested. Completed forms may be submitted in person, by mail, or by facsimile. No other request (e.g., e-mail, telephone, telegram) will be honored. Completion of the DEQ Form FSD-0005-01 is waived only if the records requested are prepared by the department specifically for sale to the public (e.g., *Environmental Regulatory Code*). Copies of the forms may be obtained through the DEQ website at <http://www.deq.state.la.us> or from the following contacts:

1. Customer Information Number (888) 763-5424;
2. DEQ Headquarters, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810, phone: (225) 765-0741;
3. Office of Air Quality and Radiation Protection, Custodian of Records, Box 82135, Baton Rouge, LA 70884-2135, phone: (225) 765-0219, fax: (225) 765-0222;
4. Office of Legal Affairs and Enforcement, Custodian of Records, Box 82282, Baton Rouge, LA 70884-2282, phone: (225) 765-0370, fax: (225) 765-0409;
5. Office of Management and Finance, Custodian of Records, Box 82231, Baton Rouge, LA 70884-2231, phone: (225) 765-0647, fax: (225) 765-0746;
6. Office of the Secretary, Custodian of Records, Box 82263, Baton Rouge, LA 70884-2263, phone: (225) 765-0741, fax: (225) 765-0746;
7. Office of Waste Services, Custodian of Records, Box 82178, Baton Rouge, LA 70884-2178, phone: (225) 765-0355, fax: (225) 765-0617; and
8. Office of Water Resources, Custodian of Records, Box 82215, Baton Rouge, LA 70884-2215, phone: (225) 765-0634, fax: (225) 765-0635.

B. Payment shall be made in accordance with the rates established in this Chapter.

C. Advance payment is required. Payment shall be made only by check or money order made payable to the Department of Environmental Quality. The department does not accept cash.

D. In order to ensure the preservation of official department records, no records shall leave the premises for duplication, whether accompanied by agency personnel or otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:429 (March 1999).

### **§2307. Exceptions to Standard Operating Procedures**

The following procedures shall apply to persons requesting copies of public records under an exception to standard operating procedures.

A. All requests for copies of public records shall be made using DEQ Form FSD-0005-01.

B. Requests for exceptions to standard operating procedures must be approved in advance by the appropriate division administrator.

C. The only exception to LAC 33:I.2305.D is for large maps that must be duplicated by an outside source copy provider, due to unavailability of suitable copying equipment within the department. In this case, the document shall be accompanied by a department employee who shall remain with the document until its return.

1. When public records are taken by department personnel to an outside source copy provider as an exception to LAC 33:I.2305.D, the requester shall be responsible for all costs of reproduction. The requester shall make payment or arrangements for payment with the outside source copy provider in advance of the request for the exception, and shall include a statement of such arrangements as part of the request. The department reserves the right to approve the outside source copy provider and to refuse the release of original public records to an outside source copy provider.

2. A request for any exception to LAC 33:I.2305.D other than that specified in this Subsection shall be submitted to the secretary, deputy secretary, or undersecretary for consideration and approval.

D. When payment of an invoice for copies of public records provided by facsimile, as an exception to standard operating procedure, is not received in the Fiscal Services Division within 10 working days, the requester's name will appear on an Accounts Receivable Past Due report maintained by the Fiscal Services Division. No copies shall be provided to any requester who appears on the Accounts Receivable Past Due report until all past due amounts have been paid. Division administrator approval is required, and credit approval may be required, prior to providing copies by facsimile.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:429 (March 1999).

**§2309. Uniform Fee Schedule**

Item	Cost
Regular Fees: One-sided Copy (any size) Two-sided Copy (any size)	\$ .25 page \$ .50 page
Reduced Fees (Form FSD-0005-02 completed): One-sided Copy (any size) Two-sided Copy (any size)	\$ .05 page \$ .10 page
Computer Reports (Copy of existing computer generated report): One-sided Copy (any size) Two-sided Copy (any size)	\$ .25 page \$ .50 page
Requests for Proposal (RFP) [Current request only]	No charge
Copies printed and produced by outside sources (Request made by DEQ employees) (DNR Print Shop, LSU Press, DOA Printing, etc.)	As determined by the cost statement
Reproduced VCR Tapes	Cost of tape and production
Computer Generated Report/Map that requires data processing time* (Disk/CD will be provided by DEQ) *Cost to include personnel, supplies, etc.	Determined on each request
Facsimile, per page **A cover sheet and an invoice shall be included in the faxed material at no charge	\$1.00 per page**
Copy of Established File on Personal Computer (Disk/CD will be provided by DEQ) (Charges include processing time)	\$5.00 per Disk/CD
Postage and Handling	Actual cost

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:430 (March 1999).

J. Dale Givens  
Secretary

9903#008

**RULE**

**Department of Environmental Quality  
Office of Waste Services  
Hazardous Waste Division**

EPA Authorization Package—RCRA VII, VIII and IX  
(LAC 33:V.Chapters 1, 3, 5, 11, 15, 17, 22, 31, 33, 35, 37, 40, 41, 43 and 49)(HW066\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended to amend the Hazardous Waste Division regulations, LAC 33:V.Chapters 1, 3, 5, 11, 15, 17, 22, 31, 33, 35, 37, 40, 41, 43, and 49 (Log Number HW066\*).

The regulations in this rule are adopted from federal regulations and promulgated with the intent of maintaining equivalency with the federal regulations located in the CFR and obtaining authorization from the EPA for RCRA programs. These federal regulations correspond to the checklists that are being used for the development of this regulatory package. This rule is identical to federal regulations found in 59 FR 62896-62953; 62 FR 32974-32980, 37694-37699, 45568-45573, 64504-64509, 64636-64671; 63 FR 18504-18751, 24596-24628, 24963-24969, 28556-28753, 33782-33829, 35147-35150, 42110-42189, 46332-46334, 47409-47418, 48124-48127, 51254-51267, 56709-56735, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Investigations and Regulation Development Division at the address or phone number given below. No fiscal or economic impact will result from the rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rule encompasses the adoption of rules required for the EPA RCRA VII, VIII, and IX authorization packages. The adoption of the federal rules will impact LAC 33:V.Chapters 1, 3, 5, 11, 15, 17, 22, 31, 33, 35, 37, 40, 41, 43, and 49, making them equivalent to the federal regulations. The basis and rationale for this rule are to make the state regulations equivalent to the federal regulations and to obtain authorization.

Some of the changes in this rule include:

1. extending the national capacity variance for spent potliners from primary aluminum production (K088);
2. excluding from RCRA condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e);
3. clarifying rules related to used oil contaminated with PCBs;
4. addressing five interrelated areas associated with Phase IV Land Disposal Restrictions (LDR);
5. adding new RCRA permit modification provision intended to make it easier for facilities to make changes to their existing RCRA permits;
6. listing of four petroleum refining process wastes as hazardous K169-K172;
7. amending LDR treatment standards for metal bearing waste which exhibit the characteristic of toxicity;
8. revising the waste treatment standards applicable to 40 waste constituents associated with the production of carbamate wastes;
9. including interim replacement standards for spent potliners from primary aluminum reduction (K088) under the LDR Program;
10. modifying the requirement for a post-closure permit, to allow EPA and the authorized States to use a variety of authorities to impose requirements on non-permitted land disposal units requiring post-closure care; and
11. amending the regulations governing closure of land-based units that have released hazardous constituents, to allow certain units to be addressed through the corrective action program.

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding

environmental/health benefits and social/economic costs is required.

### Title 33

## ENVIRONMENTAL QUALITY

### Part V. Hazardous Waste and Hazardous Materials

#### Subpart 1. Department of Environmental

#### Quality—Hazardous Waste

### Chapter 1. General Provisions and Definitions

#### §105. Program Scope

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including *solid waste* and *hazardous waste*, appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

\* \* \*

[See Prior Text in A - D.1.h.iv]

i.i. spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose;

ii. wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood; and

iii. prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in Subsection D.1.i.i and ii of this Section, so long as they meet all of the following conditions:

(a). the wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(b). prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(c). any unit used to manage wastewaters and/or spent wood preserving solutions, prior to reuse, can be visually or otherwise determined to prevent such releases;

(d). any drip pad used to manage the wastewaters and/or spent wood preserving solutions, prior to reuse, complies with the standards in LAC 33:V.Chapter 43.Subchapter S, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(e). prior to operating pursuant to this exclusion, the plant owner or operator submits to the administrative authority a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than three years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the administrative authority for reinstatement. The administrative authority may reinstate the exclusion upon finding that the

plant has returned to compliance with all conditions and that violations are not likely to recur.

\* \* \*

[See Prior Text in D.1.j - k]

i.i. oil-bearing hazardous secondary materials (i.e., sludges, by-products, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911—including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (i.e., cokers)) unless the material is placed on the land or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this Paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in Subsection D.1.1.ii of this Section, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this Section. Residuals generated from processing or recycling materials excluded under this Subsection, where such materials as generated would have otherwise met a listing under LAC 33:V.Chapter 49, are designated as F037 listed wastes when disposed of or intended for disposal; or

ii. recovered oil that is recycled in the same manner and with the same conditions as described in Subsection D.1.1.i of this Section. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172). Recovered oil does not include oil-bearing hazardous wastes listed in LAC 33:V.Chapter 49; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in LAC 33:V.4001;

m. excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled;

\* \* \*

[See Prior Text in D.1.n - n.i]

ii. free of mercury switches, mercury relays, nickel-cadmium batteries, and lithium batteries;

o. condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates;

p. secondary materials (i.e., sludges, by-products, and spent materials as defined in LAC 33:V.109) (other than hazardous wastes listed in LAC 33:V.Chapter 49) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing, provided that:

i. the secondary material is legitimately recycled to recover minerals, acids, cyanide, water, or other values;

ii. the secondary material is not accumulated speculatively;

iii. except as provided in Subsection D.1.p.iv of this Section, the secondary material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of nonearthen materials providing structural support (except smelter buildings may have partially earthen floors provided the secondary material is stored on the nonearthen portion) and have a roof suitable for diverting rainwater away from the foundation; a tank must be freestanding, not be a surface impoundment (as defined in LAC 33:V.109), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate that may be subject to wind dispersal, the owner/operator must operate these units in a manner that controls fugitive dust. Tanks, containers, and buildings must be designed, constructed, and operated to prevent significant releases to the environment of these materials;

iv. the administrative authority may make a site-specific determination, after public review and comment, that only solid mineral processing secondary materials may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing secondary materials do not contain any free liquid. The decision-maker must affirm that pads are designed, constructed, and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers, and buildings eligible for exclusion;

(a). the decision-maker must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway; and the possibility and extent of harm to human and environmental receptors via each exposure pathway;

(b). pads must meet the following minimum standards: be designed of nonearthen material that is compatible with the chemical nature of the mineral processing secondary material; be capable of withstanding physical stresses associated with placement and removal; have run-on/runoff controls; be operated in a manner which controls fugitive dust; and have integrity assurance through inspections and maintenance programs;

(c). before making a determination under this Subsection, the administrative authority must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers or broadcasting notice over local radio stations;

v. the owner or operator provides a notice to the administrative authority identifying the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process; and

vi. for purposes of Subsection D.2.h of this Section, mineral processing secondary materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste;

q. comparable fuels or comparable syngas fuels (i.e., comparable/syngas fuels) that meet the requirements of LAC 33:V.4909;

r. petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided:

i. the oil is hazardous only because it exhibits the characteristic of ignitability (as defined in LAC 33:V.4903.B) and/or toxicity for benzene (LAC 33:V.4903.E, waste code D018); and

ii. the oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An *associated organic chemical manufacturing facility* is a facility: where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. *Petrochemical recovered oil* is oil that has been reclaimed from secondary materials (i.e., sludges, by-products, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes; and

s. spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid, unless the material is placed on the land or accumulated speculatively as defined in LAC 33:V.109.

\* \* \*

[See Prior Text in D.2 - D.2.g.viii]

h. solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock, and overburden from the mining of uranium ore), except as provided in LAC 33:V.3025 for facilities that burn or process hazardous waste:

i. For purposes of this Paragraph, beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization;

filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting and/or autoclaving and/or chlorination/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching;

ii. For the purpose of this Paragraph, solid waste from the processing of ores and minerals includes only the following wastes as generated:

- (a). slag from primary copper processing;
  - (b). slag from primary lead processing;
  - (c). red and brown muds from bauxite refining;
  - (d). phosphogypsum from phosphoric acid production;
  - (e). slag from elemental phosphorus production;
  - (f). gasifier ash from coal gasification;
  - (g). process wastewater from coal gasification;
  - (h). calcium sulfate wastewater treatment plant sludge from primary copper processing;
  - (i). slag tailings from primary copper processing;
  - (j). fluorogypsum from hydrofluoric acid production;
  - (k). process wastewater from hydrofluoric acid production;
  - (l). air pollution control dust/sludge from iron blast furnaces;
  - (m). iron blast furnace slag;
  - (n). treated residue from roasting/leaching of chrome ore;
  - (o). process wastewater from primary magnesium processing by the anhydrous process;
  - (p). process wastewater from phosphoric acid production;
  - (q). basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
  - (r). basic oxygen furnace and open hearth furnace slag from carbon steel production;
  - (s). chloride process waste solids from titanium tetrachloride production; and
  - (t). slag from primary zinc processing;
- iii. a residue derived from coprocessing mineral processing secondary materials with normal beneficiation raw materials remains excluded under this Subsection if the owner or operator:
- (a). processes at least 50 percent by weight normal beneficiation raw materials; and
  - (b). legitimately reclaims the secondary mineral processing materials;

\* \* \*

[See Prior Text in D.2.i -O.2.c.vi]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste,

Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid And Hazardous Waste, Hazardous Waste Division, LR 23:564 (May 1997), LR 23:567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687 (September 1998), LR 24:1759 (September 1998), LR 25:431 (March 1999).

### §109. Definitions

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

\* \* \*

[See Prior Text]

*Hazardous Waste*—a solid waste, as defined in this Section, is a hazardous waste if:

\* \* \*

[See Prior Text in 1 - 2]

a. it exhibits any of the characteristics of hazardous waste identified in LAC 33:V.4903. However, any mixture of a waste from the extraction, beneficiation, or processing of ores and minerals excluded under LAC 33:V.105.D.2.h and any other solid waste exhibiting a characteristic of hazardous waste under LAC 33:V.4903 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred; or if it continues to exhibit any of the characteristics exhibited by the nonexcluded wastes prior to mixture. Further, for the purposes of applying the toxicity characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in LAC 33:V.4903.E.Table 5 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture;

\* \* \*

[See Prior Text in 2.b-d.ii]

iii. one of the following wastes listed in LAC 33:V.4901.C, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation—heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste Number K050), crude oil storage tank sediment from petroleum refining operations (EPA Hazardous Waste Number K169),

clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations (EPA Hazardous Waste Number K170), spent hydrotreating catalyst (EPA Hazardous Waste Number K171), and spent hydrorefining catalyst (EPA Hazardous Waste Number K172);

\* \* \*

[See Prior Text in 2.d.iv-4.b.ii.(a)]

(b). waste from burning any of the materials exempted from regulation by LAC 33:V.4105.B.8 and 9 ;

\* \* \*

[See Prior Text in 4.b.ii.(c)- d]

e. Catalyst inert support media separated from one of the following wastes listed in LAC 33:V.4901.C—spent hydrotreating catalyst (EPA Hazardous Waste Number K171) and spent hydrorefining catalyst (EPA Hazardous Waste Number K172).

\* \* \*

[See Prior Text in Hazardous Waste 5. - *Small Quantity Generator*]  
*Solid Waste*—

\* \* \*

[See Prior Text in 1-3.b.ii]

c. reclaimed—materials noted with an "\*" in column 3 of Table 1 in this Chapter are solid wastes when reclaimed (except as provided under LAC 33:V.105.D.). Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed (except as provided under LAC 33:V.105.D.);

\* \* \*

[See Prior Text in 3.d-6]

TABLE 1				
	Use Constituting Disposal (1)	Energy Recovery/ Fuel (2)	Reclamation (except as provided in LAC 33:105.D. for mineral processing secondary materials) (3)	Speculative Accumulation (4)
Spent Materials	*	*	*	*
Sludges (listed in LAC 33:V.4901)	*	*	*	*
Sludges exhibiting a characteristic of hazardous waste	*	*	-----	*
By-products (listed in LAC 33:V.4901)	*	*	*	*
By-products exhibiting a characteristic of hazardous waste	*	*	-----	*
Commercial chemical products (listed in LAC 33:V.4901.E and F)	*	*	-----	-----
Scrap Metal other than excluded scrap metal (see excluded scrap metal)	*	*	*	*

\* \* \*

[See Prior Text]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:378

(May 1989), LR 15:737 (September 1989), LR 16:47 (January 1990), LR 16:218 (March 1990), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May

1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999).

### **Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits**

#### **§305. Scope of the Permit**

A. A permit is required for the treatment, storage, and disposal of any hazardous waste as identified or listed in LAC 33:V.Chapter 49. The terms *treatment*, *storage*, *disposal*, and *hazardous waste* are defined in LAC 33:V.109. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to LAC 33:V.4387) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under Subsections F and G of this Section, or obtain an enforceable document in lieu of a post-closure permit, as provided under Subsection H of this Section. If a post-closure permit is required, the permit must address applicable groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this Section.

\* \* \*

[See Prior Text in B - G.3]

H. Enforceable Documents for Post-Closure Care. At the discretion of the administrative authority, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of LAC 33:V.4396. *Enforceable document* means an order, plan, or other document issued by EPA or by the department under an authority that meets the requirements of 40 CFR 271.16(e) including, but not limited to, a corrective action order issued by EPA under section 3008(h), a CERCLA remedial action, or a closure or post-closure plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 17:658 (July 1991), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 23:567 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1105 (June 1998), LR 24:1690 (September 1998), LR 24:1759 (September 1998), LR 25:435 (March 1999).

#### **§307. Effect of a Permit**

A. Compliance with a RCRA permit during its term constitutes compliance, for purposes of enforcement, with LAC 33:V.Subpart 1, except for those requirements not included in the permit which:

1. become effective by statute;
2. are promulgated under LAC 33:V.Chapter 22 restricting the placement of hazardous wastes in or on the land;
3. are promulgated under LAC 33:V.Chapters 23, 25, and 29 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans and will be implemented through the procedures of LAC 33:V.321.C Class 1 permit modifications; or
4. are promulgated under LAC 33:V.Chapter 43.Subchapters Q, R, and V limiting air emissions.

\* \* \*

[See Prior Text in B - C]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:435 (March 1999).

#### **§321. Modification of Permits**

\* \* \*

[See Prior Text in A - C.9]

10. Combustion Facility Changes to Meet 40 CFR Part 63 MACT Standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under LAC 33:V.322.L.9.

a. Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1211 before a permit modification can be requested under this Section.

b. If the administrative authority does not approve or deny the request within 90-days of receiving it, the request shall be deemed approved. The administrative authority may, at his or her discretion, extend this 90-day deadline one time for up to 30 days by notifying the facility owner or operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 15:378 (May 1989), LR 16:614 (July

1990), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1691 (September 1998), LR 25:435 (March 1999).

**§322. Classification of Permit Modifications**

The following is a listing of classifications of permit modifications made at the request of the permittee.

Modifications Class

\* \* \*

[See Prior Text in A - L.8]

9. Technology changes needed to meet standards under 40 CFR part 63 (subpart EEE--National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of LAC 33:V.321.C.10 are followed. <sup>1</sup>

<sup>1</sup> Class I modifications requiring prior administrative authority approval.

\* \* \*

[See Prior Text in M - N.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:614 (July 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:815 (September 1996), amended by the Office of the Secretary, LR 24:2245 (December 1998), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:436 (March 1999).

**Chapter 5. Permit Application Contents**

**Subchapter D. Part II General Permit Information Requirements**

**§517. Part II Information Requirements (the Formal Permit Application)**

The formal permit application information requirements presented in this Section reflect the standards promulgated in LAC 33:V.Subpart 1. These information requirements are necessary in order to determine compliance with all standards. Responses and exhibits shall be numbered sequentially according to the technical standards. The permit application must describe how the facility will comply with each of the sections of LAC 33:V.Chapters 15) 37 and 41. Information required in the formal permit application shall be submitted to the administrative authority and signed in accordance with requirements in LAC 33:V.509. The description must include appropriate design information (calculations, drawings, specifications, data, etc.) and administrative details (plans, flow charts, decision trees, manpower projections, operating instructions, etc.) to permit the administrative authority to determine the adequacy of the hazardous waste permit application. Certain technical data, such as design drawings, specifications, and engineering studies, shall be certified by a registered professional engineer. If a section does not apply, the permit application must state it does not apply and why it does not apply. This information is to be submitted using the

same numbering system and in the same order used in these regulations:

\* \* \*

[See Prior Text in A - F]

G. a copy of the general inspection schedule required by LAC 33:V.1509.B. Include, where applicable, as part of the inspection schedule, specific requirements in LAC 33:V.1709, 1719, 1721, 1731, 1755 -1759, 1763, 1907.I, 1911, 2109, 2309, 2507, 2703.A-G, 2907, 3119.B and C, and 3205;

\* \* \*

[See Prior Text in H - W]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 13:433 (August 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:657(April 1998), LR 24:1691 (September 1998), LR 25:436 (March 1999).

**Subchapter E. Specific Information Requirements**

**§519. Contents of Part II: General Requirements**

Part II of the permit application consists of the general information requirements of this Section, and the specific information requirements in LAC 33:V:519—549 applicable to the facility. The Part II information requirements presented in LAC 33:V.519—549 reflect the standards promulgated in LAC 33:V.Chapters 15—37. These information requirements are necessary in order for the administrative authority to determine compliance with LAC 33:V.Chapters 15—37. If owners and operators of Hazardous Waste Management facilities can demonstrate that the information prescribed in Part II cannot be provided to the extent required, the administrative authority may make allowance for submission of such information on a case-by-case basis. Information required in Part II shall be submitted to the administrative authority and signed in accordance with requirements in Subchapter B of this Chapter. Certain technical data, such as design drawings and specifications and engineering studies, shall be certified by a registered professional engineer. For post-closure permits, only the information specified in LAC 33:V.528 is required in Part II of the permit application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:436 (March 1999).

**§528. Part II Information Requirements for Post-Closure Permits**

For post-closure permits, the owner or operator is required to submit only the information specified in LAC 33:V.516; 517.A, B, F, G, H, M, N, P, R, and T; and 520, unless the

administrative authority determines that additional information from LAC 33:V.516, 517, 520, 523, 525, 527, 531, and 533 is necessary. The owner or operator is required to submit the same information when an alternative authority is used in lieu of a post-closure permit as provided in LAC 33:V.305.H.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 25:436 (March 1999).

## **Chapter 11. Generators**

### **§1109. Pre-Transport Requirements**

\* \* \*

[See Prior Text in A - E.6]

7. A generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that:

a. the generator complies with the requirements of LAC 33:V.Chapter 43.Subchapter H except for LAC 33:V.4427 and 4430;

\* \* \*

[See Prior Text in E.7.b-E.7.d.iv.(c).(v)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), LR 25:437 (March 1999).

## **Chapter 15. Treatment, Storage, and Disposal Facilities**

### **§1509. General Inspection Requirements**

\* \* \*

[See Prior Text in A - B.3]

4. The frequency of inspection may vary for the items on the schedule. However, inspections should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration or malfunction or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the terms and frequencies called for in LAC 33:V.1709, 1719, 1721, 1731, 1753-1765, 1907, 1911, 2109, 2309, 2507, 2711, 2907, 3119, and 3205, where applicable.

\* \* \*

[See Prior Text in Comment - D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1695 (September 1998), LR 25:437 (March 1999).

## **§1529. Operating Record and Reporting Requirements**

\* \* \*

[See Prior Text in A - B.8]

9. Monitoring, testing, or analytical data, and corrective action where required by LAC 33:V.1504, 1711.C - F, 1713, 1741.D - I, 1743, 1751-1767, 1903, 1907, 1911, 2304, 2306, 2309, 2504, 2507, 2508, 2509, 2709, 2711, 2719, 2904, 2906, 2907, 3119, 3203, 3205, and Chapter 33, as well as corrective action cites.

\* \* \*

[See Prior Text in B.10 - E.3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:832 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1695 (September 1998), LR 25:437 (March 1999).

## **Chapter 17. Air Emission Standards**

### **§1703. Definitions**

As used in this Chapter, all terms not defined herein shall have the meanings given them in LAC 33:V.109.

\* \* \*

[See Prior Text]

*In Light Liquid Service*—a piece of equipment that contains or contacts a waste stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20°C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kPa at 20°C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

\* \* \*

[See Prior Text]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1696 (September 1998), LR 25:437 (March 1999).

### **Subchapter A. Process Vents**

#### **§1705. Applicability**

The regulations in this Subchapter apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in LAC 33:V.1501).

\* \* \*

[See Prior Text in A - A.2]

3. a unit that is exempt from permitting under the provisions of LAC 33:V.1109.E (i.e., a 90-day tank or container) and is not a recycling unit under the provisions of LAC 33:V.4105.

B. For the owner or operator of a facility subject to the requirements of this Subchapter and who received a final permit under RCRA Section 3005 and LAC 33:V.Subpart 1 prior to December 6, 1996, the requirements of this Subchapter must be incorporated when the permit is reissued under LAC 33:V.705 or reviewed under LAC 33:V.315. Until such date when the owner and operator receive a final permit

incorporating the requirements of this Subchapter, the owner or operator are subject to the requirements of LAC 33:V.Chapter 43.

[Note: The requirements of this Subchapter apply to process vents on hazardous waste recycling units previously exempt under LAC 33:V.4115.A. Other exemptions under LAC 33:V.105.D and 1501.C are not affected by these requirements.]

C. The requirements of this Subchapter do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a Clean Air Act permit issued in accordance with 40 CFR 52.2454. The requirements of this Subchapter shall apply to the facility upon termination of the Clean Air Act permit issued pursuant to 40 CFR 52.2454.

D. The requirements of this Subchapter do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this Subchapter are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with, or made readily available with, the facility operating record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 18:723 (July 1992), LR 20:1000 (September 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1698 (September 1998), LR 25:437 (March 1999).

### **§1709. Standards: Closed-Vent Systems and Control Devices**

\* \* \*

[See Prior Text in A - A.1]

2.a. The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this Subchapter on the effective date that the facility becomes subject to the provisions of this Subchapter must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this Subchapter for installation and start-up.

b. Any unit that begins operation after December 21, 1990, and is subject to the provisions of this Subchapter when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on start-up of the affected unit); the 30-month implementation schedule does not apply.

c. The owner or operator of any facility in existence on the effective date of an EPA regulatory amendment that renders the facility subject to this Subchapter shall comply with all requirements of this Subchapter as soon as practicable, but no later than 30 months after the regulation's effective date. When control equipment required by this Subchapter cannot be installed and begin operation by the effective date of the

regulation, the facility owner or operator shall prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for the control equipment; initiation of on-site installation of the control equipment; completion of the control equipment installation; and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this Subchapter. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

d. Owners and operators of facilities and units that become newly subject to the requirements of this Subchapter after December 8, 1997, due to an action other than those described in Subsection A.2.c of this Section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this Subchapter; the 30-month implementation schedule does not apply).

\* \* \*

[See Prior Text in B - O.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 20:1000 (September 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1698 (September 1998), LR 25:438 (March 1999).

### **§1713. Recordkeeping Requirements**

\* \* \*

[See Prior Text in A - C.10.e.ii]

D. Record Retention. Records of the monitoring, operating, and inspection information required by Subsection C.3-10 of this Section must be kept on site for three years following the date of each occurrence, measurement, maintenance, corrective action, or record.

\* \* \*

[See Prior Text in E - F]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 18:723 (July 1992), LR 20:1000 (September 1994), LR 22:818 (September 1996), amended by the Office Of Waste Services, Hazardous Waste Division, LR 24:1700 (September 1998), LR 25:438 (March 1999).

### **Subchapter B. Equipment Leaks**

#### **§1717. Applicability**

\* \* \*

[See Prior Text in A - B.2]

3. a unit that is exempt from permitting under the provisions of LAC 33:V.1109.E.1 (i.e., a 90-day tank or container) and is not a recycling unit under the provisions of LAC 33:V.4105.

C. For the owner or operator of a facility subject to the requirements of this Subchapter and who has received a final permit under RCRA section 3005 and LAC 33:V.Subpart 1 prior to December 6, 1996, the requirements of this Subchapter must be incorporated when the permit is reissued

under LAC 33:V.705 or reviewed under LAC 33:V.315. Until such date when the owner or operator receives a final permit incorporating the requirements of this Subchapter, the owner or operator is subject to the requirements of LAC 33:V.Chapter 43.Subchapter Q.

\* \* \*

[See Prior Text in D - F]

[Note: The requirements of this Subchapter apply to equipment associated with hazardous waste recycling units previously exempt under LAC 33:V.4115.A. Other exemptions under LAC 33:V.105.D and 1501.C are not affected by these requirements.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 20:1000 (September 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1700 (September 1998), LR 25:438 (March 1999).

### **§1735. Standards: Closed-Vent Systems and Control Devices**

A. Owners or operators of closed-vent systems and control devices subject to this Subchapter shall comply with the provisions of LAC 33:V.1709.

B.1. The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this Subchapter on the effective date that the facility becomes subject to the provisions of this Subchapter must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this Subchapter for installation and start-up.

2. Any unit that begins operation after December 21, 1990, and is subject to the provisions of this Subchapter when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on start-up of the affected unit); the 30-month implementation schedule does not apply.

3. The owner or operator of any facility in existence on the effective date of an EPA regulatory amendment that renders the facility subject to this Subchapter shall comply with all requirements of this Subchapter as soon as practicable, but no later than 30 months after the regulation's effective date. When control equipment required by this Subchapter can not be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: specific calendar dates for award or contracts or issuance of purchase orders for the control equipment; initiation of on-site installation of the control equipment; completion of the control equipment installation; and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this Subchapter. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

4. Owners and operators of facilities and units that become newly subject to the requirements of this Subchapter

after December 8, 1997, due to an action other than those described in Subsection B.3 of this Section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this Subchapter; the 30-month implementation schedule does not apply).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:439 (March 1999).

### **§1739. Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Skip Period Leak Detection and Repair**

\* \* \*

[See Prior Text in A - B.1]

2. After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, an owner or operator may begin to skip one of the quarterly leak detection periods (i.e., monitor for leaks once every six months) for the valves subject to the requirements in LAC 33:V.1729.

3. After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, an owner or operator may begin to skip three of the quarterly leak detection periods (i.e., monitor for leaks once every year) for the valves subject to the requirements in LAC 33:V.1729.

\* \* \*

[See Prior Text in B.4]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:439 (March 1999).

### **§1743. Recordkeeping Requirements**

\* \* \*

[See Prior Text in A - G.5]

6. Identification. Either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

\* \* \*

[See Prior Text in H - L]

M. The owner or operator of a facility with equipment that is subject to this Subchapter and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with this Subchapter by documentation either in accordance with this Section or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 in accordance with the relevant provisions of the regulations at 40 CFR part 60, part 61, or part 63. The documentation of compliance under the regulation at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available with the facility operating record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 18:723 (July 1992), amended LR 18:723 (July 1992), Office of Waste Services, Hazardous Waste Division, LR 24:1701 (September 1998), LR 25:439 (March 1999).

**Subchapter C. Air Emission Standards for Tanks, Surface Impoundments, and Containers**  
**§1747. Applicability**

\* \* \*

[See Prior Text in A - B]

1. a waste management unit that holds hazardous waste placed in the unit before December 6, 1996, and in which no hazardous waste is added to the unit on or after December 6, 1996.

\* \* \*

[See Prior Text in B.2 - 8]

C. For the owner and operator of a facility subject to this Chapter and who received a final permit under RCRA section 3005 and LAC 33:V.Subpart 1 prior to December 6, 1996, the requirements of this Chapter must be incorporated into the permit when the permit is reissued in accordance with the requirements of LAC 33:V.705 or reviewed in accordance with the requirements of LAC 33:V.315. Until such date when the permit is reissued in accordance with the requirements of LAC 33:V.705 or reviewed in accordance with the requirements of LAC 33:V.315, the owner and operator are subject to the requirements of LAC 33:V.Chapter 43.Subchapter V.

\* \* \*

[See Prior Text in D - D.3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1701 (September 1998), LR 25:440 (March 1999).

**§1751. Standards: General**

\* \* \*

[See Prior Text in A]

B. The owner or operator shall control air pollutant emissions from each hazardous waste management unit in accordance with standards specified in LAC 33:V.1755-1761, as applicable to the hazardous waste management unit, except as provided for in Subsection C of this Section.

\* \* \*

[See Prior Text in C - C.2.i]

i. if Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR 60, appendix A, or a value of 25 ppmw, whichever is less; or

ii. if any other analytical method is used, one-half the limit of detection established for each organic constituent in the waste that has a Henry's law constant value at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as  $1.8 \times 10^{-6}$  atmospheres/gram-mole/m<sup>3</sup>] at 25°C;

3. a tank or surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of Subsection C.2.d of this Section;

\* \* \*

[See Prior Text in C.4 - C.4.a]

b. the organic hazardous constituents in the waste have been treated by the treatment technology established by the EPA for the waste in LAC 33:V.2227.A or have been removed or destroyed by an equivalent method of treatment approved by the department in accordance with LAC 33:V.2227.B;

\* \* \*

[See Prior Text in C.5 - D.5.c]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1702 (September 1998), LR 25:440 (March 1999).

**§1753. Waste Determination Procedures**

\* \* \*

[See Prior Text in A - A.1]

2. For a waste determination that is required by Subsection A.1 of this Section, the average VO concentration of a hazardous waste at the point of waste origination shall be determined in accordance with the procedures specified in LAC 33:V.4727.A.2 - 4.

\* \* \*

[See Prior Text in B]

1. An owner or operator shall perform the applicable waste determinations for each treated hazardous waste placed in waste management units exempted under the provisions of LAC 33:V.1751.C.2.a - f from using air emission controls in accordance with standards specified in LAC 33:V.1755 - 1761, as applicable to the waste management unit.

\* \* \*

[See Prior Text in B.2 - D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1704 (September 1998), LR 25:440 (March 1999).

**§1755. Standards: Tanks**

\* \* \*

[See Prior Text in A - C.2.b]

c. each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

\* \* \*

[See Prior Text in C.2.c.i]

ii. connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous waste is managed in the tank, except as follows:

(a). during periods when it is necessary to provide access to the tank for performing the activities of Subsection C.2.c.ii.(b) of this Section, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device; or

(b). during periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank;

\* \* \*

[See Prior Text in C.2.d - E.3.f]

4. safety devices, as defined in LAC 33:V.4721, may be installed and operated as necessary on any tank complying with the requirements of Subsection E of this Section.

\* \* \*

[See Prior Text in F - F.3.a.iv.(c)]

(d). the total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in Subsection F.1.b of this Section.

\* \* \*

[See Prior Text in F.3.a.v - c.iii]

4. safety devices, as defined in LAC 33:V.4721, may be installed and operated as necessary on any tank complying with the requirements of Subsection F of this Section.

\* \* \*

[See Prior Text in G - J.2.a]

b. the hazardous waste has been treated by an organic destruction or removal process to meet the requirements in LAC 33:V.1751.C.2; or

c. the hazardous waste meets the requirements of LAC 33:V.1751.C.4.

\* \* \*

[See Prior Text in K - L.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1704 (September 1998), LR 25:440 (March 1999).

**§1757. Standards: Surface Impoundments**

\* \* \*

[See Prior Text in A - D.1.b]

c. the cover and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed; and

\* \* \*

[See Prior Text in D.1.d - E.2.a]

b. the hazardous waste has been treated by an organic destruction or removal process to meet the requirements in LAC 33:V.1751.C.2;

c. the hazardous waste meets the requirements of LAC 33:V.1751.C.4.

\* \* \*

[See Prior Text in F - G.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste

Division, LR 24:1710 (September 1998), LR 25:441 (March 1999).

**§1759. Standards: Containers**

\* \* \*

[See Prior Text in A - C.1.c]

2. A container used to meet the requirements of Subsection C.1.b or c of this Section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity, for as long as the container is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: organic vapor permeability; the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

\* \* \*

[See Prior Text in C.3 - 4]

a. in the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in LAC 33:V.109), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the LAC 33:V.Chapter 17.Subchapter C container is accepted at the facility (i.e., the date the container becomes subject to the container standards of this Section). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest (EPA Forms 8700-22 and 8700-22A, DEQ Form HW-3), as required under LAC 33:V.905. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection C.4.c of this Section;

\* \* \*

[See Prior Text in C.4.b - D.4]

a. in the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in LAC 33:V.109), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the LAC 33:V.Chapter 17.Subchapter C container standards of this Section). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste

Manifest (EPA Forms 8700-22 and 8700-22A, DEQ Form HW-3), as required under LAC 33:V.905. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection D.4.c of this Section;

\* \* \*

[See Prior Text in D.4.b - F.4]

G. To determine compliance with the detectable organic emissions requirement of Subsection D.1.b of this Section, the procedure specified in LAC 33:V.1753.D shall be used.

\* \* \*

[See Prior Text in G.1 - H.3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1712 (September 1998), LR 25:441 (March 1999).

### **§1761. Standards: Closed-Vent Systems and Control Devices**

\* \* \*

[See Prior Text in A - C.3.a]

b. all carbon that is a hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of LAC 33:V.1709.N, regardless of the average volatile organic concentration of the carbon;

\* \* \*

[See Prior Text in C.4 - C.6]

7. the closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in LAC 33:V.1709.F.2 and L. The readings from each monitoring device required by LAC 33:V.1709.F.2 shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1716 (September 1998), LR 25:442 (March 1999).

### **§1765. Recordkeeping Requirements**

A. Each owner or operator of a facility subject to requirements in this Subchapter shall record and maintain the information specified in Subsections B - J of this Section, as applicable to the facility. Except for air emission control equipment design documentation and information required by Subsections I and J of this Section, records required by this Section shall be maintained in the operating record for a minimum of three years. Air emission control equipment design documentation shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service. Information required by Subsections I and J of this Section shall be maintained in the operating record for as long as the waste management unit is not using air emission controls specified in LAC 33:V.1755 - 1761 in accordance with the conditions specified in LAC 33:V.1747.B.7 or D, respectively.

\* \* \*

[See Prior Text in B - B.1.b.i]

ii. for each defect detected during the inspection the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the requirements of LAC 33:V.1755, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected; and

\* \* \*

[See Prior Text in B.2 - F]

1. for tanks, surface impoundments, and containers exempted under the hazardous waste organic concentration conditions specified in LAC 33:V.1751.C.1 or 2.a - f, the owner or operator shall record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of LAC 33:V.1753;

\* \* \*

[See Prior Text in F.2 - I.3.b]

J. For each hazardous waste management unit not using air emission controls specified in LAC 33:V.1755 - 1761 in accordance with the requirements of LAC 33:V.1747.B.7, the owner and operator shall record and maintain the following information:

1. certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63; and

2. identification of the specific requirements codified under 40 CFR part 60, part 61, or part 63 with which the waste management unit is in compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1718 (September 1998), LR 25:442 (March 1999).

### **§1767. Reporting Requirements**

\* \* \*

[See Prior Text in A - C]

1. a control device is operated continuously for 24 hours or longer in noncompliance with the applicable operating values defined in LAC 33:V.1713.C.4; or

\* \* \*

[See Prior Text in C.2 - D.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1720 (September 1998), LR 25:442 (March 1999).

## **Chapter 22. Prohibitions on Land Disposal**

### **Subchapter A. Land Disposal Restrictions**

#### **§2203. Definitions Applicable to this Chapter**

A. When used in this Chapter the following terms have the meanings given below:

\* \* \*

[See Prior Text]

*Soil*—unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles as classified by the U.S. Soil Conservation Service, or a mixture of such materials with liquids, sludges, or solids, that is inseparable by simple mechanical removal processes and is made up primarily of soil by volume based on visual inspection.

\* \* \*

[See Prior Text]

*Underlying Hazardous Constituent*—any constituent listed in LAC 33:V.Chapter 22.Table 7, Universal Treatment Standards, except fluoride, selenium, sulfides, vanadium, and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste at a concentration above the constituent-specific UTS treatment standard.

\* \* \*

[See Prior Text]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:221 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:667 (April 1998), LR 25:442 (March 1999).

#### **§2207. Dilution Prohibited as a Substitute for Treatment**

\* \* \*

[See Prior Text in A - C.6]

D. It is a form of impermissible dilution, and therefore prohibited, to add iron filings or other metallic forms of iron to lead-containing hazardous wastes in order to achieve any land disposal restriction treatment standard for lead. Lead-containing wastes include D008 wastes (wastes exhibiting a characteristic due to the presence of lead), all characteristic wastes containing lead as an underlying hazardous constituent, listed wastes containing lead as a regulated constituent, and hazardous media containing any of the aforementioned lead-containing wastes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:667 (April 1998), LR 25:443 (March 1999).

#### **§2214. Waste-Specific Prohibitions—Organobromine Wastes**

A. Effective April 20, 1999, the wastes specified in LAC 33:V.4901.C as EPA Hazardous Wastes Number K140 and in LAC 33:V.4901.F as EPA Hazardous Waste Number U408 are prohibited from land disposal. In addition, soils and debris contaminated with these wastes, radioactive wastes mixed with these hazardous wastes, and soils and debris contaminated with these radioactive mixed wastes, are prohibited from land disposal.

B. The requirements of Subsection A of this Section do not apply if:

1. the wastes meet the applicable treatment standards specified in LAC 33:V.2223 -2236;

2. persons have been granted an exemption from a prohibition in accordance with a petition under LAC 33:V.2241, with respect to those wastes and units covered by the petition;

3. the wastes meet the applicable treatment standards established in accordance with a petition granted under LAC 33:V.2231;

4. hazardous debris has met treatment standards in LAC 33:V.2223 or in the alternative treatment standards in LAC 33:V.2230; or

5. persons have been granted an extension to the effective date of a prohibition in accordance with LAC 33:V.2239, with respect to these wastes covered by the extension.

C. To determine whether a hazardous waste identified in this Section exceeds the applicable treatment standards specified in LAC 33:V.2223, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable universal treatment standard levels of LAC 33:V.2233, the waste is prohibited from land disposal and all requirements of this Chapter are applicable, except as otherwise specified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 25:443 (March 1999).

#### **§2216. Waste-Specific Prohibitions—Toxicity Characteristic Metal Wastes**

A. Effective April 20, 1999, the following wastes are prohibited from land disposal: the wastes specified in LAC 33:V.Chapter 49 as EPA Hazardous Waste Numbers D004 - D011 that are newly identified (i.e. wastes, soil, or debris identified as hazardous by the toxicity characteristic leaching procedure, but not the extraction procedure) and waste, soil, or debris from mineral processing operations that is identified as hazardous by the specifications in LAC 33:V.Chapter 49.

B. Effective April 20, 1999, the following waste is prohibited from land disposal: slag from secondary lead smelting which exhibits the toxicity characteristic due to the presence of one or more metals.

C. Effective May 26, 2000, the following wastes are prohibited from land disposal: newly identified characteristic wastes from elemental phosphorus processing; radioactive wastes mixed with EPA Hazardous Waste Numbers D004 - D011 that are newly identified (i.e. wastes, soil, or debris identified as hazardous by the toxicity characteristic leaching procedure, but not the extraction procedure); or mixed with newly identified characteristic mineral processing wastes, soil, or debris.

D. Between April 20, 1999 and May 26, 2000, newly identified characteristic wastes from elemental phosphorus processing, radioactive waste mixed with EPA Hazardous Waste Numbers D004 - D011, wastes that are newly identified (i.e. wastes, soil, or debris identified as hazardous by the

toxicity characteristic leaching procedure, but not the extraction procedure) or mixed with newly identified characteristic mineral processing wastes, soil, or debris may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in LAC 33:V.2239.H.2.

E. The requirements of Subsections A and B of this Section do not apply if:

1. the wastes meet the applicable treatment standards specified in LAC 33:V.2223 - 2236;

2. persons have been granted an exemption from a prohibition in accordance with a petition under LAC 33:V.2241, with respect to those wastes and units covered by the petition;

3. the wastes meet the applicable alternate treatment standards established in accordance with a petition granted under LAC 33:V.2231; or

4. persons have been granted an extension to the effective date of a prohibition in accordance with LAC 33:V.2239, with respect to these wastes covered by the extension.

F. To determine whether a hazardous waste identified in this Section exceeds the applicable treatment standards specified in LAC 33:V.2223, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents (including underlying hazardous constituents in characteristic wastes) in excess of the applicable universal treatment standard levels of LAC 33:V.2233, the waste is prohibited from land disposal, and all requirements of this Chapter are applicable, except as otherwise specified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 25:443 (March 1999).

#### **§2218. Waste-Specific Prohibitions—Petroleum Refining Wastes**

A. Effective April 20, 1999, the wastes specified in LAC 33:V.4901.C.Table 2 as EPA Hazardous Wastes Numbers K169, K170, K171, and K172, soils and debris contaminated with these hazardous wastes, radioactive wastes mixed with these hazardous wastes, and soils and debris contaminated with these radioactive mixed wastes, are prohibited from land disposal.

B. The requirements of Subsection A of this Section do not apply if:

1. the wastes meet the applicable treatment standards specified in LAC 33:V.2223-2236;

2. persons who have been granted an exemption from a prohibition in accordance with a petition under LAC 33:V.2241, with respect to those wastes and units covered by the petition;

3. the wastes meet the applicable treatment standards established in accordance with a petition granted under LAC 33:V.2231;

4. hazardous debris that have meet the treatment standards in LAC 33:V.2223 or in the alternative treatment standards in LAC 33:V.2230; or

5. persons have been granted an extension to the effective date of a prohibition in accordance with LAC 33:V.2239.

C. To determine whether a hazardous waste identified in this Subsection exceeds the applicable treatment standards specified in LAC 33:V.2223, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable universal treatment standard levels of LAC 33:V.2233, the waste is prohibited from land disposal and all requirements of this Chapter are applicable, except as otherwise stated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 25:444 (March 1999).

#### **§2221. Schedule of Wastes Identified or Listed After November 8, 1984**

\* \* \*

[See Prior Text in A-F.2]

3. On September 21, 1998, the wastes specified in LAC 33:V.4901.C as EPA Hazardous Waste Number K088 are prohibited from land disposal. In addition, soil and debris contaminated with this waste is prohibited from land disposal.

\* \* \*

[See Prior Text in F.4-7]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:667 (April 1998), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:667 (April 1998), LR 24:1725 (September 1998), LR 25:444 (March 1999).

#### **§2223. Applicability of Treatment Standards**

\* \* \*

[See Prior Text in A - D.3]

E. For characteristic wastes (D001 - D043) that are subject to treatment standards in LAC 33:V.Chapter 22.Table 2, Treatment Standards for Hazardous Wastes, and are not managed in a wastewater treatment system that is regulated under the Clean Water Act (CWA), that is CWA-equivalent, or that is injected into a Class I nonhazardous deep injection well, all underlying hazardous constituents (as defined in LAC 33:V.2203) must meet Universal Treatment Standards, found in LAC 33:V.Chapter 22.Table 7, prior to land disposal as defined in 2203.

\* \* \*

[See Prior Text in F]

G. Between August 26, 1997, and April 20, 1999, the treatment standards for the wastes specified in LAC 33:V.4901.C as EPA Hazardous Waste Numbers K156- K161 and in LAC 33:V.4901.E-F as EPA Hazardous Waste

Numbers P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U278 - U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U404, and U409-U411 and soil contaminated with these wastes were satisfied by either meeting the constituent concentrations presented in LAC 33:V.Chapter 22.Table 2, or by treating the waste by the following technologies: combustion, as defined by the technology code CMBST at LAC 33:V.Chapter 22.Table 3, for nonwastewaters; and biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at LAC 33:V.Chapter 22.Table 3, for wastewaters.

H. Prohibited D004-D011 mixed radioactive wastes and mixed radioactive listed wastes containing metal constituents that were previously treated by stabilization to the treatment standards in effect at that time and then put into storage, do not have to be retreated to meet treatment standards in this Section prior to land disposal.

I. Zinc-containing fertilizers that are produced for the general public's use and that are produced from or contain recycled characteristic hazardous wastes (D004-D011) are subject to the applicable treatment standards in LAC 33:V.Chapter 22.Table 2.

J. Effective September 4, 1998, the treatment standards for the wastes specified in LAC 33:V.4901.D as EPA Hazardous Waste Numbers P185, P191, P192, P197, U364, U394, and U395 may be satisfied by either meeting the constituent concentrations presented in Table 2, Treatment Standards for Hazardous Wastes of this Chapter or by treating the waste by the following technologies: combustion, as defined by the technology code CMBST in Table 3 of this Chapter, for nonwastewaters; and biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST in Table 3 of this Chapter, for wastewaters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 22:819 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:668 (April 1998), LR 24:1726 (September 1998), LR 25:444 (March 1999).

#### **§2227. Treatment Standards Expressed as Specified Technologies**

A. The wastes specified in Table 2 of this Chapter, for which standards are expressed as a treatment method rather than a concentration level, must be treated using the technology or technologies specified in Table 3, entitled "Technology Codes and Description of Technology-Based Standards," of this Chapter.

\* \* \*

[See Prior Text in B -D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:445 (March 1999).

#### **§2230. Treatment Standards for Hazardous Debris**

A. Treatment Standards. Hazardous debris must be treated prior to land disposal unless the administrative authority determines under LAC 33:V.109.Hazardous Waste.6.b that the debris is no longer contaminated with hazardous waste or the debris is treated to the waste-specific treatment standard in Table 8 of this Chapter for the waste contaminating the debris.

\* \* \*

[See Prior Text in A.1 - D.2]

3. Residue from the treatment of debris that is reactive because of cyanide must meet the treatment standards for D003 in Table 2 of this Chapter.

4. Ignitable nonwastewater residue containing equal to or greater than 10 percent total organic carbon is subject to the technology-based standards for D001, ignitable liquids.

\* \* \*

[See Prior Text in D.5]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended LR 22:22 (January 1996), LR 23:565 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:445 (March 1999).

#### **§2231. Variance from a Treatment Standard**

A. Based on a petition filed by a generator or treater of hazardous waste, the EPA administrator and the administrative authority may approve a variance from an applicable treatment standard if:

1. it is not physically possible to treat the waste to the level specified in the treatment standard or by the method specified as the treatment standard. To show that this is the case, the petitioner must demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or

2. it is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner must either demonstrate that:

a. treatment to the specified level or by the specified method is technically inappropriate (e.g., resulting in combustion of large amounts of mildly contaminated environmental media); or

b. for remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

\* \* \*

[See Prior Text in B - F]

G. Based on a petition filed by a generator or treater of hazardous waste, the EPA administrator and the administrative authority may approve a site-specific variance from an applicable treatment standard if:

1. it is not physically possible to treat the waste to the level specified in the treatment standard or by the method specified as the treatment standard. To show that this is the case, the petitioner must demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or

2. it is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner must either demonstrate that:

a. treatment to the specified level or by the specified method is technically inappropriate (e.g., resulting in combustion of large amounts of mildly contaminated environmental media where the treatment standard is not based on combustion of such media); or

b. for remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation;

3. for contaminated soil only, treatment to the level or by the method specified in the soil treatment standard would result in concentrations of hazardous constituents that are below (i.e., lower than) the concentrations necessary to minimize short and long term threats to human health and the environment. Treatment variances approved under this Subsection must:

a. at a minimum, impose alternative land disposal restriction treatment standards that, using a reasonable maximum exposure scenario:

i. for carcinogens, achieve constituent concentrations that result in the total excess risk to an individual exposed over a lifetime generally falling within a range from  $10^{-4}$  to  $10^{-6}$ ; and

ii. for constituents with noncarcinogenic effects, achieve constituent concentrations that an individual could be exposed to on a daily basis without appreciable risk of deleterious effect during a lifetime;

b. not consider post-land-disposal controls;

4. for contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below (i.e., lower than) natural background concentrations at the site where the contaminated soil will be land disposed;

5. public notice and a reasonable opportunity for public comment must be provided before granting or denying a petition.

\* \* \*

[See Prior Text in H - L]

M. For all variances the petitioner must also demonstrate that compliance with any given treatment variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste. In evaluating this demonstration, the department may take into account whether a treatment variance should be approved if the subject waste is to be used in a manner constituting disposal in accordance with LAC 33:V.Chapter 41.Subchapter C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:445 (March 1999).

**§2236. Alternative Land Disposal Restriction (LDR) Treatment Standards for Contaminated Soil**

A. Applicability. You must comply with LDRs prior to placing soil that exhibits a characteristic of hazardous waste, or exhibited a characteristic of hazardous waste at the time it was generated, into a land disposal unit. The following chart describes whether you must comply with LDRs prior to placing soil contaminated by listed hazardous waste into a land disposal unit:

If LDRs	And If LDRs	And If	Then You
applied to the listed waste when it contaminated the soil*	apply to the listed waste now	.....	must comply with LDRs
did not apply to the listed waste when it contaminated the soil*	apply to the listed waste now	the soil is determined to contain the listed waste when the soil is first generated	must comply with LDRs
did not apply to the listed waste when it contaminated the soil*	apply to the listed waste now	the soil is determined not to contain the listed waste when the soil is first generated	needn't comply with LDRs
did not apply to the listed waste when it contaminated the soil*	do not apply to the listed waste now	.....	need not comply with LDRs

\* To determine the date any given listed hazardous waste contaminated any given volume of soil, use the last date any given listed hazardous waste was placed into any given land disposal unit or, in the case of an accidental spill, the date of the spill.

B. Prior to land disposal, contaminated soil identified by Subsection A of this Section as needing to comply with LDRs must be treated according to the applicable treatment standards specified in Subsection C of this Section or according to the universal treatment standards specified in LAC 33V.2233 applicable to the contaminating listed hazardous waste and/or the applicable characteristic of hazardous waste if the soil is characteristic. The treatment standards specified in Subsection C of this Section and the universal treatment standards may be modified through a treatment variance approved in accordance with LAC 33:V.2233.

C. Treatment Standards for Contaminated Soils. Prior to land disposal, contaminated soil identified by Subsection A of this Section as needing to comply with LDRs must be treated according to all the standards specified in this Subsection or according to the universal treatment standards specified in LAC 33:V.2233.

1. All Soils. Prior to land disposal, all constituents subject to treatment must be treated as follows:

a. for nonmetals, treatment must achieve 90 percent reduction in total constituent concentrations, except as provided by Subsection C.1.c of this Section;

b. for metals, treatment must achieve 90 percent reduction in constituent concentrations as measured in leachate from the treated media (tested according to the toxicity characteristic leaching procedure, TCLP) or 90 percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by Subsection C.1.c of this Section;

c. when treatment of any constituent subject to treatment to a 90 percent reduction standard would result in a concentration less than 10 times the universal treatment standard for that constituent, treatment to achieve constituent concentrations less than 10 times the universal treatment standard is not required. Universal treatment standards are identified in Table 7 of this Chapter.

2. Soils that Exhibit the Characteristic of Ignitability, Corrosivity, or Reactivity. In addition to the treatment required by Subsection C.1 of this Section, prior to land disposal, soils that exhibit the characteristic of ignitability, corrosivity, or reactivity must be treated to eliminate these characteristics.

3. Soils that Contain Nonanalyzable Constituents. In addition to the treatment requirements of Subsection C.1 and 2 of this Section, prior to land disposal, the following treatment is required for soils that contain nonanalyzable constituents:

a. for soil that also contains analyzable constituents, treatment of those analyzable constituents to the levels specified in Subsection C.1 and 2 of this Section; or

b. for soil that contains only nonanalyzable constituents, treatment by the method specified in LAC 33:V.2227 for the waste contained in the soil.

D. Constituents Subject to Treatment. When applying the soil treatment standards in Subsection C of this Section, constituents subject to treatment are any constituents listed in Table 7, Universal Treatment Standards, of this Chapter that

are reasonably expected to be present in any given volume of contaminated soil, except fluoride, selenium, sulfides, vanadium, and zinc, and are present at concentrations greater than 10 times the universal treatment standard.

E. Management of Treatment Residuals. Treatment residuals from treating contaminated soil identified by Subsection A of this Section as needing to comply with LDRs must be managed as follows:

1. soil residuals are subject to the treatment standards of this Section; and

2. nonsoil residuals are subject to:

a. for soils contaminated by listed hazardous waste, the RCRA Subtitle C standards applicable to the listed hazardous waste; and

b. for soils that exhibit a characteristic of hazardous waste, if the nonsoil residual also exhibits a characteristic of hazardous waste, the treatment standards applicable to the characteristic hazardous waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, LR 25:446 (March 1999).

#### **§2237. Exemption for Surface Impoundments Treating Hazardous Waste**

\* \* \*

[See Prior Text in A - A.2.b.i.(d)]

ii. If the volume of liquid flowing through the impoundment or series of impoundments in a one-year period is greater than the volume of the impoundment or impoundments, this flow-through constitutes removal of the supernatant for the purpose of this requirement.

iii. Reserved.

\* \* \*

[See Prior Text in A.2.b.iv]

c. Subsequent Management. Treatment residues may not be placed in any other surface impoundment for subsequent management.

\* \* \*

[See Prior Text in A.2.d - C.3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1727 (September 1998), LR 25:447 (March 1999).

#### **§2245. Generators' Waste Analysis, Recordkeeping, and Notice Requirements**

A. Requirements for generators: determine if the waste has to be treated before being land disposed as follows: a generator of a hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in LAC 33:V.2223, 2230, or 2236. This determination can be made in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total

concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using Test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in LAC 33:V.110, depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. In addition, some hazardous wastes, and some soils contaminated by such hazardous wastes, must be treated by particular treatment methods before they can be land disposed. These treatment standards are also found in LAC 33:V.2223, and are described in detail in Table 3 of this Chapter. These wastes, and such soils contaminated by such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste, or a soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of LAC 33:V.2246 in addition to any applicable requirements in this Section.

B. If the waste or contaminated soil does not meet the treatment standard, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste and place a copy in the file. The notice must include the information in column "LAC:33.V.2245.B" of the Generator Paperwork Requirements Table in Subsection D of this Section. No further notification is necessary until such time when the waste or facility changes, in which case a new notification must be sent and a copy placed in the generator's file.

1. For contaminated soil, the following certification statement should be included, signed by an authorized representative:

I certify under penalty of law that I personally have examined this contaminated soil and it [does/does not] contain listed hazardous waste and [does/does not] exhibit a characteristic of hazardous waste and requires treatment to meet the soil treatment standards as provided by LAC 33:V.2236.C).

C. If the waste or contaminated soil meets the treatment standard at the original point of generation:

\* \* \*

[See Prior Text in C.1]

2. for contaminated soil, with the initial shipment of wastes to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each facility receiving the waste and place a copy in the file. The notice must include the information in Subsection D of this Section of the Generator Paperwork Requirements Table.

D. For reporting, tracking, and recordkeeping when exceptions allow certain wastes or contaminated soil that do not meet the treatment standards to be land disposed, there are certain exemptions from the requirement that hazardous wastes or contaminated soil meet treatment standards before they can be land disposed. These include, but are not limited to, case-by-case extensions under LAC 33:V.2239, disposal in

a no-migration unit under LAC 33:V.2241, or a national capacity variance or case-by-case capacity variance under LAC 33:V.2209 - 2221. If a generator's waste is so exempt, then with the initial shipment of waste, the generator must send a one-time written notice to each land disposal facility receiving the waste. The notice must include the information indicated in column "LAC 33:V.2245.D" of the Generator Paperwork Requirements Table in this Subsection. If the waste changes, the generator must send a new notice to the receiving facility and place a copy in their files.

Generator Paperwork Requirements Table				
Required Information	LAC 33:V. 2245. B	LAC 33:V. 2245. C	LAC 33:V. 2245. D	LAC 33:V. 2245. I
EPA Hazardous Waste Numbers and Manifest numbers of first shipment.				
Statement: This waste is not prohibited from land disposal.			X	
The waste is subject to the LDRs. The constituents of concern for F001-F005, and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice.	X			
The notice must include the applicable wastewater/nonwastewater category (see LAC 33:V. 2203.A and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanide).	X	X		
Waste analysis data (when available).	X	X	X	
Date the waste is subject to the prohibition.			X	
For hazardous debris, when treating with the alternative treatment technologies provided by LAC 33:V.2230: the contaminants subject to treatment, as described in LAC 33:V.2230; and an indication that these contaminants are being treated to comply with LAC 33:V.2230.			X	
For contaminated soil subject to LDRs as provided in LAC 33:V.2236.A, the constituents subject to treatment as described in LAC 33:V.2236.D, and the following statement: This contaminated soil [does/does not] contain listed hazardous waste and [does/does not] exhibit a characteristic of hazardous waste and [is subject to/complies with] the soil treatment standards as provided by LAC 33:V.2236.C or the universal treatment standards.	X	X		
A certification is needed (see applicable section for exact wording).		X		X

E. If a generator is managing and treating a prohibited waste or contaminated soil in tanks, containers, or containment buildings regulated under LAC 33:V.1109.E to meet applicable LDR treatment standards found in LAC 33:V.2223, the generator must develop and follow a written waste analysis plan that describes the procedures the generator will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of Table 8 of this Chapter, however, are not subject to these waste analysis requirements.) The plan must be kept on-site in the generator's records, and the following requirements must be met:

\* \* \*

[See Prior Text in E.1 - 3]

F. If a generator determines that the waste or contaminated soil is prohibited solely on the basis of his or her knowledge of the waste, all supporting data used to make this determination must be retained on-site in the generator's files. If a generator determines whether the waste is prohibited on the basis of tests of this waste or an extract developed using the Test Method 1311 described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in LAC 33:V.110, all waste analysis data must be retained on-site in the generator's files.

G. If a generator determines that he is managing a prohibited waste that is excluded from the definition of hazardous or solid waste or exempted from regulation under LAC 33:V.Chapter 1, 39, or 41 subsequent to the point of generation (including deactivated characteristic hazardous wastes managed in wastewater treatment systems subject to the Clean Water Act (CWA) as specified in LAC 33:V.105.D.1.b, or that are CWA-equivalent, or are managed in an underground injection well regulated by the Solid Disposal Waste Act, SDWA), the generator must place a one-time notice stating such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from the regulation under LAC 33:V.Subpart 1, and the disposition of the waste, in the facility's on-site file.

\* \* \*

[See Prior Text in H - K]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 22:1130 (November 1996), LR 23:565 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:669 (April 1998), LR 24:1728 (September 1998), LR 25:447 (March 1999).

#### **§2246. Special Rules Regarding Wastes That Exhibit a Characteristic**

\* \* \*

[See Prior Text in A - E.3.c]

F. Generators and treaters who first receive from the administrative authority a determination that a given contaminated soil subject to LDRs as provided in LAC 33:V.2236.A no longer contains a listed hazardous waste and

generators and treaters who first determine that a contaminated soil subject to LDRs as provided in LAC 33:V.2236.A no longer exhibits a characteristic of hazardous waste must:

1. prepare a one-time only documentation of these determinations including all supporting information; and
2. maintain that information in the facility files and other records for a minimum of three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:1057 (December 1990), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:669 (April 1998), LR 24:1730 (September 1998), LR 25:449 (March 1999).

#### **§2247. Owners or Operators of Treatment or Disposal Facilities: Testing, Waste Minimization, Recordkeeping, and Notice Requirements**

\* \* \*

[See Prior Text in A]

1. for wastes or contaminated soil with treatment standards expressed in the waste extract (Toxicity Characteristic Leaching Procedure, TCLP), the owner or operator of the treatment facility must test an extract of the treatment residues, using Test Method 1311 (the TCLP described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in LAC 33:V.110) to assure that the treatment residues extract meets the applicable treatment standards;

2. for wastes or contaminated soil with treatment standards expressed as concentrations in the waste, the owner or operator of the treatment facility must test the treatment residues (not an extract of such residues) to ensure that they meet the applicable treatment standards.

B. A one-time notice must be sent with the initial shipment of waste or contaminated soil to the land disposal facility. A copy of the notice must be placed in the treatment facility's file.

\* \* \*

[See Prior Text in B.1 - 2]

a. EPA Hazardous Waste Numbers and Manifest Numbers of the first shipment;

b. the waste is subject to the LDRs. The constituents of concern for F001-F005, and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice;

\* \* \*

[See Prior Text in B.2.c]

d. waste analysis data (when available);

e. for contaminated soil subject to LDRs as provided in LAC 33:V.2236.A, the constituents subject to treatment as described in LAC 33:V.2236.D and the following statement: "This contaminated soil [does/does not] contain listed hazardous waste and [does/does not] exhibit a characteristic of hazardous waste and [is subject to/complies with] the soil treatment standards as provided by LAC 33:V.2236.C"; and

f. a certification statement is needed (see applicable section for exact wording).

C. The treatment facility must submit a one-time certification signed by an authorized representative with the initial shipment of waste or treatment residue of a restricted waste to the land disposal facility. The certification must state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with the treatment standards specified in LAC 33:V.2223 without impermissible dilution of the prohibited waste. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

A certification is also necessary for contaminated soil and it must state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and believe that it has been maintained and operated properly so as to comply with treatment standards specified in LAC 33:V.2235 without impermissible dilution of the prohibited wastes. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

1. A copy of the certification must be placed in the treatment facility's on-site files. If the waste or treatment residue changes, or the receiving facility changes, a new certification must be sent to the receiving facility, and a copy placed in the file.

\* \* \*

[See Prior Text in C.2 - C.3]

4. For characteristic wastes that are subject to the treatment standards in LAC 33:V.2223 (other than those expressed as a required method of treatment), that are reasonably expected to contain underlying hazardous constituents as defined in LAC 33:V.2203, that are treated on-site to remove the hazardous characteristic, and that are then sent off-site for treatment of underlying hazardous constituents, the certification must state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of LAC 33:V.2223 to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet universal treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

5. For characteristic wastes that contain underlying hazardous constituents as defined LAC 33:V.2203 that are treated on-site to remove the hazardous characteristic and to treat underlying hazardous constituents to levels in LAC 33:V.2233 Universal Treatment Standards, the certification must state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of LAC 33:V.2223 to remove the hazardous characteristic and that underlying hazardous constituents, as defined in LAC 33:V.2203 have been treated on-site to meet the LAC 33:V.2233 Universal Treatment Standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

\* \* \*

[See Prior Text in D]

E. Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions in LAC 33:V.4139.A.2-4 regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) is not required to notify the receiving facility, in accordance with Subsection B of this Section. With each shipment of such wastes the owner or operator of the recycling facility must submit a certification described in Subsection C of this Section and a notice which includes the information listed in Subsection B of this Section (except the manifest number) to the administrative authority or his delegated representative. The recycling facility also must keep records of the name and location of each entity receiving the hazardous waste-derived product.

\* \* \*

[See Prior Text in F - H]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 23:566 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:670 (April 1998), LR 24:1730 (September 1998), LR 25:449 (March 1999).

[Tables 2-10 are in the Appendix to Chapter 22]

Table 2 - TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters	Nonwastewaters
		Common Name	CAS <sup>2</sup> Number	Concentration in mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Concentration in mg/kg <sup>5</sup> unless noted as "mg/l TCLP" or Technology Code <sup>4</sup>
D001 <sup>9</sup>	Ignitable Characteristic Wastes, except for the LAC 33:V.4903.B.1. High TOC Subcategory.	NA	NA	DEACT and meet LAC 33:V.2233 standards <sup>8</sup> ; RORGS; or CMBST	DEACT and meet LAC 33:V.2233 standards <sup>8</sup> ; RORGS; or CMBST
	High TOC Ignitable Characteristic Liquids Subcategory based on LAC 33:V 4903.B.1. - Greater than or equal to 10 percent total organic carbon. (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	RORGS; CMBST; or POLYM
* * * [See Prior Text in D002-D003]					
D004 <sup>9</sup>	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for arsenic based on the toxicity characteristic leaching procedure (TCLP) in SW846 .	Arsenic	7440-38-2	1.4 and meet LAC 33:V.2233 standards <sup>8</sup>	5.0 mg/l TCLP and meet LAC 33:V.2233 standards <sup>8</sup>
D005 <sup>9</sup>	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for barium based on the toxicity characteristic leaching procedure (TCLP) in SW846 .	Barium	7440-39-3	1.2 and meet LAC 33:V.2233 standards <sup>8</sup>	21 mg/l TCLP and meet LAC 33:V.2233 standards <sup>8</sup>
D006 <sup>9</sup>	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for cadmium based on the toxicity characteristic leaching procedure (TCLP) in SW846 .	Cadmium	7440-43-9	0.69 and meet LAC 33:V.2233 standards <sup>8</sup>	0.11 mg/l TCLP and meet LAC 33:V.2233 standards <sup>8</sup>
	Cadmium Containing Batteries Subcategory (Note: This subcategory consists of nonwastewaters only.)	Cadmium	7440-43-9	NA	RTHRM
D007 <sup>9</sup>	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for chromium based on the toxicity characteristic leaching procedure (TCLP) in SW846 .	Chromium (Total)	7440-47-3	2.77 and meet LAC 33:V.2233 standards <sup>8</sup>	0.60 mg/l TCLP and meet LAC 33:V.2233 standards <sup>8</sup>
D008 <sup>9</sup>	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for lead based on the toxicity characteristic leaching procedure (TCLP) in SW846 .	Lead	7439-92-1	0.69 and meet LAC 33:V.2233 standards <sup>8</sup>	0.75 mg/l TCLP and meet LAC 33:V.2233 standards <sup>8</sup>

	Lead Acid Batteries Subcategory (Note: This standard only applies to lead acid batteries that are identified as RCRA hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions of LAC 33:V.Chapter 22 or exempted under other LAC 33:V.Subpart 1 regulations (see LAC 33:V.4145. This subcategory consists of nonwastewaters only.)	Lead	7439-92-1	NA	RLEAD
	Radioactive Lead Solids Subcategory (Note: these lead solids include, but are not limited to, all forms of lead shielding and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stabilization, nor do they include organo-lead materials that can be incinerated and stabilized as ash.). (Note: This subcategory consists of nonwastewaters only.)	Lead	7439-92-1	NA	MACRO
D009 <sup>9</sup>	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846 ; and contain greater than or equal to 260 mg/kg total mercury that also contain organics and are not incinerator residues. (High Mercury-Organic Subcategory)	Mercury	7439-97-6	NA	IMERC; OR RMERC
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846 ; and contain greater than or equal to 260 mg/kg total mercury that are inorganic, including incinerator residues and residues from RMERC. (High Mercury-Inorganic Subcategory)	Mercury	7439-97-6	NA	RMERC

	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846 ; and contain less than 260 mg/kg total mercury and that are residues from RMERC only. (Low Mercury Subcategory)	Mercury	7439-97-6	NA	0.20 mg/l TCLP and meet LAC 33:V.2233 standards <sup>8</sup>
	All other nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain less than 260 mg/kg total mercury and that are not residues from RMERC. (Low Mercury Subcategory)	Mercury	7439-97-6	NA	0.025 mg/l TCLP and meet LAC 33:V.2233 standards <sup>8</sup>
	All D009 wastewaters.	Mercury	7439-97-6	0.15 and meet LAC 33:V.2233 standards <sup>8</sup>	NA
	Elemental mercury contaminated with radioactive materials. (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439-97-6	NA	AMLGM
	Hydraulic oil contaminated with Mercury Radioactive Materials Subcategory. (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439-97-6	NA	IMERC
D010 <sup>9</sup>	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for selenium based on the toxicity characteristic leaching procedure (TCLP) in SW846	Selenium	7782-49-2	0.82 and meet LAC 33:V.2233 standards <sup>8</sup>	5.7 mg/l TCLP and meet LAC 33:V.2233 standards <sup>8</sup>
D011 <sup>9</sup>	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for silver based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Silver	7440-22-4	0.43 and meet LAC 33:V.2233 standards <sup>8</sup>	0.14 mg/l TCLP and meet LAC 33:V.2233 standards <sup>8</sup>
*** [See Prior Text in D012-F005]					

F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP
F007	Spent cyanide plating bath solutions from electroplating operations.	Cadmium	7440-43-9	NA	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP
*** [See Prior Text in F010]					
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	Cadmium	7440-43-9	NA	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP

F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
F020 F021 F022 F023 F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri- or tetra chlorophenol, or of intermediates used to produce their pesticide derivatives, excluding wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol (F020); (2) pentachlorophenol, or of intermediates used to produce its derivatives (i.e., F021); (3) tetra-, penta-, or hexachlorobenzenes under alkaline conditions (i.e., F022) and from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri- or tetrachlorophenols, excluding wastes from equipment used only for the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol (F023); (2) tetra-, penta-, or hexachlorobenzenes under alkaline conditions (i.e., F026).	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzo-furans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzo-furans)	NA	0.000035	0.001
		Pentachlorophenol	87-86-5	0.089	7.4

		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001	
		TCDFs (All Tetrachlorodibenzo-furans)	NA	0.000063	0.001	
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4	
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4	
		2,3,4,6-Tetra chlorophenol	58-90-2	0.030	7.4	
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in LAC 33.V.4901.C or LAC 33:V.4901.B.Table 1.).	All F024 wastes	NA	CMBST	CMBST <sup>11</sup>	
		2-Chloro-1,3-butadiene	126-99-8	0.057	0.28	
		3-Chloropropylene	107-05-1	0.036	30	
		1,1-Dichloroethane	75-34-3	0.059	6.0	
		1,2-Dichloroethane	107-06-2	0.21	6.0	
		1,2-Dichloropropane	78-87-5	0.85	18	
		cis-1,3-Dichloropropylene	10061-01-5	0.036	18	
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18	
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28	
		Hexachloroethane	67-72-1	0.055	30	
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP	
		Nickel	7440-02-0	3.98	11 mg/l TCLP	
F025	Condensed light ends from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Light Ends Subcategory	Carbon tetrachloride	56-23-5	0.057	6.0	
		Chloroform	67-66-3	0.046	6.0	
		1,2-Dichloroethane	107-06-2	0.21	6.0	
		1,1-Dichloroethylene	75-35-4	0.025	6.0	
		Methylene chloride	75-9-2	0.089	30	
		1,1,2-Trichloroethane	79-00-5	0.054	6.0	
		Trichloroethylene	79-01-6	0.054	6.0	
		Vinyl chloride	75-01-4	0.27	6.0	
		Spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Spent Filters/Aids and Desiccants Subcategory	Carbon tetrachloride	56-23-5	0.057	6.0
			Chloroform	67-66-3	0.046	6.0
	Hexachlorobenzene		118-74-1	0.055	10	
	Hexachlorobutadiene		87-68-3	0.055	5.6	
	Hexachloroethane		67-72-1	0.055	30	
	Methylene chloride		75-9-2	0.089	30	
	1,1,2-Trichloroethane		79-00-5	0.054	6.0	
	Trichloroethylene		79-01-6	0.054	6.0	
	Vinyl chloride	75-01-4	0.27	6.0		

F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.).	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		Pentachlorophenol	87-86-5	0.089	7.4
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Wastes Nos. F020, F021, F023, F026, and F027.	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA
HxCDFs (All Hexachlorodibenzofurans)	NA			0.000063	0.001
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA			0.000063	0.001
PeCDFs (All Pentachlorodibenzofurans)	NA			0.000035	0.001
Pentachlorophenol	87-86-5			0.089	7.4
TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA			0.000063	0.001
TCDFs (All Tetrachlorodibenzofurans)	NA			0.000063	0.001
2,4,5-Trichlorophenol	95-95-4			0.18	7.4
2,4,6-Trichlorophenol	88-06-2			0.035	7.4
2,3,4,6-Tetrachlorophenol	58-90-2			0.030	7.4
***					
[See Prior Text in F032-F035]					

F037	Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and storm water units receiving dry weather flow. Sludge generated in storm water units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in LAC 33:V.4901.B.2.b. (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.	Acenaphthene	83-32-9	0.059	NA
		Anthracene	120-12-7	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	.032	30
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590		
Lead	7439-92-1	0.69	NA		
Nickel	7440-02-0	NA	11 mg/l TCLP		

F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air floatation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in storm water units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in LAC 33:V.4901.B.2.b. (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological units) and F037, K048, and K051 are not included in this listing.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m- and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under LAC 33:V.Subchapter A. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.).	Cyanides (Total) <sup>7</sup>	57-12-5
Lead	7439-92-1			0.69	NA
Nickel	7440-02-0			NA	11 mg/l TCLP
Acenaphthylene	208-96-8			0.059	3.4
Acenaphthene	83-32-9			0.059	3.4
Acetone	67-64-1			0.28	160
Acetonitrile	75-05-8			5.6	NA
Acetophenone	96-86-2			0.010	9.7
2-Acetylaminofluorene	53-96-3			0.059	140
Acrolein	107-02-8			0.29	NA
Acrylonitrile	107-13-1			0.24	84
Aldrin	309-00-2			0.021	0.066
4-Aminobiphenyl	92-67-1			0.13	NA
Aniline	62-53-3			0.81	14
Anthracene	120-12-7			0.059	3.4
Aramite	140-57-8	0.36	NA		
alpha-BHC	319-84-6	0.00014	0.066		
beta-BHC	319-85-7	0.00014	0.066		
delta-BHC	319-86-8	0.023	0.066		
gamma-BHC	58-89-9	0.0017	0.066		
Benzene	71-43-2	0.14	10		

Benz(a)anthracene	56-55-3	0.059	3.4
Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
Benzo(a)pyrene	50-32-8	0.061	3.4
Bromodichloro- methane	75-27-4	0.35	15
Methyl bromide (Bromomethane)	74-83-9	0.11	15
4-Bromophenyl phenyl ether	101-55-3	0.055	15
n-Butyl alcohol	71-36-3	5.6	2.6
Butyl benzyl phthalate	85-68-7	0.017	28
2-sec-Butyl-4,6- dinitrophenol (Dinoseb)	88-85-7	0.066	2.5
Carbon disulfide	75-15-0	3.8	NA
Carbon tetrachloride	56-23-5	0.057	6.0
Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
p-Chloroaniline	106-47-8	0.46	16
Chlorobenzene	108-90-7	0.057	6.0
Chlorobenzilate	510-15-6	0.10	NA
2-Chloro-1,3-butadiene	126-99-8	0.057	NA
Chlorodibromo- methane	124-48-1	0.057	15
Chloroethane	75-00-3	0.27	6.0
bis(2-Chloroethoxy) methane	111-91-1	0.036	7.2
bis(2-Chloroethyl) ether	111-44-4	0.033	6.0
Chloroform	67-66-3	0.046	6.0
bis(2-Chloroiso-propyl) ether	39638-32-9	0.055	7.2
p-Chloro-m-cresol	59-50-7	0.018	14
Chloromethane (Methyl chloride)	74-87-3	0.19	30
2-Chloronaphthalene	91-58-7	0.055	5.6
2-Chlorophenol	95-57-8	0.044	5.7
3-Chloropropylene	107-05-1	0.036	30
Chrysene	218-01-9	0.059	3.4
o-Cresol	95-48-7	0.11	5.6
m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6

p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
Cyclohexanone	108-94-1	0.36	NA
1,2-Dibromo-3- chloropropane	96-12-8	0.11	15
Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
Dibromomethane	74-95-3	0.11	15
2,4-D (2,4- Dichlorophenoxy acetic acid)	94-75-7	0.72	10
o,p'-DDD	53-19-0	0.023	0.087
p,p'-DDD	72-54-8	0.023	0.087
o,p'-DDE	3424-82-6	0.031	0.087
p,p'-DDE	72-55-9	0.031	0.087
o,p'-DDT	789-02-6	0.0039	0.087
p,p'-DDT	50-29-3	0.0039	0.087
Dibenz(a,h) anthracene	53-70-3	0.055	8.2
Dibenz(a,e)pyrene	192-65-4	0.061	NA
m-Dichlorobenzene	541-73-1	0.036	6.0
o-Dichlorobenzene	95-50-1	0.088	6.0
p-Dichlorobenzene	106-46-7	0.090	6.0
Dichlorodifluoromethan e	75-71-8	0.23	7.2
1,1-Dichloroethane	75-34-3	0.059	6.0
1,2-Dichloroethane	107-06-2	0.21	6.0
1,1-Dichloroethylene	75-35-4	0.025	6.0
trans-1,2- Dichloroethylene	156-60-5	0.054	30
2,4-Dichlorophenol	120-83-2	0.044	14
2,6-Dichlorophenol	87-65-0	0.044	14
1,2-Dichloropropane	78-87-5	0.85	18
cis-1,3- Dichloropropylene	10061-01-5	0.036	18
trans-1,3- Dichloropropylene	10061-02-6	0.036	18
Dieldrin	60-57-1	0.017	0.13
Diethyl phthalate	84-66-2	0.20	28
2-4-Dimethyl phenol	105-67-9	0.036	14
Dimethyl phthalate	131-11-3	0.047	28
Di-n-butyl phthalate	84-74-2	0.057	28
1,4-Dinitrobenzene	100-25-4	0.32	2.3
4,6-Dinitro-o-cresol	534-52-1	0.28	160
2,4-Dinitrophenol	51-28-5	0.12	160
2,4-Dinitro toluene	121-14-2	0.32	140
2,6-Dinitro toluene	606-20-2	0.55	28

Di-n-octyl phthalate	117-84-0	0.017	28
Di-n-propyl nitrosamine	621-64-7	0.40	14
1,4-Dioxane	123-91-1	12	170
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	NA
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	NA
1,2-Diphenylhydrazine	122-66-7	0.087	NA
Disulfoton	298-04-4	0.017	6.2
Endosulfan I	939-98-8	0.023	0.066
Endosulfan II	33213-6-5	0.029	0.13
Endosulfan sulfate	1031-07-8	0.029	0.13
Endrin	72-20-8	0.0028	0.13
Endrin aldehyde	7421-93-4	0.025	0.13
Ethyl acetate	141-78-6	0.34	33
Ethyl cyanide (Propanenitrile)	107-12-0	0.24	360
Ethyl benzene	100-41-4	0.057	10
Ethyl ether	60-29-7	0.12	160
bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
Ethyl methacrylate	97-63-2	0.14	160
Ethylene oxide	75-21-8	0.12	NA
Famphur	52-85-7	0.017	15
Fluoranthene	206-44-0	0.068	3.4
Fluorene	86-73-7	0.059	3.4
Heptachlor	76-44-8	0.0012	0.066
Heptachlor epoxide	1024-57-3	0.016	0.066
Hexachlorobenzene	118-74-1	0.055	10
Hexachlorobutadiene	87-68-3	0.055	5.6
Hexachlorocyclo- pentadiene	77-47-4	0.057	2.4
HxCDDs (All Hexachlorodibenzo-p- dioxins)	NA	0.000063	0.001
HxCDFs (All Hexachlorodibenzofura ns)	NA	0.000063	0.001
Hexachloroethane	67-72-1	0.055	30
Hexachloropropylene	1888-71-7	0.035	30
Indeno (1,2,3-c,d) pyrene	193-39-5	0.0055	3.4
Iodomethane	74-88-4	0.19	65
Isobutyl alcohol	78-83-1	5.6	170

Isodrin	465-73-6	0.021	0.066
Isosafrole	120-58-1	0.081	2.6
Kepone	143-50-8	0.0011	0.13
Methacrylonitrile	126-98-7	0.24	84
Methanol	67-56-1	5.6	NA
Methapyrilene	91-80-5	0.081	1.5
Methoxychlor	72-43-5	0.25	0.18
3-Methyl cholanthrene	56-49-5	0.0055	15
4,4-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
Methylene chloride	75-09-2	0.089	30
Methyl ethyl ketone	78-93-3	0.28	36
Methyl isobutyl ketone	108-10-1	0.14	33
Methyl methacrylate	80-62-6	0.14	160
Methyl methansulfonate	66-27-3	0.018	NA
Methyl parathion	298-00-0	0.014	4.6
Naphthalene	91-20-3	0.059	5.6
2-Naphthyl amine	91-59-8	0.52	NA
p-Nitroaniline	100-01-6	0.028	28
Nitrobenzene	98-95-3	0.068	14
5-Nitro-o-toluidine	99-55-8	0.32	28
p-Nitrophenol	100-02-7	0.12	29
N-Nitrosodiethylamine	55-18-5	0.40	28
N-Nitrosodimethylamine	62-75-9	0.40	NA
N-Nitroso-di-n-butylamine	924-16-3	0.40	17
N-Nitrosomethylethylamine	10595-95-6	0.40	2.3
N-Nitrosomorpholine	59-89-2	0.40	2.3
N-Nitrosopiperidine	100-75-4	0.013	35
N-Nitrosopyrrolidine	930-55-2	0.013	35
Parathion	56-38-2	0.014	4.6
Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10
Pentachlorobenzene	608-93-5	0.055	10
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
Pentachloronitrobenzene	82-68-8	0.055	4.8

Pentachlorophenol	87-86-5	0.089	7.4
Phenacetin	62-44-2	0.081	16
Phenanthrene	85-01-8	0.059	5.6
Phenol	108-95-2	0.039	6.2
Phorate	298-02-2	0.021	4.6
Phthalic anhydride	85-44-9	0.055	NA
Pronamide	23950-58-5	0.093	1.5
Pyrene	129-00-0	0.067	8.2
Pyridine	110-86-1	0.014	16
Safrole	94-59-7	0.081	22
Silvex (2,4,5-TP)	93-72-1	0.72	7.9
2,4,5-T	93-76-5	0.72	7.9
1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
Tetrachloroethylene	127-18-4	0.056	6.0
2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
Toluene	108-88-3	0.080	10
Toxaphene	8001-35-2	0.0095	2.6
Bromoform (Tribromomethane)	75-25-2	0.63	15
1,2,4-Trichlorobenzene	120-82-1	0.055	19
1,1,1-Trichloroethane	71-55-6	0.054	6.0
1,1,2-Trichloroethane	79-00-5	0.054	6.0
Trichloroethylene	79-01-6	0.054	6.0
Trichloromonofluoromethane	75-69-4	0.020	30
2,4,5-Trichlorophenol	95-95-4	0.18	7.4
2,4,6-Trichlorophenol	88-06-2	0.035	7.4
1,2,3-Trichloropropane	96-18-4	0.85	30
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	30
tris(2,3-Dibromopropyl) phosphate	126-72-7	0.11	NA
Vinyl chloride	75-01-4	0.27	6.0
Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30

		Antimony	7440-36-0	1.9	1.15 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Barium	7440-39-3	1.2	21 mg/l TCLP
		Beryllium	7440-41-7	0.82	NA
		Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	NA
		Fluoride	16964-48-8	35	NA
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Selenium	7782-49-2	0.82	5.7 mg/l TCLP
		Silver	7440-22-4	0.43	0.14 mg/l TCLP
		Sulfide	8496-25-8	14	NA
		Thallium	7440-28-0	1.4	NA
		Vanadium	7440-62-2	4.3	NA
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.	Naphthalene	91-20-3	0.059	5.6
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
K005	Wastewater treatment sludge from the production of chrome green pigments.	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous).	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP

	Wastewater treatment sludge from the production of chrome oxide green pigments (hydrated).	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	NA
K007	Wastewater treatment sludge from the production of iron blue pigments.	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
K008	Oven residue from the production of chrome oxide green pigments.	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
* * *					
[See Prior Text in K009-K013]					
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	38
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K015	Still bottoms from the distillation of benzyl chloride.	Anthracene	120-12-7	0.059	3.4
		Benzal chloride	98-87-3	0.055	6.0
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Phenanthrene	85-01-8	0.059	5.6
		Toluene	108-88-3	0.080	10
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
* * *					
[See Prior Text in K016-K020]					
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Antimony	7440-36-0	1.9	1.15 mg/l TCLP
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	Toluene	108-88-3	0.080	10
		Acetophenone	96-86-2	0.010	9.7
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
		Phenol	108-95-2	0.039	6.2
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
* * *					
[See Prior Text in K023-K027]					

K028	Spent catalyst from the hydro chlorinator reactor in the production of 1,1,1-trichloroethane.	1,1-Dichloroethane	75-34-3	0.059	6.0
		trans-1,2-Dichloroethylene	156-60-5	0.054	30
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	NA	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Cadmium	7440-43-9	0.69	NA
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
*** [See Prior Text in K029-K045]					
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	Lead	7439-92-1	0.69	0.75 mg/l TCLP
*** [See Prior Text in K047]					
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-33	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	11 mg/l TCLP

K049	Slop oil emulsion solids from the petroleum refining industry.	Anthracene	120-12-7	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Carbon disulfide	75-15-0	3.8	NA
		Chrysene	2218-01-9	0.059	3.4
		2,4-Dimethyl phenol	105-67-9	0.036	NA
		Ethylbenzene	100-41-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m- and p-xylene concentrations)	1330-20-7	0.32	30
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
Lead	7439-92-1	0.69	NA		
Nickel	7440-02-0	NA	11 mg/l TCLP		
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	Benzo(a)pyrene	50-32-8	0.061	3.4
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	11 mg/l TCLP
K051	API separator sludge from the petroleum refining industry.	Acenaphthene	83-32-9	0.059	NA
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	2218-01-9	0.059	3.4
		Di-n-butyl phthalate	105-67-9	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
Toluene	108-88-3	0.08	10		

		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	11 mg/l TCLP
K052	Tank bottoms (lead) from the petroleum refining industry.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		2,4-Dimethyl phenol	105-67-9	0.036	NA
		Ethylbenzene	100-41-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Toluene	108-88-3	0.08	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
Nickel	7440-02-0	NA	11 mg/l TCLP		
*** [See Prior Text in K060]					
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	Antimony	7440-36-0	NA	1.15 mg/l TCLP
		Arsenic	7440-38-2	NA	5.0 mg/l TCLP
		Barium	7440-39-3	NA	21 mg/l TCLP
		Beryllium	7440-41-7	NA	1.22 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Mercury	7439-97-6	NA	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Selenium	7782-49-2	NA	5.7 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP
		Thallium	7440-28-0	NA	0.20 mg/l TCLP
		Zinc	7440-66-6	NA	4.3 mg/l TCLP

K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	NA
K069	Emission control dust/sludge from secondary lead smelting. - Calcium Sulfate (Low Lead) Subcategory	Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
	Emission control dust/sludge from secondary lead smelting. - Non-Calcium Sulfate (High Lead) Subcategory	NA	NA	NA	RLEAD
*** [See Prior Text in K071-K073]					
K083	Distillation bottoms from aniline production.	Aniline	62-53-3	0.81	14
		Benzene	71-43-2	0.14	10
		Cyclohexanone	108-94-1	0.36	NA
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
		Nickel	7440-02-0	3.98	11 mg/l TCLP
*** [See Prior Text in K084-K085]					
K086	Solvent wastes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	Acetone	67-64-1	0.28	160
		Acetophenone	96-86-2	0.010	9.7
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		n-Butyl alcohol	71-36-3	5.6	2.6
		Butylbenzyl phthalate	85-68-7	0.017	28
		Cyclohexanone	108-94-1	0.36	NA
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Diethyl phthalate	84-66-2	0.20	28
		Dimethyl phthalate	131-11-3	0.047	28
		Di-n-butyl phthalate	84-74-2	0.057	28
		Di-n-octyl phthalate	117-84-0	0.017	28
		Ethyl acetate	141-78-6	0.34	33
		Ethylbenzene	100-41-4	0.057	10
		Methanol	67-56-1	5.6	NA
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Methylene chloride	75-09-2	0.089	30
Naphthalene	91-20-3	0.059	5.6		

		Nitrobenzene	98-95-3	0.068	14
		Toluene	108-88-3	0.080	10
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
K087	Decanter tank tar sludge from coking operations.	Acenaphthylene	208-96-8	0.059	3.4
		Benzene	71-43-2	0.14	10
		Chrysene	218-01-9	0.059	3.4
		Fluoranthene	206-44-0	0.068	3.4
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
K088	Spent potliners from primary aluminum reduction.	Acenaphthalene	83-32-9	0.059	3.4
		Anthracene	120-12-7	0.059	3.4
		Benzo(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene	205-99-2	0.11	6.8
		Benzo(k)fluoranthene	207-08-9	0.11	6.8
		Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Fluoranthene	206-44-0	0.068	3.4
		Indeno (1,2,3-c,d)pyrene	193-39-5	0.0055	3.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Antimony	7440-36-0	1.9	1.15 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Barium	7440-39-3	1.2	21 mg/l TCLP
		Beryllium	7440-41-7	0.82	1.22 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
				Lead	7439-92-1

		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Selenium	7782-49-2	0.82	5.7 mg/l TCLP
		Silver	7440-22-4	0.43	0.14 mg/l TCLP
		Cyanide (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanide (Amenable) <sup>7</sup>	57-12-5	0.86	30
		Fluoride	16984-48-8	35	48 mg/l TCLP
* * *					
[See Prior Text in K093-K099]					
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
* * *					
[See Prior Text in K101-K114]					
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of Dinitro toluene.	Nickel	7440-02-0	3.98	11 mg/l TCLP
		NA	NA	CARBON; or CMBST	CMBST
* * *					
[See Prior Text in K116-K136]					
K140	Floor sweepings, off-specification product, and spent filter media from the production of 2,4,6-Tribromophenol	2,4,6-Tribromophenol	118-79-6	0.035	7.4
* * *					
[See Prior Text in K141-K151]					
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.	Acetonitrile	75-05-8	5.6	1.8
		Acetophenone	96-86-2	0.010	9.7
		Aniline	62-53-3	0.81	14
		Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbaryl	63-25-2	0.006	0.14
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chlorobenzene	108-90-7	0.057	6.0
Chloroform	67-66-3	0.046	6.0		

		o-Dichlorobenzene	95-50-1	0.088	6.0
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyridine	110-86-1	0.014	16
		Toluene	108-88-3	0.080	10
		Triethylamine	121-44-8	0.081	1.5
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		o-Phenylenediamine	95-54-5	0.056	5.6
		Pyridine	110-86-1	0.014	16
		Triethylamine	121-44-8	0.081	1.5
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes.	Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chloroform	67-66-3	0.046	6.0
		Methylene chloride	75-09-2	0.089	30
		Phenol	108-95-2	0.039	6.2
K159	Organics from the treatment of thiocarbamate wastes.	Benzene	71-43-2	0.14	10
		Butylate	2008-41-5	0.003	1.4
		EPTC (Eptam)	759-94-4	0.003	1.4
		Molinate	2212-67-1	0.003	1.4

		Pebulate	1114-71-2	0.003	1.4
		Vernolate	1929-77-7	0.003	1.4
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust, and floor sweepings from the production of dithiocarbamate acids and their salts.	Antimony	7440-36-0	1.9	1.15 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
		Dithiocarbamates (total)	NA	0.028	28
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Selenium	7782-49-2	0.82	5.7 mg/l TCLP
K169	Crude oil tank sediment from petroleum refining operations.	Benz (a) anthracene	56-55-3	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo (g,h,i) perylene	191-24-2	0.0055	1.8
		Chrysene	218-01-9	0.059	3.4
		Ethyl Benzene	100-41-4	0.057	10
		Flourene	86-73-7	0.059	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	81-05-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene (Methyl Benzene)	108-88-3	0.080	10
		Xylene(s) (Total)	1330-20-7	0.32	30
K170	Clarified slurry oil sediment from petroleum refining operations.	Benz (a) anthracene	56-55-3	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo (g,h,i) perylene	191-24-2	0.0055	1.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz (a, h) anthracene	53-70-3	0.055	8.2
		Ethyl benzene	100-41-4	0.057	10
		Flourene	86-73-7	0.059	3.4
		Indeno (1, 2, 3, - cd)pyrene	193-39-5	0.0055	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	81-05-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene (Methyl Benzene)	108-88-3	0.080	10

		Xylene(s) (Total)	1330-20-7	0.32	30
K171	Spent hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media).	Benz (a) anthracene	56-55-3	0.059	3.4
		Benzene	71-43-2	0.14	10
		Chrysene	218-01-9	0.059	3.4
		Ethyl Benzene	100-14-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	81-05-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene (Methyl Benzene)	108-88-3	0.080	10
		Xylene(s) (Total)	1330-20-7	0.32	30
		Arsenic	7740-38-2	1.4	5.0 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Vanadium	7440-62-2	4.3	1.6 mg/l TCLP
		Reactive Sulfides	NA	DEACT	DEACT
K172	Spent hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feed to other catalytic reactors (this listing does not include inert support media).	Benzene	71-43-2	0.14	10
		Ethyl benzene	100-41-4	0.057	10
		Toluene (Methyl Benzene)	108-88-3	0.080	10
		Xylene(s) (Total)	1330-20-7	0.32	30
		Antimony	7440-36-0	1.9	1.15 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Vanadium	7440-62-2	4.3	1.6 mg/l TCLP
		Reactive Sulfides	NA	DEACT	DEACT
* * *					
[See Prior Text in P001-P012]					
P013	Barium cyanide	Barium	7440-39-3	NA	21 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
* * *					
[See Prior Text in P014-P072]					
P073	Nickel carbonyl	Nickel	7440-02-0	3.98	11 mg/l TCLP
P074	Nickel cyanide	Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30

		Nickel	7440-02-0	3.98	11 mg/l TCLP
* * *					
[See Prior Text in P075-P098]					
P099	Potassium silver cyanide	Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
		Silver	7440-22-4	0.43	0.14 mg/l TCLP
* * *					
[See Prior Text in P101-P102]					
P103	Selenourea	Selenium	7782-49-2	0.82	5.7 mg/l TCLP
P104	Silver cyanide	Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
		Silver	7440-22-4	0.43	0.14 mg/l TCLP
* * *					
[See Prior Text in P105-P109]					
P110	Tetraethyl lead	Lead	7439-92-1	0.69	0.75 mg/l TCLP
* * *					
[See Prior Text in P111-P113]					
P114	Thallium selenite	Selenium	7782-49-2	0.82	5.7 mg/l TCLP
* * *					
[See Prior Text in P115-P123]					
P127	Carbofuran	Carbofuran	1563-66-2	0.006	0.14
P128	Mexacarbate	Mexacarbate	315-18-4	0.056	1.4
P185	Tirpate <sup>10</sup>	Tirpate	26419-73-8	0.056	0.28
P188	Physostigmine salicylate	Physostigmine salicylate	57-64-7	0.056	1.4
P189	Carbosulfan	Carbosulfan	55285-14-8	0.028	1.4
P190	Metolcarb	Metolcarb	1129-41-5	0.056	1.4
P191	Dimetilan <sup>10</sup>	Dimetilan	644-64-4	0.056	1.4
P192	Isolan <sup>10</sup>	Isolan	119-38-0	0.056	1.4
P194	Oxamyl	Oxamyl	23135-22-0	0.056	0.28
P196	Manganese dimethyldithiocarbamate	Dithiocarbamates (total)	NA	0.028	28
P197	Formparanate <sup>10</sup>	Formparanate	17702-57-7	0.056	1.4
P198	Formetanate hydrochloride	Formetanate hydrochloride	23422-53-9	0.056	1.4
P199	Methiocarb	Methiocarb	2032-65-7	0.056	1.4
P201	Promecarb	Promecarb	2631-37-0	0.056	1.4
P202	m-Cumenyl methyl carbamate	m-Cumenyl methyl carbamate	64-00-6	0.056	1.4
P203	Aldicarb sulfone	Aldicarb sulfone	1646-88-4	0.056	0.28
P204	Physostigmine	Physostigmine	57-47-6	0.056	1.4
P205	Ziram	Dithiocarbamates (total)	NA	0.028	28
* * *					
[See Prior Text in U001-U031]					

U032	Calcium chromate	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
*** [See Prior Text in U033-U050]					
U051	Creosote	Naphthalene	91-20-3	0.059	5.6
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p- ylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
*** [See Prior Text in U052-U107]					
U108	1,4-Dioxane	1,4-Dioxane	123-91-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		1,4-Dioxane; alternate <sup>6</sup> standard for nonwastewaters only	123-91-1	12.0	170
*** [See Prior Text in U109-U132]					
U133	Hydrazine	Hydrazine	302-01-2	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
*** [See Prior Text in U134-U136]					
U137	Indeno(1,2,3-c,d)pyrene	Indeno(1,2,3-c,d) pyrene	193-39-5	0.0055	3.4
*** [See Prior Text in U138-U143]					
U144	Lead acetate	Lead	7439-92-1	0.69	0.75 mg/l TCLP
U145	Lead phosphate	Lead	7439-92-1	0.69	0.75 mg/l TCLP
U146	Lead subacetate	Lead	7439-92-1	0.69	0.75 mg/l TCLP
*** [See Prior Text in U147-U203]					
U204	Selenium dioxide	Selenium	7782-49-2	0.82	5.7 mg/l TCLP
U205	Selenium sulfide	Selenium	7782-49-2	0.82	5.7 mg/l TCLP
*** [See Prior Text in U206-U249]					
U271	Benomyl	Benomyl	17804-35-2	0.056	1.4
U278	Bendiocarb	Bendiocarb	22781-23-8	0.056	1.4
U279	Carbaryl	Carbaryl	63-25-2	0.006	0.14
U280	Barban	Barban	101-27-9	0.056	1.4
*** [See Prior Text in U328 - U359]					
U364	Bendiocarb phenol <sup>10</sup>	Bendiocarb phenol	22961-82-6	0.056	1.4
U367	Carbofuran phenol	Carbofuran phenol	1563-38-8	0.056	1.4
U372	Carbendazim	Carbendazim	10605- 21-7	0.056	1.4

U373	Propham	Propham	122-42-9	0.056	1.4
U387	Prosulfocarb	Prosulfocarb	52888-80-9	0.042	1.4
U389	Triallate	Triallate	2303-17-5	0.042	1.4
U394	A2213 <sup>10</sup>	A2213	30558-43-1	0.042	1.4
U395	Diethylene glycol, dicarbamate <sup>10</sup>	Diethylene glycol, dicarbamate	5952-26-1	0.056	1.4
U404	Triethylamine	Triethylamine	101-44-8	0.081	1.5
U408	2,4,6-Tribromophenol	2,4,6-Tribromophenol	111-79-6	0.035	7.4
U409	Thiophanate-methyl	Thiophanate-methyl	23564-05-8	0.056	1.4
U410	Thiodicarb	Thiodicarb	59669-26-0	0.019	1.4
U411	Propoxur	Propoxur	114-26-1	0.056	1.4

\*\*\*

[See Prior Text in Notes 1-11]  
Note: NA means not applicable.

Table 7. Universal Treatment Standards			
Regulated Constituent-Common Name	CAS <sup>1</sup> Number	Wastewater Standard Concentration in mg/l <sup>2</sup>	Nonwastewater Standard Concentration in mg/kg <sup>3</sup> unless noted as "mg/l TCLP"
<i>Organic Constituents</i>			
Acenaphthylene	208-96-8	0.059	3.4
*** [See Prior Text in Acenaphthene-Acrylonitrile]			
Aldicarb sulfone	1646-88-4	0.056	0.28
*** [See Prior Text in Aldrin - gamma - BHC]			
Barban	101-27-9	0.056	1.4
Bendiocarb	22781-23-3	0.056	1.4
Benomyl	17804-35-2	0.056	1.4
*** [See Prior Text in Benzene - n-Butyl alcohol]			
Butylate	2008-41-5	0.042	1.4
*** [See Prior Text in Butyl benzyl phthalate - 2-sec-Butyl-4,6-dinitrophenol/Dinoseb]			
Carbaryl	63-25-2	0.006	0.14
Carbenzadim	10605-21-7	0.056	1.4
Carbofuran	1563-66-2	0.006	0.14
Carbofuran phenol	1563-38-8	0.056	1.4
*** [See Prior Text in Carbon disulfide - Carbon tetrachloride]			
Carbosulfan	55285-14-8	0.028	1.4
*** [See Prior Text in Chlordane (alpha and gamma isomers) - p-Creosol]			
m-Cumenyl methyl carbamate	64-00-6	0.056	1.4

\*\*\*

[See Prior Text in Cyclohexanone -Dieldrin]

Diethyl phthalate	84-66-2	0.20	28
2-4-Dimethyl phenol	105-67-9	0.036	14
Dimethyl phthalate	131-11-3	.047	28
Di-n-butyl phthalate	84-74-2	0.057	28
*** [See Prior Text in 1,4-Dinitrobenzene - Disulfoton]			
Dithiocarbamates (total)	137-30-4	0.028	28
EPTC	759-94-4	0.042	1.4
*** [See Prior Text in Endosulfan I - Flourene]			
Formetanate hydrochloride	23422-53-9	0.056	1.4
Heptachlor	75-44-8	0.0012	0.066
*** [See Prior Text in Hepatchlor epoxide -Isobutyl alcohol]			
Isodrin	465-73-6	0.021	0.066
Isosafrole	120-58-1	0.081	2.6
*** [See Prior Text in Kepone - Methapyrilene]			
Methiocarb	2032-65-7	0.056	1.4
Methomyl	16752-77-5	0.028	0.14
*** [See Prior Text in Methoxychlor - Methyl parathion]			
Metolcarb	1129-41-5	0.056	1.4
Mexacarbate	315-18-4	0.056	1.4
Molinate	2212-67-1	0.042	1.4
*** [See Prior Text in Napthalene - N-Nitrosopyrrolidine]			
Oxamyl	23135-22-0	0.056	0.28

*** [See Prior Text in Parathion - Total PCBs]			
Pebulate	1114-71-2	0.042	1.4
*** [See Prior Text in Pentachlorobenzene -Phenanthrene]			
Phenol	108-95-2	0.039	6.2
Phorate	298-02-2	0.021	4.6
*** [See Prior Text in Phthalic acid - Phthalic anhydride]			
Physostigmine	57-47-6	0.056	1.4
Physostigmine salicylate	57-64-7	0.056	1.4
Promecarb	2631-37-0	0.056	1.4
*** [See Prior Text in Pronamide]			
Propham	112-42-9	0.056	1.4
Propoxur	114-26-1	0.056	1.4
Prosulfocarb	52888-80-9	0.042	1.4
*** [See Prior Text in Pyrene -Bromoform (Tribromomethane)]			
2,4,6-Tribromophenol	118-79-6	0.035	7.4
*** [See Prior Text in 1,2,4-Trichlorobenzene - Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)]			
<i>Inorganic Constituents</i>			
Antimony	7440-36-0	1.9	1.15 mg/l TCLP
Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
Barium	7440-39-3	1.2	21 mg/l TCLP
Beryllium	7440-41-7	0.82	1.22 mg/l TCLP

Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
Cyanides (Total) <sup>4</sup>	57-12-5	1.2	590
Cyanides (Amenable) <sup>4</sup>	57-12-5	0.86	30
Fluoride <sup>5</sup>	16964-48-8	35	NA
Lead	7439-92-1	0.69	0.75 mg/l TCLP
Mercury—Nonwastewater from Retort	7439-97-6	NA	0.20 mg/l TCLP
Mercury—All Others	7439-97-6	0.15	0.025 mg/l TCLP
Nickel	7440-02-0	3.98	11 mg/l TCLP
Selenium <sup>7</sup>	7782-49-2	0.82	5.7 mg/l TCLP
Silver	7440-22-4	0.43	0.14 mg/l TCLP
Sulfide <sup>5</sup>	18496-25-8	14	NA
Thallium	7440-28-0	1.4	0.20 mg/l TCLP
Vanadium <sup>5</sup>	7440-62-2	4.3	1.6 mg/l TCLP
Zinc <sup>5</sup>	7440-66-6	2.61	4.3 mg/l TCLP

\*\*\*  
[See Prior Text in Note 1 - 5]

<sup>6</sup> Reserved.

<sup>7</sup> This constituent is not an underlying hazardous constituent as defined at LAC 33:V.2203 because its UTS level is greater than its TC level, thus a treated selenium waste would always be characteristically hazardous, unless it is treated to below its characteristic level.

Note: NA means not applicable

### Chapter 31. Incinerators §3105. Applicability

\*\*\*  
[See Prior Text in A-D]

E. The owner or operator of an incinerator may conduct trial burns subject only to the requirements of LAC 33:V.3115.

Table 1. Hazardous Constituents			
Common Name	Chemical Abstracts Name	Chemical Abstracts Number	Hazardous Waste Number
*** [See Prior Text in A2213 -Potassium cyanide]			
Potassium dimethyldithiocarbamate	Carbamodithioic acid, dimethyl, potassium salt	128-03-0	U383
Potassium n-methyldithiocarbamate	Carbamodithioic acid, methyl-monopotassium salt	137-41-7	U377
*** [See Prior Text in Potassium pentachlorophenate -Triallate]			
2,4,6-Tribromophenol	Tribromophenol, 2,4,6-	118-79-6	U408
*** [See Prior Text in 1,2,4-Trichlorobenzene - Ziram]			

<sup>1</sup> The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this table.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:1139 (December 1985), LR 13:433 (August 1987), LR 14:424 (July 1988), LR 15:737 (September 1989), LR 16:399 (May 1990), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:944 (September 1995), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:318 (February 1998), LR 24:681 (April 1998), LR 24:1741 (September 1998), LR 25:479 (March 1999).

### **Chapter 33. Groundwater Protection** **§3301. Applicability**

\* \* \*

[See Prior Text in A - E]

F. The regulations of this Chapter apply to all owners and operators subject to the requirements of LAC 33:V.305.H when the department issues either a post-closure permit or an enforceable document (as defined in LAC 33:V.305.H) at the facility. When the department issues an enforceable document, references in this Chapter to "in the permit" mean "in the enforceable document."

G. The administrative authority may replace all or part of the requirements of this Chapter applying to a regulated unit with alternative requirements for groundwater monitoring and corrective action for releases to groundwater set out in the permit (or in an enforceable document as defined in LAC 33:V.305.H) where the administrative authority determines that:

1. the regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release; and

2. it is not necessary to apply the groundwater monitoring and corrective action requirements of this Chapter because alternative requirements will protect human health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 10:496 (July 1984), LR 16:399 (May 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:480 (March 1999).

### **Chapter 35. Closure and Post-Closure** **§3501. Applicability**

\* \* \*

[See Prior Text in A - C.4]

D. The administrative authority may replace all or part of the requirements of this Chapter (and the unit-specific standards referenced in LAC 33:V.3507.A.3 applying to a regulated unit), with alternative requirements set out in a permit or in an enforceable document (as defined in LAC 33:V.305.H), where the administrative authority determines that:

1. the regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid

waste management unit(s) (or areas of concern) are likely to have contributed to the release; and

2. it is not necessary to apply the closure requirements of this Chapter (and those referenced herein) because the alternative requirements will protect human health and the environment and will satisfy the closure performance standard of LAC 33:V.3507.A.1 and 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 16:614 (July 1990), LR 18:1256 (November 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1108 (June 1998), LR 24:1742 (September 1998), LR 25:480 (March 1999).

### **Subchapter A. Closure Requirements**

#### **§3511. Closure Plan; Amendment of Plan**

\* \* \*

[See Prior Text in A - B.6]

7. for facilities that use trust funds to establish financial assurance LAC 33:V.3707 and 3711 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure ; and

8. for facilities where the administrative authority has applied alternative requirements at a regulated unit under LAC 33:V.3301.G, 3501.D, and/or 3701.D, either the alternative requirements applying to the regulated unit or a reference to the enforceable document containing those alternative requirements.

\* \* \*

[See Prior Text in C - C.4]

5. The owner or operator requests the administrative authority to apply alternative requirements to a regulated unit under LAC 33:V.3301.G, 3501.D, and/or 3701.D.

\* \* \*

[See Prior Text in D - E]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 14:791 (November 1988), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 17:478 (May 1991), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 21:266 (March 1995), , amended by the Office of Waste Services, Hazardous Waste Division, LR 25:480 (March 1999).

### **Subchapter B. Post-Closure Requirements**

#### **§3523. Post-Closure Plan, Amendment of Plan**

\* \* \*

[See Prior Text in A - B.2.a]

b. the functioning of the monitoring equipment in accordance with the requirements of LAC 33:V.Chapters 23, 25, 27, 29, 32, and 33;

3. the name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period ; and

4. for facilities where the administrative authority has applied alternative requirements at a regulated unit under alternative requirements that apply to the regulated unit or a

reference to the enforceable document containing those requirements.

\* \* \*

[See Prior Text in C - D.2.b]

c. events which occur during the active life of the facility, including partial and final closures, affect the approved post-closure plan ; or

d. the owner or operator requests the administrative authority to apply alternative requirements to a regulated unit under LAC 33:V.3301.G, 3501.D, and/or 3701.D.

\* \* \*

[See Prior Text in D.3 - E]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 14:791 (November 1988), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:480 (March 1999).

## Chapter 37. Financial Requirements

### §3701. Applicability

\* \* \*

[See Prior Text in A - C.Comment]

D. The administrative authority may replace all or part of the requirements of this Chapter applying to a regulated unit with alternative requirements for financial assurance set out in the permit or in an enforceable document (as defined in LAC 33:V.305.H), where the administrative authority:

1. prescribes alternative requirements for the regulated unit under LAC 33:V.3301.G and/or 3501.D; and

2. determines that it is not necessary to apply the requirements of this Chapter because the alternative financial assurance requirements will protect human health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:614 (July 1990), LR 21:266 (March 1995), , amended by the Office of Waste Services, Hazardous Waste Division, LR 25:480 (March 1999).

## Chapter 40. Used Oil

### Subchapter A. Materials Regulated as Used Oil

#### §4003. Applicability

This Section identifies those materials which are subject to regulation as used oil under this Chapter. This Section also identifies some materials that are not subject to regulation as used oil under this Chapter and indicates whether these materials may be subject to regulation as hazardous waste under this Subpart.

\* \* \*

[See Prior Text in A - H]

I. Used Oil Containing PCBs. Used oil containing PCBs (as defined at 40 CFR 761.3) at any concentration less than 50 ppm is subject to the requirements of this Subchapter. Used oil subject to the requirements of this Subchapter may also be subject to the prohibitions and requirements found at 40 CFR part 761, including sections 761.20(d) and (e). Used oil containing PCBs at concentrations of 50 ppm or greater is not

subject to the requirements of this Subchapter, but is subject to regulation under 40 CFR part 761.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended LR 22:828 (September 1996), LR 22:836 (September 1996), mended by the Office of Waste Services, Hazardous Waste Division, LR 24:1108 (June 1998), LR 25:481 (March 1999).

### Subchapter B. Standards for Used Oil Generators

#### §4013. Used Oil Storage

Used oil generators are subject to all applicable Spill Prevention, Control, and Countermeasures (40 CFR part 112) in addition to the requirements of this Subchapter. Used oil generators are also subject to the Underground Storage Tanks (LAC 33:XI) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this Subchapter.

\* \* \*

[See Prior Text in A - C.2]

D. Response to Releases. Upon detection of a release of used oil to the environment which is not subject to the requirements of LAC 33:XI.715 and which has occurred after the effective date of the recycled used oil management program in effect in the state in which the release is located, a generator must perform the following cleanup steps:

\* \* \*

[See Prior Text in D.1 - 3]

4. if necessary , repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:481 (March 1999).

### Subchapter D. Standards for Used Oil Transporter and Transfer Facilities

#### §4035. Used Oil Storage at Transfer Facilities

Used oil transporters are subject to all applicable spill prevention, control, and countermeasures (40 CFR part 112) in addition to the requirements of this Subchapter. Used oil transporters are also subject to the Underground Storage Tanks (LAC 33:XI) standards for used oil stored in underground tanks, whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this Subchapter. Used oil transfer facility status is contingent upon approval of the administrative authority.

\* \* \*

[See Prior Text in A - G.2]

H. Response to Releases. Upon detection of a release of used oil to the environment which is not subject to the requirements of LAC 33:XI.715 and which occurred after the effective date of the recycled used oil management program in effect in the state in which the release is located, the owner/operator of a transfer facility must perform the following cleanup steps:

\* \* \*

[See Prior Text in H.1 - 4]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), LR 21:267 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:481 (March 1999).

**Subchapter E. Standards for Used Oil Processors and Re-Refiners**

**§4049. Used Oil Management**

Used oil processors/re-refiners are subject to all applicable Spill Prevention, Control, and Countermeasures (40 CFR part 112) in addition to the requirements of this Subchapter. Used oil processors/re-refiners are also subject to the Underground Storage Tanks (LAC 33:XI) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this Subchapter.

\* \* \*

[See Prior Text in A - F.2]

G. Response to Releases. Upon detection of a release of used oil to the environment not subject to the requirements of LAC 33:XI.715 which has occurred after the effective date of the recycled used oil management program in effect in the state in which the release is located, an owner/operator must perform the following cleanup steps:

\* \* \*

[See Prior Text in G.1 - H.2.b]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:482 (March 1999).

**Subchapter F. Standards for Used Oil Burners Which Burn Off-Specification Used Oil for Energy Recovery**

**§4069. Used Oil Storage**

Used oil burners are subject to all applicable Spill Prevention, Control, and Countermeasures (40 CFR part 112) in addition to the requirements of this Subchapter. Used oil burners are also subject to the Underground Storage Tank (LAC 33:XI) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this Subchapter.

\* \* \*

[See Prior Text in A - F.2]

G. Response to Releases. Upon detection of a release of used oil to the environment not subject to the requirements of LAC 33:XI.715 which has occurred after the effective date of the recycled used oil management program in effect for the state in which the release is located, a burner must perform the following cleanup steps:

\* \* \*

[See Prior Text in G.1 - 4]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:482 (March 1999).

**Subchapter G. Standards for Used Oil Fuel Marketers §4085. Tracking**

\* \* \*

[See Prior Text in A - A.6]

B. On-Specification Used Oil Delivery. A generator, transporter, processor/re-refiner, or burner who first claims the used oil that is to be burned for energy recovery meets the fuel specifications under LAC 33:V.4005 must keep a record of each shipment of used oil to the facility to which it delivers the used oil. Records for each shipment must include the following information:

\* \* \*

[See Prior Text in B.1 - C]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), LR 21:267 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:482 (March 1999).

**Chapter 41. Recyclable Materials**

**§4105. Requirements for Recyclable Material**

Recyclable materials are subject to additional regulations as follows:

\* \* \*

[See Prior Text in A - B.11]

12. Reserved;

\* \* \*

[See Prior Text in B.13 - F]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:219 (March 1990), LR 17:362 (April 1991), repromulgated LR 18:1256 (November 1992), amended LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:837 (September 1996), LR 23:579 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:685 (April 1998), LR 24:1108 (June 1998), LR 24:1742 (September 1998), LR 25:482 (March 1999).

**Chapter 43. Interim Status**

**§4301. Purpose and Applicability**

\* \* \*

[See Prior Text in A]

B. Except as provided in LAC 33:V.4719, the standards of this Chapter and of LAC 33:V.Chapter 26 apply to owners and operators of facilities that treat, store, or dispose of hazardous waste who have fully complied with the requirements for interim status under section 3005(e) of RCRA and LAC 33:V.501 until either a permit is issued under section 3005 of RCRA or until applicable LAC 33:V.Chapter 43 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely

notification as required by section 3010(a) of RCRA and/or failed to file part A of the permit application as required by LAC 33:V.303.K and 501.C. These standards apply to all treatment, storage, and disposal of hazardous waste at these facilities after the effective date of these regulations, except as specifically provided otherwise in this Chapter or LAC 33:V.Chapter 49.

[Comment: As stated in section 3005(a) of RCRA, after the effective date of regulations under that section (i.e., LAC 33:V.Chapters 3, 5, and 7), the treatment, storage, and disposal of hazardous waste is prohibited except in accordance with a permit. Section 3005(e) of RCRA provides for the continued operation of an existing facility that meets certain conditions, until final administrative disposition of the owner's and operator's permit application is made.]

C. The requirements of this Chapter do not apply to:

1. a person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act;

[Comment: These LAC 33:V.Chapter 43 regulations do apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in Subsection B of this Section.]

2. the owner or operator of a POTW which treats, stores, or disposes of hazardous waste;

[Comment: The owner or operator of a facility under Subsection C.1 and 2 of this Section is subject to the requirements of LAC 33:V.Chapters 9, 11, 15 - 21, 23 - 29, and 31 - 37 to the extent they are included in a permit by rule granted to such a person under 40 CFR 122 and by 144.14.]

3. a person who treats, stores, or disposes of hazardous waste in a state with a RCRA hazardous waste program authorized under subpart A or B of 40 CFR part 271, except that the requirements of this Chapter will continue to apply:

a. if the authorized state RCRA program does not cover disposal of hazardous waste by means of underground injection; or

b. to a person who treats, stores, or disposes of hazardous waste in a state authorized under subpart A or B of 40 CFR part 271 if the state has not been authorized to carry out the requirements and prohibitions applicable to the treatment, storage, or disposal of hazardous waste at his facility which are imposed in accordance with the Hazardous and Solid Waste Act Amendments of 1984. The requirements and prohibitions that are applicable until a state receives authorization to carry them out include all federal program requirements identified in 40 CFR 271.1.j;

4. the owner or operator of a facility permitted, licensed, or registered by the state to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation by LAC 33:V.Subpart 1;

5. the owner and operator of a facility managing recyclable materials described in LAC 33:V.4105.B, C, and E (except to the extent they are referred to in LAC 33:V.Chapter 40 or LAC 33:V.4139, 4143, or 4145);

6. a generator accumulating waste on-site in compliance with LAC 33:V.1109.E, except to the extent the requirements are included in LAC 33:V.1109.E;

7. a farmer disposing of waste pesticides from his own use in compliance with LAC 33:V.1101.D;

8. the owner or operator of a totally enclosed treatment facility (as defined in LAC 33:V.109);

9. the owner or operator of an elementary neutralization unit or wastewater treatment unit (as defined in LAC 33:V.109), provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in LAC 33:V.Chapter 22.Table 2, Treatment Standards for Hazardous Wastes) or reactive (D003) waste to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in LAC 33:V.4321.B;

10.a. except as provided in Subsection C.10.b of this Section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

i. a discharge of a hazardous waste;

ii. an imminent and substantial threat of a discharge of hazardous waste;

iii. a discharge of a material that, when discharged, becomes a hazardous waste; or

iv. an immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in LAC 33:V.109;

b. an owner or operator of a facility otherwise regulated by this Chapter must comply with all applicable requirements of LAC 33:V.Chapter 43.Subchapters C and D;

c. any person who is covered by Subsection C10.b of this Section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this Chapter and 40 CFR 122-124 for those activities; and

d. in the case of an explosives or munitions emergency response, if a federal, state, tribal, or local official acting within the scope of his or her official responsibilities or an explosives or munitions emergency response specialist determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition;

11. a transporter storing manifested shipments of hazardous waste in containers meeting the requirements of LAC 33:V.1109.A at a transfer facility for a period of 10 days or less;

12. the addition of absorbent material to waste in a container (as defined in LAC 33:V.109) or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container and LAC 33:V.4321.B.1 and LAC 33:V.Chapter 43.Subchapter H are complied with;

13. universal waste handlers and universal waste transporters (as defined in LAC 33:V.3813) handling the

wastes listed below. These handlers are subject to regulation under LAC 33:V.Chapter 38, when handling the following universal wastes:

- a. batteries as described in LAC 33:V.3803;
- b. pesticides as described in LAC 33:V.3805;
- c. thermostats as described in LAC 33:V.3807;

14. LAC 33:V.5309 identifies when the requirements of this Chapter apply to the storage of military munitions classified as solid waste under LAC 33:V.5303. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in LAC 33:V.Subpart 1.

\* \* \*

[See Prior Text in D - H]

I. LAC 33:V.5309 identifies when the requirements of this Chapter apply to the storage of military munitions classified as solid waste under LAC 33:V.5303. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in LAC 33:V.Chapters 1 - 37, 41 - 49, and 53.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:84 (February 1987), LR 16:220 (March 1990), LR 17:362 (April 1991), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1743 (September 1998), LR 25:482 (March 1999).

#### **§4303. Changes During Interim Status**

\* \* \*

[See Prior Text in A - B.6]

7. addition of newly regulated units under LAC 33:V.4303.A.6;

8. changes necessary to comply with standards under 40 CFR part 63, subpart EEE--National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:1375 (December 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:482 (March 1999).

#### **Subchapter A. General Facility Standards**

##### **§4307. Applicability**

The regulations of LAC 33:V.Chapter 43 apply to owners and operators of all hazardous waste facilities except as LAC 33:V. 4301 provides otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 21:944 (September 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1109 (June 1998), LR 25:484 (March 1999).

#### **§4317. General Inspection Requirements**

\* \* \*

[See Prior Text in A - B.2]

3. The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in LAC 33:V.4425, 4437, 4440, 4455, 4470, 4485, 4502, 4519, 4529, 4541, 4555, 4565, 4567, 4577, and 4727- 4739, where applicable.

\* \* \*

[See Prior Text in C - D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1744 (September 1998), LR 25:484 (March 1999).

#### **Subchapter D. Manifest System, Recordkeeping, and Reporting**

##### **§4357. Operating Record**

\* \* \*

[See Prior Text in A - B.7]

8. monitoring, testing, or analytical data, and corrective action when required by LAC 33:V.Chapter 43.Subchapter E, 4320, 4367, 4375, 4433, 4437, 4440, 4449, 4451, 4455, 4470, 4472, 4474, 4483, 4485, 4489.D.1, 4497- 4502, 4519, 4529, 4557, 4559, 4587, 4589, and 4725- 4739;

[Comment: As required by LAC 33:V.4375, monitoring data at disposal facilities must be kept throughout the post-closure period.]

\* \* \*

[See Prior Text in B.9 - 16]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:837 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1744 (September 1998), LR 25:484 (March 1999).

#### **Subchapter E. Groundwater Monitoring**

##### **§4367. Applicability**

Facilities that have interim status must comply with this Subchapter in lieu of LAC 33:V.Chapter 33.

A. The owner or operator of a surface impoundment, landfill, or land treatment facility, which is used to manage hazardous waste, must implement a groundwater monitoring program capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility, except as LAC 33:V. 4301 and Subsection C of this Section provide otherwise.

\* \* \*

[See Prior Text in B - D]

E. The administrative authority may replace all or part of the requirements of this Chapter applying to a regulated unit (as defined in LAC 33:V.3301) with alternative requirements developed for groundwater monitoring set out in an approved closure or post-closure plan or in an enforceable document (as defined in LAC 33:V.305.H), where the administrative authority determines that:

1. a regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release; and

2. it is not necessary to apply the requirements of this Chapter because the alternative requirements will protect human health and the environment. The alternative standards for the regulated unit must meet the requirements of LAC 33:V.4379.A and B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:484 (March 1999).

## **Subchapter F. Closure and Post-Closure**

### **§4377. Applicability**

Except as LAC 33:V.4307 provides otherwise:

\* \* \*

[See Prior Text in A - B.4]

C. LAC 33:V.4396 applies to owners and operators of units that are subject to the requirements of LAC 33:V.305.H and are regulated under an enforceable document (as defined in LAC 33:V.305.H).

D. The administrative authority may replace all or part of the requirements of this Subchapter (and the unit-specific standards in LAC 33:V.4379.C) applying to a regulated unit (as defined in LAC 33:V.3301), with alternative requirements for closure set out in an approved closure or post-closure plan, or in an enforceable document (as defined in LAC 33:V.305.H), where the administrator authority determines that:

1. a regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and both the regulated unit and one or more solid waste management unit(s) (or areas of concern) are likely to have contributed to the release; and

2. it is not necessary to apply the closure requirements of this Chapter (and/or those referenced herein) because the alternative requirements will protect human health and the environment and will satisfy the closure performance standards of LAC 33:V.4379. A and B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:219 (March 1990), LR 16:614 (July 1990), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1109 (June 1998), LR 25:485 (March 1999).

### **§4381. Closure Plan; Amendment of Plan**

\* \* \*

[See Prior Text in A - B.6]

7. an estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under LAC 33:V.4403 or 4407 and whose remaining operating life is less than 20 years, and for facilities without approved closure plans; and

8. for facilities where the administrative authority has applied alternative requirements at a regulated unit under LAC 33:V.4367.E, 4377.D, and/or 4397.D, either the alternative requirements applying to the regulated unit or a reference to the enforceable document containing those alternative requirements.

\* \* \*

[See Prior Text in C - C.1.b]

c. in conducting partial or final closure activities, unexpected events require a modification of the closure plan; or

d. the owner or operator requests the administrative authority to apply alternative requirements to a regulated unit under LAC 33:V.4367.E, 4377.D, and/or 4397.D.

\* \* \*

[See Prior Text in C.2 - E]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:485 (March 1999).

### **§4391. Post-Closure Plan; Amendment of Plan**

\* \* \*

[See Prior Text in A - C.2.b]

3. the name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period;

4. for facilities subject to LAC 33:V.4396, provisions that satisfy the requirements of LAC 33:V.4396.A and B; and

5. for facilities where the administrative authority has applied alternative requirements at a regulated unit under LAC 33:V.4367.E, 4377.D, and/or 4397.D, either the alternative requirements that apply to the regulated unit or a reference to the enforceable document containing those requirements.

\* \* \*

[See Prior Text in D - D.1]

a. changes in operating plans or facility design affect the post-closure plan;

b. events which occur during the active life of the facility, including partial and final closures, affect the post-closure plan; or

c. the owner or operator requests the administrative authority to apply alternative requirements to a regulated unit under LAC 33:V.3301.G, 3501.D, and/or 3707.D.

\* \* \*

[See Prior Text in D.2 - G.2.b]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 14:791 (November 1988), LR 16:614 (July 1990), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:485 (March 1999).

**§4396. Post-Closure Requirements for Facilities that Obtain Enforceable Documents in Lieu of Post-Closure Permits**

A. Owners and operators who are subject to the requirement to obtain a post-closure permit under LAC 33:V.305, but who obtain enforceable documents in lieu of post-closure permits, as provided under LAC 33:V.305.H, must comply with the following requirements:

1. submit information about the facility in accordance with LAC 33:V.528;
2. facility-wide corrective action in accordance with LAC 33:V.3322; and
3. LAC 33:V.Chapter 33.

B.1. The administrative authority, in issuing enforceable documents under this Section in lieu of permits, will assure a meaningful opportunity for public involvement which, at a minimum, includes public notice and opportunity for public comment:

a. when the department becomes involved in a remediation at the facility as a regulatory or enforcement matter;

b. on the proposed preferred remedy and the assumptions upon which the remedy is based, in particular those related to land use and site characterization; and

c. at the time of a proposed decision that remedial action is complete at the facility. These requirements must be met before the administrative authority may consider that the facility has met the requirements of LAC 33:V.305.H, unless the facility qualifies for a modification to these public involvement procedures under Subsection B.2 or 3 of this Section.

2. If the administrative authority determines that even a short delay in the implementation of a remedy would adversely affect human health or the environment, the administrative authority may delay compliance with the requirements of Subsection B.1 of this Section and implement the remedy immediately. However, the administrative authority must assure involvement of the public at the earliest opportunity and, in all cases, upon making the decision that additional remedial action is not needed at the facility.

3. The administrative authority may allow a remediation initiated prior to October 22, 1998, to substitute for corrective action required under a post-closure permit even if the public involvement requirements of Subsection B.1 of this Section have not been met, so long as the administrative authority assures that notice and comment on the decision that no further remediation is necessary to protect human health and the environment takes place at the earliest reasonable opportunity after October 22, 1998.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 25:486 (March 1999).

**Subchapter G. Financial Requirements**

**§4397. Applicability**

\* \* \*

[See Prior Text in A - C]

D. The administrative authority may replace all or part of the requirements of this Chapter applying to a regulated unit with alternative requirements for financial assurance set out in the permit or in an enforceable document (as defined in LAC 33:V.305.H), where the administrative authority:

1. prescribes alternative requirements for the regulated unit under LAC 33:V.4367.E and/or 4377.D; and
2. determines that it is not necessary to apply the requirements of this Subchapter because the alternative financial assurance requirements will protect human health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 13:651 (November 1987), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1109 (June 1998), LR 25:486 (March 1999).

**Subchapter Q. Air Emission Standards for Process**

**Vents**

**§4549. Applicability**

\* \* \*

[See Prior Text in A - B.2]

3. a unit that is exempt from permitting under the provisions of LAC 33:V.1109.E.1 (i.e., a 90-day tank or container) and is not a recycling unit under the requirements of LAC 33:V.4105.

[Note: The requirements of LAC 33:V.4553—4559 apply to process vents on hazardous waste recycling units previously exempt under LAC 33:V.4115.A. Other exemptions under LAC 33:V.105.D and 4307 are not affected by these requirements.]

C. The requirements of this Subchapter do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this Subchapter are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with, or made readily available with, the facility operating record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 18:723 (July 1992), LR 20:1000 (September 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1745 (September 1998), LR 25:486 (March 1999).

**Subchapter R. Air Emission Standards for Equipment Leaks**

**§4561. Applicability**

\* \* \*

[See Prior Text in A - B.2]

3. a unit that is exempt from permitting under the provisions of LAC 33:V.1109.E.1 (i.e., a 90-day tank or container) and is not a recycling unit under the provisions of LAC 33:V.4105.

\* \* \*

[See Prior Text in C - D]

E. Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of LAC 33:V.4565 - 4581 if it identified, as required in LAC 33:V.4589.

[Note: The requirements of LAC 33:V.4565-4589 apply to equipment associated with hazardous waste recycling units previously exempt under LAC 33:V.4115.A. Other exemptions under LAC 33:V.105.D and 4307 are not affected by these requirements.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 20:1000 (September 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1745 (September 1998), LR 25:486 (March 1999).

**§4723. Schedule for Implementation of Air Emission Standards**

A. Owners or operators of facilities existing on December 6, 1996, and subject to Subchapters H, I, and J of this Chapter shall meet the following requirements:

1. install and begin operation of control equipment or waste management units required to comply with this Subchapter and complete modifications of production or treatment processes to satisfy exemption criteria in accordance with LAC 33:V.4725 by December 6, 1996, except as provided for in Subsection A.2 of this Section;

2. when control equipment or waste management units required to comply with this Subchapter cannot be installed and in operation, or modifications of production or treatment processes to satisfy exemption criteria in accordance with LAC 33:V.4725, by December 6, 1996, the owner or operator shall:

a. install and begin operation of the control equipment and waste management units, and complete modifications of production or treatment processes as soon as possible, but no later than December 6, 1997;

b. prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for control equipment waste management units and production or treatment process modifications; initiation of on-site installation of control equipment, or waste management units, and modifications of production or treatment processes; completion of the control equipment or waste management unit installation, and production or treatment process modifications; and performance of testing to demonstrate that the installed equipment or waste management units and modified production or treatment processes meet the applicable standards of this Subchapter;

\* \* \*

[See Prior Text in A.2.c - A.2.d]

B. Owners or operators of facilities and units in existence on the effective date of the statutory or regulatory amendment

act that renders the facility subject to Subchapters H, I, or J of this Chapter shall meet the following requirements:

1. install and begin operation of all control equipment or waste management units required to comply with this Subchapter, and complete modifications of production or treatment processes to satisfy exemption criteria in accordance with LAC 33:V.4725, by the effective date of the amendment except as provided for in Subsection B.2 of this Section;

2. when control equipment or waste management units required to comply with this Subchapter cannot be installed and begin operation, or when modifications of production or treatment processes to satisfy exemption criteria in accordance with LAC 33:V.4725 cannot be completed, by the effective date of the amendment, the owner or operator shall:

a. install and begin operation of the control equipment or waste management units, and complete modification of production or treatment processes as soon as possible, but no later than 30 months after the effective date of the amendment;

\* \* \*

[See Prior Text in B.2.b - c]

C. Owners and operators of facilities and units that become newly subject to the requirements of this Subchapter after December 8, 1997, due to an action other than those described in Subsection B of this Section must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this Subchapter; the 30-month implementation schedule does not apply).

D. The administrative authority may elect to extend the implementation date for control equipment at a facility, on a case-by-case basis, to a date later than December 8, 1997, when special circumstances that are beyond the facility owner's or operator's control delay installation or operation of control equipment, and the owner or operator has made all reasonable and prudent attempts to comply with the requirements of this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1747 (September 1998), LR 25:487 (March 1999).

**Chapter 49. Lists of Hazardous Wastes**

**§4901. Category I Hazardous Wastes**

\* \* \*

[See Prior Text in A]

B. Hazardous Wastes from Nonspecific Sources

1. The following solid wastes are listed hazardous wastes from nonspecific sources unless they are excluded in accordance with LAC 33:V.105.H.

(Note: EPA in January 1985 added new listed hazardous wastes.)

Table 1. Hazardous Wastes from Nonspecific Sources		
Industry and EPA Hazardous Waste No.	Hazard Code	Hazardous Waste
Generic		
* * *		
[See Prior Text in F001-F035]		

F037	(T)	Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators, tanks and impoundments, ditches and other conveyances, sumps, and storm water units receiving dry weather flow, sludge generated in storm water units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in LAC 33:V.4901.B.2.b (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under LAC 33:V.105.D.1.1, if those residuals are to be disposed of.
* * *		
[See Prior Text in F038 - F039]		

\*(I,T) should be used to specify mixtures containing ignitable and toxic constituents.

\* \* \*

[See Prior Text in B.2-B.3.c.xii]

C. Hazardous wastes from specific sources are listed in Table 2.

Table 2. Hazardous Wastes from Specific Sources		
Industry and EPA Hazardous Waste No.	Hazard Code	Hazardous Waste
* * *		
[See Prior Text]		
K136	(T)	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.
K140	(T)	Floor sweepings, off-specification product, and spent filter media from the production of 2,4,6-Tribromophenol.
K149	(T)	Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride.)
* * *		
[See Prior Text]		
K052	(T)	Tank bottom (lead) from the petroleum refining industry.
K169	(T)	Crude oil tank sediment from petroleum refining operations.

K170	(T)	Clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations.
K171	(I, T)	Spent hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feed to other catalytic reactors (this listing does not include inert support media).
K172	(I, T)	Spent hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feed to other catalytic reactors (this listing does not include inert support media).
<b>Iron and Steel</b>		
* * *		
[See Prior Text]		

\* \* \*

[See Prior Text in D - Table 3]

F. Commercial chemical products or manufacturing chemical intermediates or off-specification commercial chemical products referred to in LAC 33:V.4901.D.1-4 are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity generator exclusion defined in LAC 33:V.3903, 3913, and 3915.A and C. These wastes and their corresponding EPA Hazardous Waste Numbers are listed in Table 4. [Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability), and C (Corrosivity). Absence of a letter indicates that the compound is listed only for toxicity.]

Table 4. Toxic Wastes		
EPA Hazardous Waste No.	Chemical Abstract Number	Hazardous Waste
* * *		
[See Prior Text]		
U011	61-82-5	1H-1,2,4-Triazol-3-amine
U408	118-79-6	2,4,6-Tribromophenol
U227	79-00-5	1,1,2-Trichloroethane
* * *		
[See Prior Text]		

G. Constituents that Serve as a Basis for Listing Hazardous Waste. Table 6 lists constituents that serve as a basis for listing hazardous waste.

Table 6.

Table of Constituents that Serve as a Basis for Listing Hazardous Waste

\* \* \*

[See Prior Text in F001 - K136]

EPA Hazardous Waste Number K140

2,4,6-Tribromophenol

\* \* \*

[See Prior Text in K141 - K161]

EPA Hazardous Waste Number K169

Benzene

EPA Hazardous Waste Number K170

Benzo(a)pyrene, dibenz(a,h)anthracene, benzo (a) anthracene, benzo (b)fluoranthene benzo(k)fluoranthene, 3-Methyl cholanthrene 7, 12-dimethylbenz(a)anthracene

EPA Hazardous Waste Number K171

Benzene, arsenic

EPA Hazardous Waste Number K172

Benzene, arsenic

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:320 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:790 (November 1988), LR 15:182 (March 1989), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829 (September 1996), LR 22:840 (September 1996), amended by the Office of Waste

Services, Hazardous Waste Division, LR 23:1522 (November 1997), LR 24:321 (February 1998), LR 24:686 (April 1998), LR 24:1754 (September 1998), LR 25:487 (March 1999).

**§4909. Comparable/Syngas Fuel Exclusion**

A. Wastes that meet the following comparable/syngas fuel requirements are not solid wastes.

B. Comparable Fuel Specifications

1. Physical Specifications

a. Heating Value. The heating value must exceed 5,000 BTU/lbs. (11,500 J/g).

b. Viscosity. The viscosity must not exceed: 50 cs, as-fired.

2. Constituent Specifications. For compounds listed in Table 7 of this Section the specification levels and, where nondetect is the specification, minimum required detection limits are listed in Table 7 of this Section.

C. Synthesis Gas Fuel Specification. Synthesis gas fuel (i.e., syngas fuel) that is generated from hazardous waste must:

1. have a minimum BTU value of 100 BTU/Scf;
2. contain less than one ppmv of total halogen;
3. contain less than 300 ppmv of total nitrogen other than diatomic nitrogen (N<sub>2</sub>);
4. contain less than 200 ppmv of hydrogen sulfide; and
5. contain less than one ppmv of each hazardous constituent in the target list of LAC 33:V.Chapter 31.Table 1.

**Table 7: Detection and Detection Limit Values for Comparable Fuel Specification**

Chemical Name	CAS Number	Concentration Limit (mg/kg at required 10,000 BTU/lb)	Minimum Detection limit (mg/kg)
Total Nitrogen as N	N/A	4900	
Total Halogens as Cl	N/A	540	
Total Organic Halogens as Cl	N/A	25 or individual halogenated organics listed below	
Polychlorinated biphenyls, total [Aroclors, total] <sup>a</sup> .	1336-36-3	Nondetect	1.4
Cyanide, total	57-12-5	Nondetect	1.0
<b>Metals:</b>			
Antimony, total	7440-36-0	7.9	
Arsenic, total	744-38-2	0.23	
Barium, total	7440-39-3	23	
Beryllium, total	7440-41-7	1.2	
Cadmium, total	7440-43-9	1.2	
Chromium, total	7440-47-3	2.3	
Cobalt	7440-48-4	4.6	
Lead, total	7439-92-1	31	
Manganese	7439-96-5	1.2	
Mercury, total	7439-97-6	0.24	
Nickel, total	7440-02-0	58	
Selenium, total	7782-49-2	0.15	

Silver, total	7440-22-4	2.3	
Thallium, total	7440-28-0	23	
Hydrocarbons:			
Benzo[a]anthracene	56-55-3	1100	
Benzene	71-43-2	4100	
Benzo[b]fluoranthene	205-99-2	960	
Benzo[k]fluoranthene	207-08-9	1900	
Benzo[a]pyrene	50-32-8	960	
Chrysene	218-01-9	1400	
Dibenzo[a,h]anthracene	53-70-3	960	
7,12-Dimethylbenz[a]anthracene	57-97-6	1900	
Fluoranthene	206-44-0	1900	
Indeno(1,2,3-cd)pyrene	193-39-5	960	
3-Methyl cholanthrene	56-49-5	1900	
Naphthalene	91-20-3	3200	
Toluene	108-88-3	36000	
Oxygetes:			
Acetophenone	98-86-2	1900	
Acrolein	107-02-8	37	
Allyl alcohol	107-18-6	30	
Bis(2-ethylhexyl)phthalate [Di-2- ethylhexyl phthalate]	117-81-7	1900	
Butyl benzyl phthalate	85-68-7	1900	
o-Cresol [2-Methyl phenol]	95-48-7	220	
m-Cresol [3-Methyl phenol]	108-39-4	220	
p-Cresol [4-Methyl phenol]	106-44-5	220	
Di-n-butyl phthalate	84-74-2	1900	
Diethyl phthalate	84-66-2	1900	
2,4-Dimethyl phenol	105-67-9	1900	
Dimethyl phthalate	131-11-3	1900	
Di-n-octyl phthalate	117-84-0	960	
Endothall	145-73-3	100	
Ethyl methacrylate	97-63-2	37	
2-Ethoxyethanol [Ethylene glycol monoethyl ether]	110-80-5	100	
Isobutyl alcohol	78-83-1	37	
Isosafrole	120-58-1	1900	
Methyl ethyl ketone [2-Butanone]	78-93-3	37	
Methyl methacrylate	80-62-6	37	
1,4-Naphthoquinone	130-15-4	1900	
Phenol	108-95-2	1900	
Propargyl alcohol [2-Propyn-1-ol]	107-19-7	30	
Safrole	94-59-7	1900	
Sulfated Organics:			

Carbon disulfide	75-15-0	Nondetect	37
Disulfoton	298-04-4	Nondetect	1900
Ethyl methane sulfonate	62-50-0	Nondetect	1900
Methyl methane sulfonate	66-27-3	Nondetect	1900
Phorate	298-02-3	Nondetect	1900
1,3-Propane sultone	1120-71-4	Nondetect	100
Tetraethyldithiopyrophosphate [Sulfotepp]	3689-24-5	Nondetect	1900
Thiophenol [Benzenethiol]	108-98-5	Nondetect	30
O,O,O-Triethyl phosphorothioate	126-68-1	Nondetect	1900
Nitrogenated Organics:			
Acetonitrile [Methyl cyanide]	75-05-8	Nondetect	37
2-Acetylaminofluorene [2-AAF]	53-96-3	Nondetect	1900
Acrylonitrile	107-13-1	Nondetect	37
4-Aminobiphenyl	92-67-1	Nondetect	1900
4-Aminopyridine	504-24-5	Nondetect	100
Aniline	62-53-3	Nondetect	1900
Benzidine	92-87-5	Nondetect	1900
Dibenz[a,j]acridine	224-42-0	Nondetect	1900
O,O-Diethyl O-pyrazinyl phospho-thioate [Thionazin]	297-97-2	Nondetect	1900
Dimethoate	60-51-5	Nondetect	1900
p-(Dimethylamino)azobenzene [4-Dimethylaminoazobenzene]	60-11-7	Nondetect	1900
3,3'-Dimethyl benzidine	119-93-7	Nondetect	1900
","-Dimethylphenethylamine	122-09-8	Nondetect	1900
3,3'-Dimethoxybenzidine	119-90-4	Nondetect	100
1,3-Dinitrobenzene [m-Dinitrobenzene]	99-65-0	Nondetect	1900
4,6-Dinitro-o-cresol	534-52-1	Nondetect	1900
2,4-Dinitrophenol	51-28-5	Nondetect	1900
2,4-Dinitro toluene	121-14-2	Nondetect	1900
2,6-Dinitro toluene	606-20-2	Nondetect	1900
Dinoseb [2-sec-Butyl-4,6-dinitrophenol]	88-85-7	Nondetect	1900
Diphenylamine	122-39-4	Nondetect	1900
Ethyl carbamate [Urethane]	51-79-6	Nondetect	100
Ethylenethiourea (2-Imidazolidinethione)	96-45-7	Nondetect	110
Famphur	52-85-7	Nondetect	1900
Methacrylonitrile	126-98-7	Nondetect	37
Methapyrilene	91-80-5	Nondetect	1900
Methomyl	16752-77-5	Nondetect	57
2-Methylactonitrile [Acetone cyanohydrin]	75-86-5	Nondetect	100
Methyl parathion	298-00-0	Nondetect	1900
MNNG (N-Metyl-N-nitroso-N'-nitroguanidine)	70-25-7	Nondetect	110
1-Naphthyl amine, [^-Naphthyl amine]	134-32-7	Nondetect	1900
2-Naphthyl amine, [^-Naphthyl amine]	91-59-8	Nondetect	1900

Nicotine	54-11-5	Nondetect	100
4-Nitroaniline, [p-Nitroaniline]	100-01-6	Nondetect	1900
Nitrobenzene	98-95-3	Nondetect	1900
p-Nitrophenol, [p-Nitrophenol]	100-02-7	Nondetect	1900
5-Nitro-o-toluidine	99-55-8	Nondetect	1900
N-Nitrosodi-n-butylamine	924-16-3	Nondetect	1900
N-Nitrosodiethylamine	55-18-5	Nondetect	1900
N-Nitrosodiphenylamine, [Diphenylnitrosamine]	86-30-6	Nondetect	1900
N-Nitroso-N-methylethylamine	10595-95-6	Nondetect	1900
N-Nitrosomorpholine	59-89-2	Nondetect	1900
N-Nitrosopiperidine	100-75-4	Nondetect	1900
N-Nitrosopyrrolidine	930-55-2	Nondetect	1900
2-Nitropropane	79-46-9	Nondetect	30
Parathion	56-38-2	Nondetect	1900
Phenacetin	62-44-2	Nondetect	1900
1,4-Phenylene diamine, [p-Phenylenediamine]	106-50-3	Nondetect	1900
N-Phenylthiourea	103-85-5	Nondetect	57
2-Picoline [alpha-Picoline]	109-6-8	Nondetect	1900
Propylthiouracil [6-Propyl-2-thiouracil]	51-52-5	Nondetect	100
Pyridine	110-86-1	Nondetect	1900
Strychnine	57-24-9	Nondetect	100
Thioacetamide	62-55-5	Nondetect	57
Thiofanox	39196-18-4	Nondetect	100
Thiourea	62-56-6	Nondetect	57
Toluene-2,4-diamine [2,4-Diaminotoluene]	95-80-7	Nondetect	57
Toluene-2,6-diamine [2,6-Diaminotoluene]	823-40-5	Nondetect	57
o-Toluidine	95-53-4	Nondetect	2200
p-Toluidine	106-49-0	Nondetect	100
1,3,5-Trinitrobenzne, [sym-Trinitobenzene]	99-35-4	Nondetect	2000
Halogenated Organics <sup>b</sup> :			
Allyl chloride	107-05-1	Nondetect	37
Aramite	104-57-8	Nondetect	1900
Benzal chloride [Dichloromethyl benzene]	98-87-3	Nondetect	100
Benzyl chloride	100-44-77	Nondetect	100
Bis(2-chloroethyl)ether [Dichloroethyl ether]	111-44-4	Nondetect	1900
Bromoform [Tribromomethane]	75-25-2	Nondetect	37
Bromomethane [Methyl bromide]	74-83-9	Nondetect	37
4-Bromophenyl phenyl ether [p-Bromo diphenyl ether]	101-55-3	Nondetect	1900
Carbon tetrachloride	56-23-5	Nondetect	37
Chlordane	57-74-9	Nondetect	14
p-Chloroaniline	106-47-8	Nondetect	1900
Chlorobenzene	108-90-7	Nondetect	37

Chlorobenzilate	510-15-6	Nondetect	1900
p-Chloro-m-cresol	59-50-7	Nondetect	1900
2-Chloroethyl vinyl ether	110-75-8	Nondetect	37
Chloroform	67-66-3	Nondetect	37
Chloromethane [Methyl chloride]	74-87-3	Nondetect	37
2-Chlorophthalene [beta-Chlorophthalene]	91-58-7	Nondetect	1900
2-Chlorophenol [o-Chlorophenol]	95-57-8	Nondetect	1900
Chloroprene [2-Chloro-1,3-butadiene]	1126-99-8	Nondetect	37
2,4-D [2,4-Dichlorophenoxyacetic acid]	94-75-7	Nondetect	7.0
Diallate	2303-16-4	Nondetect	1900
1,2-Dibromo-3-chloropropane	96-12-8	Nondetect	37
1,2-Dichlorobenzene [o-Dichlorobenzene]	95-50-1	Nondetect	1900
1,3-Dichlorobenzene [m-Dichlorobenzene]	541-73-1	Nondetect	1900
1,4-Dichlorobenzene [p-Dichlorobenzene]	106-46-7	Nondetect	1900
3,3'-Dichlorobenzidine	91-94-1	Nondetect	1900
Dichlorodifluoromethane [CFC-12]	75-71-8	Nondetect	37
1,2-Dichloroethane [Ethylene dichloride]	107-06-2	Nondetect	37
1,1-Dichloroethylene [Vinylidene chloride]	75-35-4	Nondetect	37
Dichloromethoxy ethane [Bis (2-chloroethoxy) methane]	111-91-1	Nondetect	1900
2,4-Dichlorophenol	120-83-2	Nondetect	1900
2,6-Dichlorophenol	87-65-0	Nondetect	1900
1,2-Dichloropropane [Propylene dichloride]	78-87-5	Nondetect	37
cis-1,3-Dichloropropylene	10061-01-5	Nondetect	37
trans-1,3-Dichloropropylene	10061-02-6	Nondetect	37
1,3-Dichloro-2-propanol	96-23-1	Nondetect	30
Endosulfan I	959-98-8	Nondetect	1.4
Endosulfan II	33213-65-9	Nondetect	1.4
Endrin	72-20-8	Nondetect	1.4
Endrin aldehyde	7421-93-4	Nondetect	1.4
Endrin Ketone	53494-70-5	Nondetect	1.4
Epichlorohydrin [1-Chloro-2, 3-epoxy propane]	106-89-8	Nondetect	30
Ethylidene dichloride [1, 1-Dichloroethane]	75-34-3	Nondetect	37
2-Fluoroacetamide	640-19-7	Nondetect	100
Heptachlor	76-44-8	Nondetect	1.4
Heptachlor epoxide	1024-57-3	Nondetect	2.8
Hexachlorobenzene	118-74-1	Nondetect	1900
Hexachloro-1, 3-butadiene [Hexachlorobutadiene]	87-68-3	Nondetect	1900
Hexachlorocyclopentadiene	77-47-4	Nondetect	1900
Hexachloroethane	67-72-1	Nondetect	1900
Hexachlorophene	70-30-4	Nondetect	1000
Hexachloropropene [Hexachloropropylene]	1888-71-7	Nondetect	1900
Isodrin	465-73-6	Nondetect	1900

Kepone [Chlordecone]	143-50-0	Nondetect	3600
Lindane [gamma-Hexachlorocyclohexane] [gamma-BHC]	58-89-9	Nondetect	1.4
Methylene chloride [Dichloromethane]	75-09-2	Nondetect	37
4, 4'-methylene-bis (2-chloroaniline)	101-14-4	Nondetect	100
Methyl iodide [Iodomethane]	74-88-4	Nondetect	37
Pentachlorobenzene	608-93-5	Nondetect	1900
Pentachloroethane	76-01-7	Nondetect	37
Pentachloronitrobenzene [PCNB] [Quintobenzene] [Quintozene]	86-68-8	Nondetect	1900
Pentachlorophenol	87-86-5	Nondetect	1900
Pronamide	23950-58-5	Nondetect	1900
Silvex [2,4,5-Trichlorophenoxypropionic acid]	93-72-1	Nondetect	7.0
2,3,7,8-Tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD]	1746-01-6	Nondetect	30
1,2,4,5-Tetrachlorobenzene	95-94-3	Nondetect	1900
1,1,2,2-Tetrachloroethane	79-34-5	Nondetect	37
Tetrachloroethylene [Perchloroethylene]	127-18-4	Nondetect	37
2,3,4,6-Tetra chlorophenol	58-90-2	Nondetect	1900
1,2,4-Trichlorobenzene	120-82-1	Nondetect	1900
1,1,1-Trichloroethane [Methyl chloroform]	71-55-6	Nondetect	37
1,1,2-Trichloroethane [Vinyl trichloride]	79-00-5	Nondetect	37
Trichloroethylene	79-01-6	Nondetect	37
Trichlorofluoromethane [Trichloromonofluoromethane]	75-69-4	Nondetect	37
2,4,5-Trichlorophenol	95-95-4	Nondetect	1900
2,4,6-Trichlorophenol	88-06-02	Nondetect	1900
1,2,3-Trichloropropane	96-18-4	Nondetect	37
Vinyl Chloride	75-01-4	Nondetect	37

<sup>a</sup> Absence of PCBs can also be demonstrated by using appropriate screening methods, e.g., immunoassay kit for PCB in oils (Method 4020) or colorimetric analysis for PCBs in oil (Method 9079).

<sup>b</sup> Some minimum required detection limits are above the total halogen limit of 540 ppm. The detection limits reflect what was achieved during EPA testing and analysis and also analytical complexity associated with measuring all halogen compounds on LAC 33:V.Chapter 31.Table 1 at low levels. EPA recognizes that in practice the presence of these compounds will be functionally limited by the molecular weight and the total halogen limit of 540 ppm.

**D. Implementation.** Waste that meets the comparable or syngas fuel specifications provided by Subsection B or C of this Section (these constituent levels must be achieved by the comparable fuel when generated, or as a result of treatment or blending, as provided in Subsections D.3 or 4 of this Section) is excluded from the definition of solid waste provided in Subsection D.1-13 of this Section.

1. Notices. For purposes of this Section, the person claiming and qualifying for the exclusion is called the comparable/syngas fuel generator and the person burning the comparable/syngas fuel is called the comparable/syngas fuel burner. The person who generates the comparable fuel or syngas fuel must claim and certify to the exclusion.

a. State RCRA and CAA Authorized States or Regional RCRA and CAA Administrative Authority in Unauthorized States

i. The generator must submit a one-time notice to the regional or state RCRA and CAA administrative authority in whose jurisdiction the exclusion is being claimed and where the comparable/syngas fuel will be burned certifying compliance with the conditions of the exclusion and providing documentation as required by Subsection D.1.a.iii of this Section.

ii. If the generator is a company that generates comparable/syngas fuel at more than one facility, the generator shall specify at which sites the comparable/syngas fuel will be generated.

iii. A comparable/syngas fuel generator's notification to the administrative authority must contain the following items:

(a). the name, address, and EPA ID number of the person/facility claiming the exclusion;

(b). the applicable EPA hazardous waste codes for the hazardous waste;

(c). the name and address of the units meeting the requirements of Subsection D.2 of this Section that will burn the comparable/syngas fuel; and

(d). the following statement signed and submitted by the person claiming the exclusion or his authorized representative:

Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of LAC 33:V.4909 have been met for all waste identified in this notification. Copies of the records and information required at LAC 33:V.4909.D.10 are available at the comparable/syngas fuel generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

b. Public Notice. Prior to burning an excluded comparable/syngas fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Comparable/Syngas Fuel Excluded Under the Resource Conservation and Recovery Act" containing the following information:

- i. the name, address, and EPA ID number of the generating facility;
- ii. the name and address of the unit(s) that will burn the comparable/syngas fuel;
- iii. a brief, general description of the manufacturing, treatment, or other process generating the comparable/syngas fuel;
- iv. an estimate of the average and maximum monthly and annual quantity of the waste claimed to be excluded; and
- v. the name and mailing address of the regional or state administrative authority to whom the claim was submitted.

2. Burning. The comparable/syngas fuel exclusion for fuels meeting the requirements of Subsections B or C and D.1 of this Section applies only if the fuel is burned in the following units that also shall be subject to federal/state/local air emission requirements, including all applicable CAA MACT requirements:

- a. industrial furnaces as defined in LAC 33:V.109;
- b. boilers, as defined in LAC 33:V.109, that are further defined as follows:
  - i. industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or
  - ii. utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or
  - c. hazardous waste incinerators subject to regulation under LAC 33:V.Chapter 31 or Chapter 43.Subchapter N or applicable CAA MACT standards.

3. Blending to Meet the Viscosity Specification. A hazardous waste blended to meet the viscosity specification shall:

- a. as generated and prior to any blending, manipulation, or processing meet the constituent and heating

value specifications of Subsection B.1.a and B.2 of this Section;

b. be blended at a facility that is subject to the applicable requirements of LAC 33:V.Chapters 9, 11, 15, 17, 18, 19, 21, 23, 24, 25, 27, 28, 29, 30, 32, 33, 35, 37, and 43; and

c. not violate the dilution prohibition of Subsection D.6 of this Section.

4. Treatment to Meet the Comparable Fuel Exclusion Specifications

a. A hazardous waste may be treated to meet the exclusion specifications of Subsection B.1 and 2 of this Section provided the treatment:

- i. destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;
- ii. is performed at a facility that is subject to the applicable requirements of LAC 33:V.Chapters 9, 11, 15, 17, 18, 19, 21, 23, 24, 25, 27, 28, 29, 30, 32, 33, 35, 37, and 43; and

iii. does not violate the dilution prohibition of Subsection D.6 of this Section.

b. Residuals resulting from the treatment of a hazardous waste listed in LAC 33:V.4901 to generate a comparable fuel remain a hazardous waste.

5. Generation of a Syngas Fuel

a. A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of Subsection C of this Section provided the processing:

- i. destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying constituents or materials;
- ii. is performed at a facility that is subject to the applicable requirements of LAC 33:V.Chapters 9, 11, 15, 17, 18, 19, 21, 23, 24, 25, 27, 28, 29, 30, 32, 33, 35, 37, and 43 or is an exempt recycling unit in accordance with LAC 33:V.4115; and

iii. does not violate the dilution prohibition of Subsection D.6 of this Section.

b. Residuals resulting from the treatment of a hazardous waste listed in LAC 33:V.4901 to generate a syngas fuel remain a hazardous waste.

6. Dilution Prohibition for Comparable and Syngas Fuels. No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the exclusion specifications of Subsections B.1.a or 2 or C of this Section.

7. Waste Analysis Plans. The generator of a comparable/syngas fuel shall develop and follow a written waste analysis plan which describes the procedures for sampling and analysis of the hazardous waste to be excluded. The waste analysis plan shall be developed in accordance with the applicable sections of the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, incorporated by reference in LAC 33:V.110. The plan shall be followed and retained at the facility excluding the waste.

- a. At a minimum, the plan must specify:

- i. the parameters for which each hazardous waste will be analyzed and the rationale for the selection of those parameters;
- ii. the test methods which will be used to test for these parameters;
- iii. the sampling method which will be used to obtain a representative sample of the waste to be analyzed;
- iv. the frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and
- v. if process knowledge is used in the waste determination, any information prepared by the generator in making such determination.

b. The waste analysis plan shall also contain records of the following:

- i. the dates and times waste samples were obtained, and the dates the samples were analyzed;
- ii. the names and qualifications of the person(s) who obtained the samples;
- iii. a description of the temporal and spatial locations of the samples;
- iv. the name and address of the laboratory facility at which analyses of the samples were performed;
- v. a description of the analytical methods used, including any cleanup and sample preparation methods;
- vi. all quantitative limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;
- vii. all laboratory results demonstrating that the exclusion specifications have been met for the waste; and
- viii. all laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in Subsection D.11 of this Section and also provides for the availability of the documentation to the claimant upon request.

c. Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of a syngas fuel as an excluded waste, a waste analysis plan containing the elements of Subsection D.7.a of this Section to the appropriate regulatory authority. The approval of waste analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the waste analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.

#### 8. Comparable Fuel Sampling and Analysis

a. General. For each waste for which an exclusion is claimed, the generator of the hazardous waste must test for all the constituents on LAC 33:V.Chapter 31.Table 1, except those that the generator determines, based on testing or knowledge, should not be present in the waste. The generator is required to document the basis of each determination that a constituent should not be present. The generator may not

determine that any of the following categories of constituents should not be present:

- i. a constituent that triggered the toxicity characteristic for the waste constituents that were the basis of the listing of the waste stream, or constituents for which there is a treatment standard for the waste code in LAC 33:V.2223;
- ii. a constituent detected in previous analysis of the waste;
- iii. constituents introduced into the process that generates the waste; or
- iv. constituents that are by-products or side reactions to the process that generates the waste.

[*Note:* Any claim under Subsection D.8 of this Section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the waste above the exclusion specifications.]

b. For each waste for which the exclusion is claimed where the generator of the comparable/syngas fuel is not the original generator of the hazardous waste, the generator of the comparable/syngas fuel may not use process knowledge in accordance with Subsection D.8.a of this Section and must test to determine that all of the constituent specifications of Subsections B.2 and C of this Section have been met.

c. The comparable/syngas fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the waste. For the waste to be eligible for exclusion, a generator must demonstrate that:

- i. each constituent of concern is not present in the waste above the specification level at the 95 percent upper confidence limit around the mean; and
- ii. the analysis could have detected the presence of the constituent at or below the specification level at the 95 percent upper confidence limit around the mean.

d. Nothing in this Section preempts, overrides, or otherwise negates the provision in LAC 33:V.1103 that requires any person who generates a solid waste to determine if that waste is a hazardous waste.

e. In an enforcement action, the burden of proof to establish conformance with the exclusion specification shall be on the generator claiming the exclusion.

f. The generator must conduct sampling and analysis in accordance with their waste analysis plan developed under Subsection D.7 of this Section.

g. Syngas fuel and comparable fuel that have not been blended in order to meet the kinematic viscosity specifications shall be analyzed as generated.

h. If a comparable fuel is blended in order to meet the kinematic viscosity specifications, the generator shall:

- i. analyze the fuel as generated to ensure that it meets the constituent and heating value specifications; and
- ii. after blending, analyze the fuel again to ensure that the blended fuel continues to meet all comparable/syngas fuel specifications.

i. Excluded comparable/syngas fuel must be retested, at a minimum, annually and must be retested after a process change that could change the chemical or physical properties of the waste.

9. Speculative Accumulation. Any persons handling a comparable/syngas fuel are subject to the speculative accumulation test under LAC 33:V.109.Solid Waste.2.c.

10. Records. The generator must maintain records of the following information on-site:

a. all information required to be submitted to the implementing authority as part of the notification of the claim:

i. the owner/operator name, address, and EPA facility ID number of the person claiming the exclusion;

ii. the applicable EPA hazardous waste codes for each hazardous waste excluded as a fuel; and

iii. the certification signed by the person claiming the exclusion or his authorized representative.

b. a brief description of the process that generated the hazardous waste and process that generated the excluded fuel, if not the same;

c. an estimate of the average and maximum monthly and annual quantities of each waste claimed to be excluded;

d. documentation for any claim that a constituent is not present in the hazardous waste as required under Subsection D.8.a of this Section;

e. the results of all analyses and all detection limits achieved as required under Subsection D.8 of this Section;

f. if the excluded waste was generated through treatment or blending, documentation as required under Subsection D.3 or 4 of this Section;

g. if the waste is to be shipped off-site, a certification from the burner as required under Subsection D.12 of this Section;

h. a waste analysis plan and the results of the sampling and analysis that includes the following:

i. the dates and times waste samples were obtained, and the dates the samples were analyzed;

ii. the names and qualifications of the person(s) who obtained the samples;

iii. a description of the temporal and spatial locations of the samples;

iv. the name and address of the laboratory facility at which analyses of the samples were performed;

v. a description of the analytical methods used, including any cleanup and sample preparation methods;

vi. all quantitative limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

vii. all laboratory analytical results demonstrating that the exclusion specifications have been met for the waste; and

viii. all laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in Subsection D.11 of this Section and also provides for the availability of the documentation to the claimant upon request; and

i. if the generator ships comparable/syngas fuel off-site for burning, the generator must retain for each

shipment the following information on-site:

i. the name and address of the facility receiving the comparable/syngas fuel for burning;

ii. the quantity of comparable/syngas fuel shipped and delivered;

iii. the date of shipment or delivery;

iv. a cross-reference to the record of comparable/syngas fuel analysis or other information used to make the determination that the comparable/syngas fuel meets the specifications as required under Subsection D.8 of this Section; and

v. a one-time certification by the burner as required under Subsection D.12 of this Section.

11. Records Retention. Records must be maintained for a period of three years. A generator must maintain a current waste analysis plan during that three-year period.

12. Burner Certification. Prior to submitting a notification to the state and regional administrative authority, a comparable/syngas fuel generator who intends to ship the fuel off-site for burning must obtain a one-time written, signed statement from the burner:

a. certifying that the comparable/syngas fuel will only be burned in an industrial furnace or boiler, utility boiler, or hazardous waste incinerator, as required under Subsection D.2 of this Section;

b. identifying the name and address of the units that will burn the comparable/syngas fuel; and

c. certifying that the state in which the burner is located is authorized to exclude wastes as comparable/syngas fuel under the provisions of this Section.

13. Ineligible Waste Codes. Wastes that are listed because of presence of dioxins or furans, as set out in LAC 33:V.Chapter 49.Table 6, are not eligible for this exclusion, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to full RCRA hazardous waste management requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 25:489 (March 1999).

L. Hall Bohlinger  
Deputy Secretary

9903#009

## **RULE**

### **Office of the Governor Division of Administration Board of Trustees of the State Employees Group Benefits Program**

#### **Diabetes Self-Management Training**

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting

the power to adopt and promulgate rules with respect thereto, the Board has adopted amendments to the Plan Document of Benefits.

The Board finds that it is necessary to amend provisions of the Plan Document regarding benefits for diabetes self-management training. Accordingly, the Board hereby amends the Plan Document of Benefits for the State Employees Group Benefits Program in the following particulars:

Amend Article 3, Section I, Subsection F, by adding a new paragraph, 36, to read as follows:

36. outpatient self-management training and education, including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes, and non-insulin using diabetes, when such self-management training and education is provided by a licensed health care professional with demonstrated expertise in diabetes care and treatment who has completed an educational program required by the appropriate licensing board in compliance with the National Standards for Diabetes Self-Management Education Program as developed by the American Diabetes Association, and only as follows:

a. a one-time evaluation and training program for diabetes self management, conducted by the health care professional in compliance with the National Standards for Diabetes Self-Management Education Program as developed by the American Diabetes Association, upon certification by the health care professional that the covered person has successfully completed the program, such benefits not to exceed \$500;

b. additional diabetes self-management training required because of a significant change in the covered person's symptoms or conditions, limited to benefits of \$100 per year and \$2,000 per lifetime;

\* \* \*

Jack W. Walker, Ph.D.  
Chief Executive Officer

9903#052

#### **RULE**

**Office of the Governor  
Division of Administration  
Board of Trustees of the  
State Employees Group Benefits Program**

**Plan Document—Impotency Drugs**

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board has adopted amendments to the Plan Document of Benefits.

The Board finds that it is necessary to amend the Plan Document to limit benefits for drugs prescribed for treatment

of impotency. Accordingly, the Plan Document of Benefits for the State Employees Group Benefits Program is hereby amended in the following particulars:

Amend Article 3, Section VIII, of the Plan Document by adding thereto a new subsection, designated as subsection PP, to read as follows:

**VIII. Exceptions and Exclusions for All Medical Benefits**  
No benefits are provided under this contract for:

\* \* \*

PP. Drugs prescribed for Treatment of impotence, except when prescribed for males over the age of thirty, in a quantity not greater than five (5) per month, and provided that no benefits are payable for Yohimbine oral tablets, Papaverine and Phentolamine self-injectables, or any other drugs prescribed or dispensed for Treatment of impotence unless such Treatment is indicated in the approval of the drug by the Food and Drug Administration;

\* \* \*

Jack W. Walker, Ph.D.  
Chief Executive Officer

9903#048

#### **RULE**

**Office of the Governor  
Division of Administration  
Board of Trustees of the State Employees Group  
Benefits Program**

**Special Enrollment—Retirees**

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board has adopted amendments to the Plan Document of Benefits.

In order to implement the provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and to comply with rules and regulations promulgated pursuant thereto, and La. R.S. 22:250.1, et seq., the Board of Trustees of the State Employees Group Benefits Program hereby amends the Plan Document of Benefits in the following particulars:

**Amendment Number 1**

Amend Article 1, Section II, Subsection B, Paragraph 2, to read as follows:

2. Effective Date of Coverage. Retiree coverage will be effective on the first of the month following the date of retirement, provided the Employee and employer have agreed to make and are making the required contributions. *Retirees Shall Not Be Eligible for Coverage as Overdue Applicants.*

**Amendment Number 2**

Amend Article 1, Section II, Subsection E, to read as follows:

**E. Special Enrollments**

In accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and the regulations promulgated pursuant thereto, and La. R.S. 22:250.1, et seq., certain eligible persons for whom the option to enroll for coverage was previously declined, and who would otherwise be considered overdue applicants, may enroll under the following circumstances, terms, and conditions for special enrollments.

1. **Loss of Other Coverage.** Special enrollment will be permitted for employees or dependents for whom the option to enroll for coverage was previously declined because such employees or dependents had other coverage which has terminated due to:

- a. loss of eligibility through separation, divorce, termination of employment, reduction in hours, or death of the plan participant; or
- b. cessation of employer contributions for the other coverage, unless such employer contributions were ceased for cause or for failure of the individual participant; or
- c. the employee or dependent having had COBRA continuation coverage under another plan, and the COBRA continuation coverage has been exhausted, as provided in HIPAA.

2. **After Acquired Dependents.** Special enrollment will be permitted for employees or dependents for whom the option to enroll for coverage was previously declined when the employee acquires a new dependent by marriage, birth, adoption, or placement for adoption.

3. Special enrollment application must be made within 30 days of the termination date of the prior coverage or the date the new dependent is acquired. Persons eligible for special enrollment for whom application is made more than 30 days after eligibility will be considered overdue applicants, subject to the provisions of Article 1, Section II, Subsection D above.

4. The effective date of coverage shall be:

- a. for loss of other coverage or marriage, the first of the month following the date of the receipt by the State Employees Group Benefits Program of all required forms for enrollment;
- b. for birth of a dependent, the date of birth;
- c. for adoption, the date of adoption or placement for adoption;

5. The Program will require that all special enrollment applicants complete a Statement of Physical Condition form and sign an acknowledgment of pre-existing condition form.

6. Medical expenses incurred during the first 12 months that coverage for the special enrollee is in force under this contract will not be considered as covered medical expenses if they are in connection with a disease, illness, accident or injury for which medical advice, diagnosis, care, or treatment was recommended or received during the 6-month period immediately prior to the enrollment date. The provisions of this paragraph do not apply to pregnancy.

7. If the special enrollee was previously covered under a group health plan, health insurance coverage, Part A or B of Title XVII of the Social Security Act (Medicare), Title XIX of the Social Security Act (Medicaid) other than coverage

consisting solely of benefits under section 1928 thereof, or other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and the rules and regulations promulgate pursuant thereto, the duration of the prior coverage will be credited against the initial 12-month period used by the Program to exclude benefits for a pre-existing condition provided, however, that termination under the prior coverage occurred within 63 days of the date of coverage under the Program.

8. *Retirees Shall Not Be Eligible for Special Enrollment*, except under the following conditions:

- a. retirement began on or after July 1, 1997;
- b. the retiree can document that creditable coverage was in force at the time of the election not to participate or continue participation in the Program;
- c. the retiree can demonstrate that creditable coverage was maintained continuously from the time of the election until the time of requesting special enrollment;
- d. the retiree has exhausted all COBRA and/or other continuation rights and has made a formal request to enroll within thirty (30) days of the loss of other coverage; and
- e. the retiree has lost eligibility to maintain other coverage through no fault of his/her own and has no other creditable coverage in effect.

Jack W. Walker, Ph.D.  
Chief Executive Officer

9903#058

**RULE**

**Office of the Governor  
Office of Elderly Affairs**

FY 1998-99 State Plan on Aging (LAC 4:VII.1317)

(Editor's Note: The following rule published on pages 26-27 of the January 20, 1999 *Louisiana Register* is being repromulgated to correct a typographical error in the chart, Area Agencies on Aging. The chart inadvertently included Calcasieu as the Area Agency on Aging for Calcasieu Planning and Service Area. Instead the text should have listed the Governor's Office of Elderly Affairs as performing the responsibilities as the Area Agency on Aging for the Calcasieu Planning and Service Area.)

**Title 4**

**ADMINISTRATION**

**Part VII. Governor's Office**

**Chapter 13. State Plan on Aging**

**§1317. Area Agencies on Aging**

Area Agency on Aging	Planning and Service Area (Parishes Served)
***	***
Governor's Office of Elderly Affairs*	Calcasieu
***	***

\*performing the responsibilities as an Area Agency on Aging

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:932(8).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 19:1317 (October 1993), repealed and promulgated by the Office of the Governor, Office of Elderly Affairs, LR 23:1146 (September 1997) amended LR 24:1110 (June 1998), LR 25:26 (January 1999), repromulgated LR 25:499 (March 1999).

Paul F. "Pete" Arceneaux  
Executive Director

9903#059

## RULE

### Office of the Governor Oil Spill Coordinator's Office

Natural Resource Damage Assessment  
(LAC 43:XXIX.Chapter 1)

In accordance with the provisions of L.R.S. 30:2480, and the provisions of the Louisiana Administrative Procedure Act, L.R.S. 49:950 et seq., the Office of the Oil Spill Coordinator adopts rules for the assessment of natural resources damages from unauthorized discharges of oil.

In accord with Section 2718 of the federal Oil Pollution Act of 1990-OPA-(33 U.S.C. 2701 et seq.), the Louisiana Legislature enacted the Louisiana Oil Spill Prevention and Response Act-OSPRA-(LSA L.R.S. 30:2451 et seq.) in 1991. Both OPA and OSPRA provide for natural resources damages and damage assessment costs resulting from oil spill incidents. Double recovery for such damages is prohibited by Section 2706(d)(3) of OPA.

Consequently, both Federal Natural Resource Damage Assessment Regulations (15 C.F.R. 990 et seq.) and these rules envision that, in most cases, federal and state trustees will cooperatively carry out their NRDA responsibilities; however, differences in the NRDA provisions of OPA and OSPRA will, occasionally, make such cooperative assessments difficult to achieve. These rules have been drafted to implement the provisions of OSPRA with the intent to facilitate federal-state cooperative NRDA efforts under OPA and OSPRA as much as possible.

#### Title 43

#### NATURAL RESOURCES

#### Part XXIX. Oil Spill Prevention and Response

#### Chapter 1. Natural Resource Damage Assessment

#### Subchapter A. General Provisions

#### §101. Declaration and Intent

A. The Louisiana Oil Spill Coordinator in the Office of the Governor adopts these rules pursuant to the Oil Spill Prevention and Response Act (OSPRA), Louisiana Revised Statutes, §30:2451 et seq. These rules are applicable in the event that an unauthorized discharge of oil or a substantial threat of an unauthorized discharge of oil to state waters results in injury to natural resources.

B. These rules shall be interpreted and implemented in a manner consistent with federal law. Any conflict between a provision of these rules and the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. part 300

and/or the Oil Spill Prevention and Response Act (L.R.S. 30:2451 et seq.) should be resolved in favor of the cited authorities. Thus, the coordinator and state natural resource trustees are encouraged to cooperate and coordinate their actions with the federal trustees, and in cooperation with the potentially responsible party, to make the environment and the public whole for injuries resulting from unauthorized discharges by assessing natural resource damages for those injuries, presenting a claim for damages (including the reasonable costs of assessing damages), recovering damages, and developing and implementing a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources and services under their trusteeship.

C. The federal trustees are not bound by these rules and have the right to bring separate claims in addition to any claim made by the state trustees. Even though state and federal trustees may bring a separate claim, double recovery is prohibited. The state trustees may bring a claim for natural resource damages pursuant to their authority under the Oil Pollution Act of 1990 (OPA), 33 U.S.C., §2701 et seq., or under OSPRA, R.S. 30:2451 et seq. The state trustees may use the natural resource damage assessment procedures established under this rule or under the rules adopted pursuant to OPA, a combination of procedures drawn from both OPA and OSPRA rules, or under the OSPRA rules. The decision as to which assessment procedures will be used shall be documented in the Administrative Record. Whether the state trustees use OPA procedures, OSPRA procedures, or a combination of OSPRA and OPA procedures, they will perform the field investigation as described in §117 of this Chapter.

D. In the action to recover natural resource damages, the coordinator, in consultation with the state natural resource trustees, shall make the determination whether to assess natural resource damages and the amount of damages, and such determination shall create a rebuttable presumption of the amount of such damages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:500 (March 1999).

#### §103. Applicability

This Chapter applies to any unauthorized discharge or substantial threat of an unauthorized discharge of oil that enters or poses a threat to land, coastal waters, or any other waters of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:500 (March 1999).

#### §105. Usage

As used in these rules, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require. Any reference to "days" in this Chapter shall refer to calendar days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:500 (March 1999).

## §107. Severability

A. If any section or provision of this Chapter or the application of that section or provision to any person, situation, or circumstance is determined to be invalid by a court of competent jurisdiction for any reason, such adjudication shall not affect any other section or provision of this Chapter, or the application of the adjudicated section or provision to any other person, situation, or circumstance.

B. The Louisiana Oil Spill Coordinator declares that he adopts the valid portions and applications of this Chapter without the invalid sections, and to this end, the provisions of this Chapter are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:501 (March 1999).

## §109. Definitions

The following words, terms, and phrases, when used in this Chapter, shall have the following meanings, unless the word, term, or phrase is otherwise defined in the text.

*Acquisition of Equivalent*—the acquisition of a natural resource that provides services substantially equivalent to those injured as the result of an unauthorized discharge of oil.

*Area Contingency Plan*—the contingency plan required by the Federal Water Pollution Control Act (33 U.S.C., §1321(j)(4)).

*Assessment or Natural Resource Damage Assessment*—the process of collecting, compiling, and analyzing information through prescribed procedures and/or protocols to determine damages for injuries to natural resources and/or any loss in the services provided by the natural resources resulting from an unauthorized discharge of oil.

*Baseline*—the condition of the natural resources and services that would have existed had the incident not occurred. Baseline data may be estimated using historical data, reference data, control data, or data on incremental changes (e.g., number of dead animals), alone or in combination, as appropriate.

*Coastal Waters*—the waters and bed of the Gulf of Mexico within the jurisdiction of the State of Louisiana, including the arms of the Gulf of Mexico subject to tidal influence, estuaries, and any other waters within the state, if such other waters are navigated by vessels with a capacity to carry 10,000 gallons or more of oil as fuel or cargo.

*Coordinator*—the Louisiana Oil Spill Coordinator.

*Cost-Effective*—the least costly activity among two or more activities that provide the same or a comparable level of benefits, in the judgment of the state trustees.

*Damages*—damages specified in section 1002(b)(2)(A and D) of OPA [33 U.S.C. 2702(b)(2)], and includes the costs of assessing these damages, as defined in section 1001(5) of OPA [33 U.S.C. 2701(5)], effective as of the date of the adoption of this rule.

*Exposure*—when all or part of a natural resource is or may be in physical contact with oil (resulting from an unauthorized discharge) or with media containing oil or its degradation products. (See above.)

*Federal Fund*—the Oil Spill Liability Trust Fund established by the *Internal Revenue Code of 1986*, 26 U.S.C. §9509.

*Federal Trustee(s)*—official(s) of the federal government designated, according to the Oil Pollution Act of 1990 (33 U.S.C. §2701 et seq.), §2706(b)(2), as trustees who may present a claim for and recover damages for injury to natural resources.

*Field Investigation*—an evaluation by one or more representatives of the state natural resource trustees of the area impacted by an unauthorized discharge of oil to determine the actual and potential exposure of natural resources and the impact on natural resources and the services they provide for the purpose of evaluating which damage assessment methods, if any, should be utilized by state trustees.

*Incident*—any unauthorized discharge of oil or series of unauthorized discharges of oil, including the threat of unauthorized discharge of oil, having the same origin, involving one or more vessels, facilities, or any combination thereof.

*In Consultation With the Other State Trustee(s)*—process described in Memoranda of Agreement between the Oil Spill Coordinator and the state natural resource trust agencies.

*Injury*—any observable or measurable adverse change, either long or short term, in the chemical or physical quality or the viability of a natural resource or loss of services (as defined in this Section), resulting either directly or indirectly from an unauthorized discharge of oil, response to an unauthorized discharge of oil, or substantial threat of an unauthorized discharge of oil.

*Lead Administrative Trustee*—the state trustee, either the Louisiana Oil Spill Coordinator or his designee, responsible for compiling the administrative record and for coordinating activities of the state trustees in the natural resource damage assessment process.

*Loss or Loss of Services*—any impairment of a service, as defined in this section, provided by a natural resource, resulting either directly or indirectly from exposure to an unauthorized discharge of oil.

*National Contingency Plan*—the plan prepared and published as revised from time to time, under the Federal Water Pollution Control Act (33 U.S.C. §§ 1321 et seq.) and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.).

*Natural Recovery*—the process through which injured natural resources and their services return to baseline condition without additional human intervention.

*Natural Resources*—all land, fish, shellfish, fowl, wildlife, biota, vegetation, air, water, groundwater supplies, and other similar resources owned, managed, held in trust, regulated, or otherwise controlled by the State of Louisiana.

*Oil*—oil of any kind or in any form including, but not limited to, crude oil, petroleum, fuel oil, sludge, oil refuse, oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C., §9601(14)(A)-(F), effective as of the date of the adoption of this rule and which is subject to the provisions of that Act.

*OSPRA*—the Oil Spill Prevention and Response Act Louisiana Revised Statutes 30:2451 et seq.

*On-Scene Coordinator* or *State On-Scene Coordinator* or *SOSC*—the Louisiana Oil Spill Coordinator or state official designated by the coordinator to coordinate and direct response actions under the State Oil Spill Contingency Plan pursuant to L.R.S. 30:2464.

*Pathway*—the medium, mechanism, or route by which the incident has resulted in exposure to oil (from an unauthorized discharge) of natural resources. For unauthorized discharges of oil, a pathway is the sequence of events by which:

- a. the oil traveled through various components of an ecosystem and contacted the natural resource of concern; or
- b. exposure to oil in one part of an ecosystem was transmitted to the natural resource of concern, without the oil directly contacting the natural resource.

*Public Use(s)*—the services provided by natural resources for human activities; this includes, but is not limited to, cultural, archaeological, transportation, public water supply, industrial water supply, swimming, fishing, harvesting of natural resources, nature viewing, hunting, diving, sailing, boating, hiking, camping, climbing, photographing, drawing, painting, and other human uses.

*Recovery*—the return of the injured natural resource and service to baseline conditions.

*Reference Area* or *Reference Resource*—an area or natural resource, unaffected by the relevant incident, and which is comparable in physical, chemical, and biological characteristics or in the level of services provided to the area potentially injured as a result of the relevant incident.

*Rehabilitation*—those actions which enhance the recovery of injured natural resources.

*Replacement*—substituting natural resources at or near the impacted area to compensate for the loss of natural resources and/or services due to an unauthorized discharge of oil.

*Responsible Party* or *Responsible Parties*—

- a. the owner(s) and/or operator(s) of a vessel or terminal facility from which an unauthorized discharge of oil emanates or threatens to emanate; and
- b. in the case of an abandoned vessel or facility, the party who would have been responsible immediately prior to the abandonment; and
- c. any other person, but not including a person or entity who is rendering care, assistance, or advice in response to an unauthorized discharge or threatened unauthorized discharge of another person, who causes, allows, or permits an unauthorized discharge of oil or threatened unauthorized discharge of oil.

*Restoration*—any action (or alternative), or combination of actions (or alternatives), to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and services, and may include:

- a. *Primary Restoration*, which is any action, including natural recovery, that returns injured natural resources and services to baseline; and
- b. *Compensatory Restoration*, which is any action taken to compensate for interim losses of natural resources and services that occur from the date of the incident until recovery.

*Restoration Plan*—a plan developed for public review and comment that describes the restoration alternatives to be considered in the restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources.

*Services, Ecological Services, or Natural Resource Services*—the processes or functions provided by natural resources for the benefit of other natural resources and/or the public and includes, but is not limited to, water purification, flood control, erosion control, shelter, food supply, and reproductive habitats.

*State Oil Spill Contingency Plan*—the plan required by L.R.S. 30:2456.

*State Natural Resource Trustees*—Louisiana Department of Environmental Quality, Louisiana Department of Natural Resources, Louisiana Department of Wildlife and Fisheries, and/or other agencies of the state of Louisiana designated by the Governor according to the Oil Pollution Act of 1990 as state natural resources trustees.

*State Trustee(s)*—the state trustee coordinator (Louisiana Oil Spill Coordinator) and the state natural resource trustees (Louisiana Department of Environmental Quality, Louisiana Department of Natural Resources, Louisiana Department of Wildlife and Fisheries). The definition of state trustees may also include other agencies of the state of Louisiana designated by the Governor according to the Oil Pollution Act of 1990 as state natural resource trustees.

*Trustee(s)*—those officials of the federal and state governments, of Indian tribes, and foreign governments, designated under 33 U.S.C. 2706(b) of Oil Pollution Act.

*Unauthorized Discharge of Oil*—any actual or threatened discharge of oil not authorized by a federal or state permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:501 (March 1999).

## **Subchapter B. State Trustee Response, Organization, and Coordination**

### **§111. Notification of an Unauthorized Discharge of Oil**

A. The coordinator shall promptly notify all state natural resource trustees of all reported unauthorized discharges of oil.

B. After observing the characteristics of the unauthorized discharge of oil and the location of the affected natural resources, if the SOSC determines that the quantity or properties of the oil discharged or the natural resources potentially impacted by the oil differ significantly from the initial report, the SOSC shall promptly provide the state trustees with an updated report.

AUTHORITY NOTE: Promulgated in accordance with L.R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:502 (March 1999).

### **§113. Coordination of Trustee Response to an Unauthorized Discharge of Oil**

A. The state trustees shall, through the unified incident command system:

1. assist each other in prioritizing protection of natural resources during any significant unauthorized discharge of oil.

The trustees shall be available, throughout the response to the unauthorized discharge of oil, to advise and assist the SOSC regarding the benefits and risks associated with response activities on natural resources;

2. confer on a regular basis, as necessary, in accordance with the National Contingency Plan, Area Contingency Plans, Regional Contingency Plans and the State Oil Spill Contingency Plan;

3. integrate and coordinate assessment activities with ongoing response activities as long as assessment activities do not interfere with those response activities; and

4. exchange information related to the impact of response activities on natural resources. The SOSC shall provide the trustees with an incident report detailing the quality and effectiveness of the responsible party's containment and removal actions and the protection and preservation of natural resources.

B. The SOSC shall advise the state trustees in writing when the impacted area is safely accessible for damage assessment activities. The SOSC shall allow access to the impacted area in accordance with the site safety plan. The SOSC may limit the state trustee activities only if such activities would create an unreasonable interference with response actions.

C. The state natural resource trustees with the assistance of the coordinator shall conduct natural resource damage assessments by:

1. developing and utilizing contingency planning to enhance coordination among all trustees, emergency response agencies, and potentially responsible parties to ensure a consistent and comprehensive response to unauthorized discharges of oil;

2. coordinating and exchanging scientific, technical, economic and legal expertise among the trustees and potentially responsible party;

3. integrating all scientific, technical, economic, and legal issues;

4. executing, when necessary, contracts to procure the services of appropriate experts;

5. providing the opportunity for early participation in the field investigation and assessment process by the potentially responsible parties; and

6. providing opportunity for public review and comment on the administrative record and draft restoration plan.

D. The state trustees shall coordinate with the federal trustees in all phases of the damage assessment and restoration process.

E. The lead administrative trustee shall:

1. coordinate the natural resource damage assessment and organize communication among the trustees and with the potentially responsible party regarding the assessment. The lead administrative trustee shall perform all administrative tasks required to disseminate information to all participants in the assessment and to ensure that the assessment is completed within the time periods, including any extensions granted, provided by L.R.S. 30:2480. Administrative tasks include:

a. scheduling of meetings of the trustees and potentially responsible party and preparing agendas for those meetings;

b. notifying trustees and potentially responsible party of all pertinent developments on a timely basis;

c. maintaining documents and records of the assessment; and

d. establishing and maintaining the Administrative Record as required by §127 of this Chapter.

2. ensure that disagreements among trustees are expeditiously resolved; and

3. informing the Louisiana Attorney General of state trustee actions during the assessment process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:502 (March 1999).

### **§115. Responsible Party Participation**

A. Pursuant to L.R.S. 30:2480(C)(6)(c), the state trustees are directed to invite the potentially responsible party to participate in natural resource damage assessment as soon as practicable and no later than the delivery of the "Notice of Intent" (see §123 of this Chapter). The state trustees shall determine the scope of participation by the potentially responsible party consistent with L.R.S. 30:2480.

1. Responsible parties may assist the state trustees in the identification of natural resources most at risk from the unauthorized discharge of oil, and may assist the trustees in identifying protective measures to be used in responding to unauthorized discharges of oil, and in identifying personnel and organizations likely to participate in response and assessment activities, with appropriate quality control.

2. The lead administrative trustees shall invite the potentially responsible party to participate in the assessment process, the field investigation, the selection of assessment methods, restoration planning, and post-assessment activities. The invitation to participate should be in writing, and a written response by the responsible party is required to confirm the desire to participate. If the responsible party elects to participate in any part of the assessment process, the state trustees and the responsible party should enter into a written agreement whereby the conditions of their respective participation are defined, including provisions to have a state trustee representative present when the responsible party conducts any activity pertinent to a cooperative NRDA process, and whereby they agree to provide data acquired to the state trustees as described in Subsection B below. This agreement may be drafted concurrently with the commencement of preassessment activities. The coordinator or any other state trustee may limit or terminate the participation of the responsible party in any activity conducted by the affected state trustee when such participation is inconsistent with or in conflict with the responsibilities of the affected state trustees.

B. Upon the written request of the responsible party, the coordinator, lead administrative trustee, or state natural resource trustee shall provide photographs, videos, duplicate or split samples, if possible, and validated data generated or

obtained by the specified state trustee(s) during the natural resource damage assessment and the implementation of the resulting restoration plan. Upon the written request of any state trustee(s), the responsible party shall provide photographs, videos, duplicate or split samples, if possible, validated data generated or obtained by the responsible party during the natural resource damage assessment and the implementation of the resulting restoration plan. Conditions for sharing samples and data should be incorporated into the written participation agreement described in A.2 of this Section.

C. Any assessment conducted with the participation of the responsible party shall include any stipulations agreed upon by the responsible party and the state trustees. Stipulations may be proposed by either the responsible party or the state trustees at any time during the assessment. These stipulations may be amended to the written agreement entered into pursuant to paragraph A.2 of this Section. These stipulations are binding in any and all judicial or administrative proceedings concerning the incident in question. The stipulations shall continue, and shall be binding on all parties, after termination of the responsible party's participation or after the termination of a negotiated assessment under §121 of this Chapter. Stipulations must be agreed upon by the state trustees.

D. Whenever the coordinator, in consultation with the state natural resource trustees, decides that the responsible party is interfering with state trustee responsibilities or is causing unreasonable delay in the assessment process, the state trustees may proceed without the participation of the responsible party after reasonable effort has been made to resolve problems at the level at which they occur, or if necessary, after a hearing with arbitration has taken place between the responsible party, the coordinator, and the affected state natural resource trustees. The coordinator shall provide the responsible party with a written statement, which shall be included in the administrative record, describing the factual basis for disallowing further participation by the responsible party. The responsible party may rejoin the assessment process or participate if the responsible party demonstrates, to the satisfaction of the coordinator, and state natural resource trustees, that the dilatory or disruptive practices will not reoccur.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:503 (March 1999).

### **Subchapter C. Natural Resource Damage Assessments** **§117. Field Investigation**

A. A field investigation will be conducted to determine whether a natural resource damage assessment is necessary, and if so, the scope of the natural resource damage assessment. One or more representatives of the state natural resource trustee agencies shall initiate a field investigation within 24 hours after written approval for access to the site by the SOSOC.

B. The state natural resource trustees shall determine the appropriate methods to be used in conducting the field investigation which may include sampling and data collection. The state trustees shall provide an opportunity for the

responsible party to participate in all phases of the Natural Resource Damage Assessment process, including field investigations.

C. Information gathered as part of the field investigation, including sampling protocols and data validations, will be part of the administrative record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:504 (March 1999).

### **§119. Criteria to Be Considered in Determining Injury and/or Loss of Services**

A. The state natural resource trustees may find injury to a natural resource when:

1. the natural resource was directly or indirectly exposed to oil from an unauthorized discharge of oil; and
2. there was a pathway between the natural resource and the unauthorized discharge of oil; and
3. reliable and valid methods indicate adverse effects on natural resources and services resulting from exposure to oil from the unauthorized discharge; or
4. the natural resource and/or service was adversely impacted by response activities either to an actual unauthorized discharge or the substantial threat of an unauthorized discharge of oil.

B. The state natural resource trustees may find a loss of services when:

1. the ability of the natural resource to provide services has been reduced as the result of an unauthorized discharge of oil or response activities associated with the unauthorized discharge or substantial threat of an unauthorized discharge; or
2. the ability of the natural resource to provide public uses has been reduced as the result of an unauthorized discharge of oil or the substantial threat of an unauthorized discharge of oil.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:504 (March 1999).

### **§121. Assessment Procedures and Protocols for Determining, Quantifying, and Valuing Natural Resource Injury and Loss of Services**

A. The coordinator, in consultation with the trustees, shall determine within 60 days of the written notification by the on-scene coordinator that the response is complete whether information gathered during the field investigation(s) indicates that a natural resource damage assessment is warranted.

B. The state natural resource trustees may use any appropriate and accepted assessment procedures and methods as long as they consider the unique characteristics and the location of the natural resources affected by the unauthorized discharge or substantial threat of unauthorized discharge of oil, including adverse impacts caused by response activities, if any. The methods shall be designed to ensure that the cost of any restoration, rehabilitation, replacement, or acquisition project shall not be disproportionate to the value of the natural resource before the injury.

C. Any assessment generated by the state natural resource trustees must be reasonable and the costs of conducting the assessment must have a rational and direct connection to the value of and/or level of services provided by the injured resources prior to the unauthorized discharge of oil.

D. In addition, the use of a more complex or expensive method must be reasonably related to the expected increase in the quantity and/or quality of relevant information provided by the more complex procedure.

E. The procedures must be capable of providing information of use in determining the type and scale of restoration appropriate for the injury.

F. The state natural resource trustees may petition the coordinator for a longer period of time to make the determination by showing that the probability of impact from the unauthorized discharge on the affected natural resources cannot be adequately estimated in 60 days.

G. Only after a field investigation which may include sampling and data collection, the state natural resource trustees shall determine the injury to natural resources as a result of an unauthorized discharge of oil. The state natural resource trustees shall utilize methods that provide appropriate, valid, and reliable measurements of resource injuries associated with the unauthorized discharge of oil. In performing an assessment, the state natural resource trustees shall, to the extent possible, use generally accepted scientific and technical standards and methodologies that have been demonstrated to produce valid and reliable assessment results. Injury determination, restoration planning, and quantification of restoration costs must be based on a site-specific assessment of the unique characteristics and the location of the natural resources.

H. The range of assessment options includes:

1. Comprehensive Assessment Procedures. A method including sampling, modeling, and other appropriate scientific procedures to make a reasonable and rational determination of injury and cost-effective restoration alternatives to natural resources resulting from an unauthorized discharge of oil and will be used when the coordinator, in consultation with the state natural resource trustees, determines that an expedited or negotiated assessment procedure is not appropriate.

2. Expedited Assessment Procedures may be used:

a. when the following circumstances exist:

i. the unauthorized discharge of oil has caused limited observable mortality; and

ii. the extent of injury can be determined within 12 months following the completion of response actions; and

iii. a restoration plan can be initiated within 12 months of completion of the response actions; or

b. when the quantity of oil discharged is less than 1,000 gallons; or

c. when the coordinator, in consultation with the state natural resource trustees, determines that the expedited damage assessment method is the most cost-effective, technically feasible method for achieving timely restoration of injured natural resources.

3. Negotiated Assessment Procedures. Any assessment method agreed to by the state trustees and the responsible person.

I. If more than one procedure for providing the same type and quality of information is available, the most cost-effective procedure must be used.

J. The coordinator and the state natural resource trustees shall complete the comprehensive assessment procedure within 20 months of the date of written notification by the SOSOC that response is complete. The state natural resource trustees may petition the coordinator for a longer period of time to make the determination by showing that the full impact of the unauthorized discharge on the affected natural resources cannot be determined in 20 months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:504 (March 1999).

### **§123. Notice of Intent to Conduct Restoration Planning**

A. The coordinator, in consultation with the state natural resource trustees, shall determine within 60 days of written notification by the on-scene coordinator that the response is complete whether information gathered during the field investigation(s) indicates that a natural resource damage assessment is necessary, and determine which assessment procedure is appropriate. The coordinator upon receipt of a petition from the state natural resource trustees may decide that a longer period of time is necessary to make the determinations required above, and shall notify the responsible party in writing of any extensions of this deadline.

B. Under L.R.S. 30:2480(6)(c), the lead administrative trustee is directed to promote participation of the responsible party in all stages of the assessment. The coordinator and state natural resource trustees shall inform the responsible party as soon as possible that the state trustees are conducting activities associated with an unauthorized discharge of oil. The coordinator, after consultation with the state natural resource trustees, shall provide the responsible party with a written notice of intent to conduct restoration planning at least 10 days prior to commencement of assessment actions.

C. The notice of intent to perform an assessment shall include:

1. a summary of the activities conducted during the field investigation and other state trustee actions to date; and

2. a description of the unauthorized discharge of oil; and

3. an evaluation of the effect of response activities on natural resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:505 (March 1999).

### **§125. Plans for Restoration, Rehabilitation, Replacement and/or Acquisition of the Equivalent of Injured Natural Resources**

A. The coordinator, in consultation with the state natural resource trustees, shall develop a plan for the restoration, replacement, rehabilitation and/or acquisition of the equivalent natural resources.

B. Each restoration plan shall:

1. include an analysis of alternative restoration plans, including natural recovery;

2. be cost-effective and technically feasible. Technical feasibility means the technology and management skills necessary to implement a restoration plan are known such that the plan has a reasonable chance of successful completion;

3. not have costs disproportionate to the value of the natural resources and/or the services provided by the resources prior to the unauthorized discharge of oil;

4. allow for corrective actions in the execution of the restoration plan;

5. provide for a period of monitoring sufficient to determine the effectiveness of the plan; and

6. prior to initiation of the plan, be subject to public hearing (upon request) and comment period consistent with L.R.S. 30:2480(I).

C. The restoration plan may be developed simultaneously with other portions of the damage assessment. Restoration plans should be developed as early in the process as practicable and may be developed in phases. Phased restoration plans may be used when trustees determine that:

1. pilot projects are necessary to establish the technical feasibility of the restoration plan;

2. restoration of a particular resource and/or service is not possible without first restoring another resource and/or service upon which the first depends;

3. natural recovery is the chosen alternative for some, but not all, of the injured natural resources; or

4. there is a potential for continuing injury resulting from the unauthorized discharge of oil.

D. The restoration plan may include any combination of:

1. restoration; rehabilitation; replacement and/or acquisition of equivalent natural resources; or

2. natural recovery.

E. The restoration plan shall include criteria for determining when restoration plan is completed, including:

1. performance standards and appropriate measures for their achievement;

2. natural changes occurring in reference areas; and

3. the ability of the natural resources to maintain their viability without further human intervention.

F. If an equivalent regional restoration plan has been developed for the ecosystem encompassing the injured natural resources, the state trustees may use restoration projects identified in that plan for purposes of compensating for the injuries resulting from a particular incident.

G. The coordinator shall issue a certificate of completion to the responsible party when no further actions are necessary to achieve the goals of the restoration plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:505 (March 1999).

#### **Subchapter D. Administration**

##### **§127. Administrative Record**

A. The administrative record, which must be opened concurrently with issuance of the Notice of Intent to Conduct Restoration Planning (as per §123 of this Rule) shall contain documents relied upon by the state trustees in selecting appropriate assessment procedures and protocols and in

developing restoration plans. The purpose of the administrative record is to ensure documentation of the state trustees' decisions.

B. The administrative record shall be developed and maintained by the lead administrative trustee. All closed administrative records from unauthorized discharges of oil under the jurisdiction of the coordinator, shall be maintained by the coordinator as required by the Louisiana Public Records Act (L.R.S. 44:1 et seq.).

C. Each administrative record shall contain, at a minimum:

1. all final documents and references to documents used by state trustees in selecting state assessment procedures and protocols, and in developing restoration plans; and

2. all technical, scientific and economic information discovered and relied upon by the state trustees during the assessment; and

3. the Notice of Intent to Conduct Restoration Planning; and

4. the field investigation report and all other information considered in the pre-assessment phase; and

5. a copy of the assessment and the restoration plan as presented to the responsible party; and

6. all correspondence, agreements, and other documents related to the role of the responsible party in the assessment process; and

7. comments received from the public and the state trustees' response to those comments.

D. The following documents and data shall not be included in the administrative record:

1. drafts, unless a final document is not produced and the draft document is material to decisions made, pre-decisional, deliberative inter-agency and intra-agency documents.

2. documents describing analysis of liability or any attorney-client privileged documents or attorney work product documents also shall not be included.

3. any scientific, technical, or economic data that fails to meet all criteria set forth in a quality assurance/quality control plan developed by the state trustees unless there is a scientifically reliable basis for utilizing any of the data.

E. The administrative record is a document subject to the Louisiana Public Records Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:506 (March 1999).

##### **§129. Recovery of Damages**

A. Upon developing a restoration plan, the coordinator must present a written demand to the responsible party. Delivery of the demand should be made in a manner that establishes the date of receipt by the responsible party. The demand must invite the responsible party to either:

1. implement the final restoration plan subject to state trustee oversight and reimburse the trustees for their response costs and costs associated with the development of the damage assessment and restoration plan; or

2. advance to the trustees a specified sum representing trustee response and assessment costs and all trustee costs associated with implementing the final restoration plan.

B. In an action filed or settled pursuant to the Oil Spill Prevention and Response Act (OSPRA), L.R.S. 30:2480, the state trustees may recover those costs which are attributable to the performance of the assessment of damages and the development, implementation, and monitoring of the restoration plan, including:

1. the costs of the assessment including, but not limited to:
  - a. salary, fringe benefits, overhead, transportation, lodging, and state per diem costs;
  - b. the costs of sampling and analyses of oil and natural resources, including reference areas;
  - c. the costs of laboratories, contractors, and other experts retained by the trustees in assessing injury and determining damages;
  - d. the cost of the mediation required by §133 of this Chapter (relating to mediation);
2. the costs of restoration, rehabilitation, replacement and/or acquisition of equivalent resources and/or services to hasten recovery to baseline;
3. the costs of emergency restoration to diminish further injury to natural resources from the time of the initial unauthorized discharge until the time of restoration of the injured natural resources and the services they provide;
4. the cost of restoration, rehabilitation, replacement and/or acquisition of equivalent resources and/or services to provide compensation for losses from the time of the initial unauthorized discharge until the time baseline is achieved;
5. the net loss of taxes, royalties, rents, fees, or net profit share that the state would otherwise have collected in the absence of the unauthorized discharge of oil;
6. all costs that have a rational connection to the assessment and are incurred in the performance of the assessment, and the development, implementation, and monitoring of the restoration plan.

C. The responsible party shall reimburse each state trustee's assessment costs.

D. If a responsible party is entitled to a limitation of natural resource damages liability, then any recovery under L.R.S. 30:2480, shall be limited as provided in L.R.S. 30:2479.

E. In the event that the responsible party does not reimburse state natural resource trustees, the state natural resource trustees shall be reimbursed from the Oil Spill Contingency Fund pursuant to Paragraph 3 of this Subsection. If the responsible party fails to pay, the Oil Spill Contingency Fund is liable for all natural resource damages assessed as the result of injuries caused by an unauthorized discharge of oil.

1. State Trustee Costs
  - a. State trustees may recover from the Oil Spill Contingency Fund all costs incurred responding to an unauthorized discharge of oil and in assessing damages resulting from injuries to natural resources caused by an unauthorized discharge of oil under the jurisdiction of the coordinator.
  - b. State natural resource trustees must submit directly to the coordinator satisfactory proof of costs incurred. Satisfactory proof of costs is compliance with the procedures prescribed by and according to the rules of the comptroller of

public accounts of the State of Louisiana. The coordinator will recommend that the comptroller make payment to the state natural resource trustees for their assessment costs.

2. In the event the responsible party fails to pay a natural resource damage assessment claim, the state natural resource trustees may present the claim to the Oil Spill Contingency Fund for the costs of actions to restore, rehabilitate, replace and/or acquire the equivalent of injured natural resources and for the costs to diminish injuries to natural resources resulting from an unauthorized discharge of oil pursuant to this Subsection.

3. Oil Spill Contingency Fund Liability and Limitation

- a. The Oil Spill Contingency Fund is liable when:
  - i. the federal fund denies the claim; or
  - ii. the amount of the claim paid by the federal fund is not sufficient to restore, rehabilitate, replace and/or acquire the equivalent of the injured natural resources.

b. If Subparagraph a of this Paragraph applies, then the Oil Spill Contingency Fund shall be liable for further damages for the following:

- i. restoration, rehabilitation, replacement and/or acquisition of the equivalent natural resources; and
- ii. for the diminution of injuries to natural resources for a period of 2 years from the date the federal fund grants or denies the claim.

4. The coordinator shall diligently seek reimbursement to the Oil Spill Contingency Fund. The coordinator shall seek reimbursement from the responsible parties, the federal fund, and any other person who is liable under OSPRA for all expenditures from the Oil Spill Contingency Fund, when the Oil Spill Contingency Fund has paid a natural resource damage assessment claim. When state natural resource trustees have recovered damages from the Oil Spill Contingency Fund, the coordinator shall be subrogated to all rights or causes of action of the state natural resource trustees.

F. The state natural resource trustees shall present the assessment claim to the responsible party via hand delivery or United States Postal Service Return Receipt Requested Certified Mail.

G. Within 60 days of the presentation of an assessment claim by the coordinator or state natural resource trustees, the responsible party shall make full payment or initiate restoration, rehabilitation, replacement, or mitigation of damages unless the assessment is in dispute and referred to mediation pursuant to L.R.S. 30:2480(G). In the case of successful mediation, payment of the assessment claim shall be made within 60 days of the completion of the mediation unless otherwise agreed.

H. The coordinator shall ensure that there is no double recovery for natural resource damages resulting from an unauthorized discharge of oil.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:506 (March 1999).

### §131. Settlements

A. A negotiated settlement is a binding agreement in which the responsible party agrees to pay the state trustees a certain amount or to perform certain restoration, rehabilitation, replacement, acquisition. The coordinator, in consideration of

the responsible party's agreement in writing, will agree to release the responsible party from further liability for damages to natural resources resulting from an unauthorized discharge of oil. Such release shall not be executed until after the payment is received by the state trustees or until after the restoration, rehabilitation, replacement, acquisition and/or relevant research project is certified complete by the coordinator. Release from liability by the coordinator does not release the responsible party from liability to Federal trustees, or for response costs, unless specifically included in the settlement agreement. The coordinator, in consultation with and with agreement of the state natural resource trustees, may consider, and settle any filed or developing claim on behalf of the state on such terms as are fair, reasonable, and in the public interest.

B. The draft agreement between the state trustees and the responsible party shall be subject to public review and comment as set forth in §135 of this Chapter (relating to public participation) and shall provide:

1. that title to real or personal property acquired as compensation for injured natural resources may vest in a public entity only where the terms and conditions for that entity's acceptance of title are met;

2. that criteria for certification of project completion are specifically enumerated; and

3. for all items necessary to ensure restoration, rehabilitation, replacement and/or acquisition of equivalent natural resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:507 (March 1999).

### §133. Mediation

A. No state trustee or responsible party may invoke the jurisdiction of any court over a disputed natural resource damage assessment claim unless and until the assessment claim has been referred to mediation pursuant to this Section.

B. The mediation process required by R.S. 30:2480(G), shall be conducted pursuant to this Subsection.

1. The coordinator, within 10 days of receipt of the written notice that the responsible party is disputing the assessment claim, shall send written notification to all parties of the referral to mediation.

2. Each side is entitled to one mediator. If the state trustees and the responsible party agree on a single person to serve as mediator, then that person shall be the only mediator.

3. Any designated mediator must have completed a minimum of 40 classroom hours of mediation training in a course conducted by an alternative dispute resolution system or other dispute resolution organization. This requirement may be waived for any mediator only with the unanimous consent of all state trustees and all responsible parties. A mediator conducting a mediation under this Section shall act as an impartial third party and be subject to the standards and duties set forth.

4. Before appointment of the mediator is final, any prospective mediator shall submit complete disclosure statements for the approval of all parties, which statements shall include a resumé of experience, together with a declaration describing all past, present, and anticipated future

relationships related to the subject matter of the dispute and with all parties and their agents or representatives involved in the dispute.

5. After appointment as a mediator and thereafter throughout the mediation process, the mediator shall not acquire any ownership or any other financial interest in, nor shall be employed by or act as a consultant to, any party to the dispute or the agent or representative of any party to the dispute, and during this period shall not engage in any discussion or make any agreement with any party to the dispute or the agent or representative of any party to the dispute, regarding the acquisition of any ownership or financial interest, employment, or consulting activity after the mediation process is completed. Provided, however, that the parties to the mediation, by unanimous consent, may waive these restrictions specifically, in writing, upon full disclosure of the facts by the mediator.

C. All communications in the mediation shall be confidential and privileged.

D. The mediation shall terminate at the conclusion of the period that the parties agree to mediate, including any agreed extensions, but not less than one full business day, or upon declaration by any mediator of an impasse.

E. The mediation shall be scheduled so as to conclude within 135 days after the responsible party receives the natural resource damage assessment claim.

F. Within 3 days following the termination or conclusion of a mediation, the mediator(s) shall provide the coordinator with notice of the completion of the mediation process.

G. The mediation shall take place in Baton Rouge, Louisiana, unless the state trustees and the responsible party agree otherwise.

H. All participants in the mediation process who represent either a state trustee or a responsible party must be vested with the authority to negotiate a mediated settlement agreement on behalf of their respective trustee or responsible party and to recommend to the trustee or responsible party approval of any mediated settlement agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:508 (March 1999).

### §135. Public Participation

A. The coordinator shall give public notice through the use of the *Louisiana Register*, the official state journal, the official journal of the parish, and at least one newspaper of general circulation serving the impacted area at the time that a Notice of Intent to Conduct Restoration Planning is issued to the responsible party.

B. The coordinator shall provide for a public hearing and comment period consistent with R.S. 30:2480(I) following the issuance of an assessment and restoration plan consistent with L.R.S. 30:2480(I).

C. The coordinator shall not execute any documents which relieve a responsible party from liability for damages resulting from injury to natural resources until the public comment period has expired.

D. When an equivalent resource plan (e.g., Regional Restoration Plan) is proposed for adoption by the state trustees, the coordinator and the state natural resource trustees

may conduct, upon the request of any member of the public, a public hearing on the proposed plan.

E. The public hearing shall be convened in or near the area covered by the equivalent resource plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2451 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Oil Spill Coordinator's Office, LR 25:508 (March 1999).

**Chapters 3. - 7. Reserved.**

Roland J. Guidry  
Oil Spill Coordinator

9903#038

## RULE

### Department of Health and Hospitals Board of Dentistry

Adjudication Proceeding Costs  
(LAC 46:XXXIII.421)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry hereby amends LAC 46:XXXIII.421, Subpoenas. No preamble has been prepared.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XXXIII. Dental Health Professions

#### Chapter 4. Fees and Costs

#### Subchapter E. Adjudication Proceeding Costs

#### §421. Subpoenas

For issuance of a subpoena or subpoena duces tecum with respect to an administrative hearing, a fee of \$15.00 shall be payable by the respondent to the board, but not by the board, in addition to the witness fees prescribed by law. [see R.S. 49:956(5)].

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Dentistry, LR 14:791 (November 1988), amended by the Department of Health and Hospitals, Board of Dentistry, LR 25:509 (March 1999).

C. Barry Ogden  
Executive Director

9903#011

## RULE

### Department of Health and Hospitals Board of Dentistry

Advertising and Soliciting by Dentists  
(LAC 46:XXXIII.301)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry hereby amends LAC 46:XXXIII.301, Advertising and Soliciting by Dentists. No preamble has been prepared.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XXXIII. Dental Health Professions

#### Chapter 3. Dentists

#### §301. Advertising and Soliciting by Dentists

A. - I. ...

J. Advertisement of Fees and Discounted Services

1. An appropriate disclosure regarding advertised fees is necessary to protect the public so all procedures or devices which are advertised with fees must adequately describe the procedure or device in such a way that a layperson is not misled. Proof of customary fee must be available if discounted fees are advertised, and the true fee from which the discount is taken must be in the advertisement also.

2. - 3. ...

K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Dentistry, (December 1970), amended 1971, amended and promulgated LR 13:179 (March 1987), amended by Department of Health and Hospitals, Board of Dentistry, LR 15:966 (November 1989), LR 18:739 (July 1992), LR 20:657 (June 1994), LR 21:567 (June 1995), LR 22:23 (January 1996), LR 22:1215 (December 1996), repromulgated LR 23:199 (February 1997), amended LR 23:1524 (November 1997), amended LR 25:509 (March 1999).

C. Barry Ogden  
Executive Director

9903#012

**RULE**

**Department of Health and Hospitals  
Board of Dentistry**

Continuing Education—Dentists and Hygienists  
(LAC 46:XXXIII.1611 and 1613)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8) and (13), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.1611, Continuing Education Requirements for Relicensure of Dentists, and LAC 46:XXXIII.1613, Continuing Education Requirements for Relicensure of Dental Hygienists. No preamble has been prepared.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXXIII. Dental Health Professions**

**Chapter 16. Continuing Education Requirements**

**§1611. Continuing Education Requirements for  
Relicensure of Dentists**

A. - J. ...

K. Dentists who successfully complete certification courses in advanced cardiac life support continuing education will be awarded up to 16 hours of clinical continuing dental education. However, dentists completing the shorter recertification course in advanced cardiac life support will be awarded 3 hours of non-clinical continuing dental education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8)and(13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661(June 1994), amended LR 21:569 (June 1995), LR 22:24 (January 1996), LR 22:1216 (December 1996), LR 23:1526 (November 1997), LR 25:510 (March 1999).

**§1613. Continuing Education Requirements for  
Relicensure of Dental Hygienists**

A. - J. ...

K. Dental hygienists who successfully complete a continuing education course as set forth in §710, Administration of Local Anesthesia for Dental Purposes, will be awarded 72 hours of clinical continuing dental hygiene education. However, these hours may not be carried over to a subsequent renewal period and will count only toward the renewal of their license during the period in which they attended the course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8)and(13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR: 20:661 (June 1994), amended LR 21:570 (June 1995), LR 22:24 (January 1996), LR 22:1217 (December 1996), LR 23:1526 (November 1997), LR 25:510 (March 1999).

C. Barry Ogden  
Executive Director

9903#013

**RULE**

**Department of Health and Hospitals  
Board of Dentistry**

Expanded Duty Dental Assistant Course Providers  
(LAC 46:XXXIII.504)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.504, Authorized Providers of Instruction for Expanded Duty Dental Assistant Courses. No preamble has been prepared.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXXIII. Dental Health Professions**

**Chapter 5. Dental Assistants**

**§504. Authorized Providers of Instruction for Expanded  
Duty Dental Assistant Courses**

A. Louisiana State University School of Dentistry and Northeast Louisiana School of Dental Hygiene; or

B. Louisiana state schools of allied health science including vocational technical schools in affiliation with Louisiana State University School of Dentistry and Northeast Louisiana School of Dental Hygiene; or

C. ...

D. The board reserves the right to randomly monitor any and all courses given under Chapter 5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:205 (February 1993), amended LR 25:510 (March 1999).

C. Barry Ogden  
Executive Director

9903#014

**RULE**

**Department of Health and Hospitals  
Board of Dentistry**

Formal Adjudication  
(LAC 46:XXXIII.901)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:75 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.901, Scope of Chapter. No preamble has been prepared.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XXXIII. Dental Health Professions**

**Chapter 9. Formal Adjudication**

**§901. Scope of Chapter**

The rules of Chapter 9 govern the board's initiation and adjudication of administrative complaints providing cause under law for the suspension or revocation, of a license issued by the board, imposition of probation on or other disciplinary action against persons holding licenses, permits, certifications, or registrations issued by the board, applicants therefor, or any non-licensed person illegally practicing dentistry or dental hygiene. The rules of Chapter 9 are promulgated in order to supplement the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Dental Practice Act, R.S. 37:751 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760 (4), (5), and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Dentistry, LR 13:178 (March 1987), amended by the Department of Health and Hospitals, Board of Dentistry, LR 19:1317 (October 1993), amended LR 25:510 (March 1999).

C. Barry Ogden  
Executive Director

9903#015

**RULE**

**Department of Health and Hospitals**  
**Board of Dentistry**

Guidelines for Returning to Active Practice  
(LAC 46:XXXIII.124)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry hereby adds LAC 46:XXXIII.124, Guidelines for Returning to Active Practice. No preamble has been prepared.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XXXIII. Dental Health Professions**

**Chapter 1. General Provisions**

**§124. Guidelines for Returning to Active Practice**

A. Section 124 is intended to provide guidelines to enable the Board to provide evaluation and remediation to dentists and dental hygienists who have not actively practiced their professions for a sufficient length of time which would justify various levels of remediation to assure the board that the dentist or dental hygienist is sufficiently qualified to again practice on the public.

B. In all cases where a dentist or dental hygienist has not practiced their profession due to a problem concerning

unprofessional conduct, substance abuse, criminal activity, or other issues concerning moral turpitude, said dentist or dental hygienist shall be assessed by a psychiatrist or psychologist of the board's choosing to determine remediability. The cost of the assessment shall be borne by the dentist or dental hygienist.

C. Evaluations of the diagnostic, clinical, and laboratory skills of the dentist or dental hygienist shall be evaluated by an entity of the board's choosing. The costs of the evaluation shall be borne by the dentist or dental hygienist. Evaluations may include, but not be limited to, comprehensive table examinations, written examinations, and clinical examinations. These examinations shall cover those areas of dentistry the board feels are necessary to have evaluated.

D. When a license has been inactive for a period of three months to one year, it is the prerogative of the board to have the licensee evaluated in any specific or all fields of dentistry or dental hygiene as deemed necessary by the board.

E. In all cases where a license has been suspended for a period of three months or more, the dentist or dental hygienist shall successfully complete a course in ethics as determined by the board.

F. When a license has been inactive for one year or greater, an evaluation by a dentist and/or specialist appointed by the board shall be conducted. Varying degrees of remediation shall be determined by the board on a case-by-case basis. Areas of specific concern for general dentists are:

1. oral diagnosis/treatment planning;
2. dental materials;
3. operative dentistry;
4. fixed prosthodontics;
5. removable prosthodontics;
6. periodontics;
7. endodontics;
8. pain control/pharmacology;
9. nitrous oxide sedation;
10. cardiopulmonary resuscitation;
11. infection control;
12. OSHA regulations;
13. jurisprudence;
14. implantology;
15. ethics.

G. Specialists may be evaluated by other specialists in that field appointed by the board, or oral examinations, or written examinations.

H. Dental hygienists shall be evaluated on all areas of dental hygiene for which they are authorized to perform. These evaluations may be performed by written and/or clinical examinations.

I. In all cases, the board has the discretion to prescribe any course of remediation it deems fit and proper, including, but not limited to, requiring further schooling at a dental or dental hygiene school, participation in mini-residencies, or practicing only under the direct supervision of other licensed dentists.

J. Any dentist or dental hygienist who is authorized to return to active practice with restrictions or requirements on their license who do not completely satisfy said requirements

or restrictions shall be subject to sanctions, including, but not limited to, revocation of their license whether or not a complaint has been received by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 25:511 (March 1999).

C. Barry Ogden  
Executive Director

9903#016

## RULE

### Department of Health and Hospitals Board of Dentistry

#### Health Care Provider—Financial Interest Disclosure (LAC 46:XXXIII.316)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., particularly R.S. 37:760(8), and under the mandate of R.S. 37:1744, notice is hereby given that the Department of Health and Hospitals, Board of Dentistry hereby amends LAC 46:XXXIII.316, Disclosure of Financial Interest by Referring Dental Health Care Provider. No preamble has been prepared.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XXXIII. Dental Health Professions

#### Chapter 3. Dentists

#### §316. Disclosure of Financial Interest by Referring Dental Health Care Provider

A. This rule is authorized and mandated by R.S. 37:1744 and a violation of §316 will constitute a violation of either R.S. 37:776(A)(24) or R.S. 37:777(18).

B. No dental health care provider shall make referrals outside the same group practice as that of the referring dental health care provider to any licensed health care facility, or provider of health care goods and services, including, but not limited to, providers of clinical laboratory services, diagnostic services, medicinal suppliers, and therapeutic services when the referring dental health care provider has a financial interest served by such referrals, unless in advance of any such referral, the referring dental health care provider discloses to the patient, in writing, the existence of such financial interest. Nothing herein shall be construed to allow any Louisiana dentist or dental hygienist to violate LSA-R.S. 37:776(A)(9) or 37:777(15), which prohibits patient referrals in return for the payment of something of value, except as provided therein, whether or not the arrangement is first disclosed, in writing, to the patient.

C. ...

D. It shall be a violation of §316 for any licensee to enter into any arrangement or scheme, including cross-referral arrangements, if the licensee knows, or should know, that he or she has a principal purpose of insuring referrals by the

licensee to a particular entity, which referral, if made directly by the licensee, would be a violation of §316.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and mandated R.S. 37:1744.

HISTORICAL NOTE: Adopted by the Department of Health and Hospitals, Board of Dentistry, LR 23:1527 (November 1997), amended LR 25:512 (March 1999).

C. Barry Ogden  
Executive Director

9903#021

## RULE

### Department of Health and Hospitals Board of Dentistry

#### Inventories of Controlled Substances (LAC 46:XXXIII.320)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751 et seq., particularly R.S. 37:760(8), and under the mandate of R.S. 37:1744, notice is hereby given that the Department of Health and Hospitals, Board of Dentistry adds LAC 46:XXXIII.320, Required Inventories. No preamble has been prepared.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XXXIII. Dental Health Professions

#### Chapter 3. Dentists

#### §320. Required Inventories

A. The purpose of §320 is to supplement R.S. 37:794, Dispensing of Controlled Substances; Records.

B. All licensees handling controlled substances in Schedules I, II, III, IV, or V shall prepare a complete and accurate inventory of each such substance in his or her possession or under his or her control. All licensees will have records open for inspection by the Department of Health and Hospitals, the Drug Enforcement Administration, and the Louisiana State Board of Dentistry.

C. This inventory shall list a common or established name of each such controlled substance.

D. If the controlled substances are in dosage unit form, it will fully identify the form (e.g., amphetamine sulfate, 10 mg. tablets), and record the number of dosage units. If the controlled substance is in an ingredient in a powder, crystalline, liquid, bead, or other form, this inventory will fully identify the form (e.g., dextroamphetamine sulfate, elixir, 5 mg. per 5 ml.) and record the amount of each form.

E. This inventory shall be placed on the record separate from other business, professional, or required records. This record shall be prepared, dated, and signed by the dentist under whose control the controlled substances are placed.

F. The record shall be kept for a period of at least two (2) years from the date of preparation. Inventory records shall be prepared in accordance with the provisions of §320.F every two (2) years on the anniversary date of the initial inventory.

These inventories may coincide with the dentist's regular fiscal inventory, provided that he maintains his records of receipt, distribution, and dispensing in such a manner as to facilitate complete accounting for his or her handling of controlled substance (perpetual inventory control).

G. Any dentist failing to comply with the above conditions shall be deemed to have violated R.S. 37:776(A)(24) and R.S. 37:794.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and mandated R.S. 37:1744.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 25:512 (March 1999).

C. Barry Ogden  
Executive Director

9903#022

## RULE

### Department of Health and Hospitals Board of Dentistry

Licensure by Credentials—Dental Hygienists  
(LAC 46:XXXIII.706)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.706, Requirements of Applicants for Licensure by Credentials. No preamble has been prepared.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XXXIII. Dental Health Professions

#### Chapter 7. Dental Hygienists

#### §706. Requirements of Applicants for Licensure by Credentials

A. ...

1. - 5. ...

6. has never been convicted of a felony or a misdemeanor involving moral turpitude including, but not limited to, driving while under the influence of alcohol or drugs;

7. - 20. ...

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:737 (July 1992), amended LR 21:570 (June 1995), LR 22:23 (January 1996), LR 25:513 (March 1999).

C. Barry Ogden  
Executive Director

9903#023

## RULE

### Department of Health and Hospitals Board of Dentistry

Licensure by Credentials—Dentists  
(LAC 46:XXXIII.306)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry hereby amends LAC 46:XXXIII.306, Requirement of Applicants for Licensure by Credentials. No preamble has been prepared.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XXXIII. Dental Health Professions

#### Chapter 3. Dentists

#### §306. Requirements of Applicants for Licensure by Credentials

A. Before any applicant is awarded a license according to his/her credentials in lieu of an examination administered by the board, said applicant shall provide to the board satisfactory documentation evidencing:

1. - 5. ...

6. has never been convicted of a felony or a misdemeanor involving moral turpitude including, but not limited to, driving while under the influence of alcohol or drugs;

7. - 20. ...

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:739 (July 1992), amended LR 21:571 (June 1995), LR 22:23 (January 1996), LR 23:1528 (November 1997), LR 25:513 (March 1999).

C. Barry Ogden  
Executive Director

9903#024

## RULE

### Department of Health and Hospitals Board of Dentistry

Provision of Dental Services at Locations  
Other Than Dental Office  
(LAC 46:XXXIII.314)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry hereby amends LAC 46:XXXIII.314, Provision of Dental Services at Locations Other Than Dental Office. No preamble has been prepared.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXXIII. Dental Health Professions**

**Chapter 3. Dentists**

**§314. Provision of Dental Services at Locations Other Than Dental Office**

A. When dental services are provided by dental health care providers to patients in locations other than the dental health care provider's dental office, or an accredited hospital, the dental health care provider shall:

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 23:1525 (November 1997), amended LR 25:514 (March 1999).

C. Barry Ogden  
Executive Director

9903#025

**RULE**

**Department of Health and Hospitals  
Board of Dentistry**

**Reinstatement of Licenses Revoked for Non-Payment  
(LAC 46:XXXIII.114)**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry hereby amends LAC 46:XXXIII.114, Reinstatement of Licenses Revoked for Non-Payment. No preamble has been prepared.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXXIII. Dental Health Professions**

**Chapter 1. General Provisions**

**§114. Reinstatement of Licenses Revoked for Non-Payment**

A. Any licensee seeking the reinstatement of his or her license to practice dentistry or dental hygiene in the State of Louisiana shall request in writing the reinstatement of his or her license, and personally appear before the board for an interview to determine the merits of the request for reinstatement.

B. When a dentist or dental hygienist has allowed their Louisiana license to lapse for any reason whatsoever, but continued to practice dentistry or dental hygiene in another state, that person must seek relicensure by credentials and is prohibited from receiving relicensure by reinstating their Louisiana license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1113 (June 1998), amended LR 25:514 (March 1999).

C. Barry Ogden  
Executive Director

9903#026

**RULE**

**Department of Health and Hospitals  
Board of Nursing**

**Continuing Education—Nursing Practice  
(LAC 46:XLVII.Chapter 33)**

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Board of Nursing, pursuant to the authority vested in the board by R.S. 37:918 and R.S. 37:920, has amended Title 46:XLVII pertaining to continuing education/nursing practice requirements of the board for registered nurse licensure.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS  
Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 33. General**

**Subchapter C. Registration and Licensure**

**§3335. Continuing Education—Nursing Practice**

A. Authority of the Louisiana State Board of Nursing (Board). The Board derives its authority to establish the requirement for evidence of activities which contribute to continued competence for relicensure to practice as a registered nurse from R.S. 37:911, R.S. 37:918(4) and (12) and R.S. 37:920.E (1), (2), and (4).

B. Definitions for the Purposes of §3335.

*Accredited Post Secondary Institution*—a degree granting institution that conducts a program preparing registered nurses and awards degrees at any or all of the following levels: associates, bachelors, masters, and doctoral, and which is accredited by a nationally recognized accrediting body.

*Approved Offering*—a continuing education offering provided by an approved provider.

*Approved Provider*—individual, partnership, corporation, association, organization, organized health care system, educational institution, or governmental agency which has been approved by the Board, accredited by the American Nurses Credentialing Center's Commission on Accreditation (ANCC), or approved to provide nursing continuing education by an ANCC accredited approver.

*Board Approved Contact Hours*—contact hours which have been approved by the Board or through the ANCC.

*Clinical Competence*—the possession and use of professional knowledge and skills in relation to direct patient/client care.

*Certifying Body*—an agency qualified to evaluate an individual, an institution, or an educational program and attesting that certain predetermined standards for safe and ethical practice of the profession or service are met.

*Competence*—the possession of professional knowledge and skills necessary to practice or function at the legally qualified level.

*Contact Hour*—a unit of measurement that describes 50 minutes of participation in an educational activity which meets the Board's continuing education criteria.

*Continued Competence*—the possession and maintenance of current professional knowledge and skills.

*Continuing Education*—a planned educational activity designed to update the knowledge and skills of the participant, beyond the entry level, or to prepare for practice in a different area of nursing.

*Continuing Education Activities*—

a. *Course*—an intense, planned educational activity, presented over time, which includes content related to a specific subject for which academic credit or contact hours are awarded.

b. *Offering*—a continuing education activity of short duration for which a minimum of one contact hour is awarded.

c. *Program*—a series of offerings with a common theme and common overall goals. Offerings may occur consecutively or concurrently.

*Criterion*—a standard, rule, or test by which something can be judged, measured, or valued.

*Current*—occurring in the present time; contemporary.

*Documentation of Nursing Practice*—the presence of written evidence of nursing practice.

*Examination*—an exercise designed to evaluate progress, qualifications, or knowledge.

*Full-Time Nursing Practice*—a minimum of 2080 hours, per year, of employment as a registered nurse or full-time equivalency requirements set forth by the employer.

For self-employed, home health, and contract nurses, a minimum of 1,600 documented nursing practice hours, exclusive of travel, per calendar year, is accepted as full-time employment. Documentation of practice hours shall include paycheck stubs and a log record of actual hours worked.

*Inactive Licensure Status*—is recorded when the RN requests inactive licensure status rather than renew a current RN license.

*Lapsed License*—delinquent licensure status due to failure to renew or to request inactive licensure status.

*National Council Licensure Examination for Registered Nurses (NCLEX-RN)*—the examination approved by the Board and administered to measure competency for initial licensure as a registered nurse.

*Nursing Practice*—the performance, with or without compensation, by an individual licensed by the Board as a registered nurse, of functions requiring specialized knowledge and skill derived from the biological, physical, and behavioral sciences [Nurse Practice Act, R.S. 37:913 (13) and (14)], which includes, but is not limited to, direct patient care, supervision, teaching, administration, and other positions which require use of nursing knowledge, judgment, and skill.

*Part-Time Nursing Practice*—a minimum of 160 hours employment as a registered nurse, but less than full-time employment within the one-year audit period.

*Practice Hour*—sixty minutes of nursing practice.

*Refresher Course*—instruction designed to up-date professional knowledge and skills to the legally qualified level.

*Requirement*—something needed or demanded by virtue of a law, regulation, etc.

C. Continuing Education/Nursing Practice Requirements. Registered Nurses are required to meet the continuing education nursing practice requirements for relicensure and to certify compliance on the application for relicensure. The following options are available to fulfill these requirements.

1. License Renewal. For licensure renewal the applicant shall be in compliance with one of the following:

a. a minimum of 5 Board approved contact hours of continuing education and full-time practice as a registered nurse during the previous calendar year; or

b. a minimum of 10 Board approved contact hours of continuing education and a minimum of 160 hours of practice as a registered nurse during the previous calendar year; or

c. a minimum of 15 Board approved contact hours of continuing education during the previous calendar year; or

d. initial licensure by examination or by endorsement during the previous calendar year; or

e. current certification in a specialty area of nursing by a certifying body whose requirements have been approved by the Board as being equivalent to or exceeding the above requirements.

2. Exceptions. A licensee may request an exemption, on the license renewal application, supported with documentation, from the continuing education/nursing practice requirements, or for an extension of time within which to fulfill the requirements, for one of the following reasons.

a. The licensee is requesting inactive status for the license. In this case, the requirements apply when the licensee seeks to reactivate the license.

b. The licensee served on active duty in the armed forces for a minimum of six months during the licensure period.

c. The licensee has been unable to work due to a physical or mental disability for 2/3 of the most recent audit period and submits medical evidence of readiness or ability to return to work.

d. The individual is currently enrolled as a bonafide student in a Board approved refresher course.

e. The individual presents evidence of an emergency or extenuating circumstances. At the time of filing an application for relicensure based on an exception, the licensee shall attach documentation of the exception.

3. Penalty for Non-Compliance

a. Failure to comply with these requirements shall prohibit license renewal and result in the licensee being placed on a delinquent/lapsed licensure status. Upon presentation of evidence of meeting the continuing education/nursing practice requirements, the license may be reinstated with a potential for disciplinary action.

b. Falsification of data on the renewal or audit forms may result in disciplinary action.

D. Reinstatement of License

1. For reinstatement of a license which has lapsed, been suspended, has been inactive, or has been retired, for less than 4 years, the applicant shall provide documentation of a minimum of 15 Board approved contact hours of continuing education for each year of inactive licensure status, or current licensure in another state and compliance with §3335.C.1.

2. For reinstatement of a license which has lapsed, been suspended, or has been inactive for four years or more, the applicant shall provide documentation of one of the following:

a. completion of a Board approved refresher course consisting of a minimum of 160 hours of instructor planned, supervised instruction, including theory and clinical practice; or

b. enrollment and completion of a bonafide nursing course in an approved school, which consists of 160 hours of instructor planned, supervised instruction, including theory and clinical practice, in lieu of a refresher course; or

c. individualized remediation including an assessment of needs, a program of study designed to meet these needs, and an evaluation of the learning outcomes of the program. Such program shall be sponsored by an approved provider in an accredited post-secondary educational institution whose faculty hold masters degrees in nursing; or

d. a minimum of 60 Board approved contact hours of continuing education within the previous 4 years; or

e. successful completion of the NCLEX-RN examination during the previous calendar year (Licensees who choose the option of taking the NCLEX-RN shall complete the required application, pay the established fee, and follow the current process for testing.); or

f. current licensure in another state, and compliance with §3335.C.1.

E. Continuing Education Activities. Continuing education course credit may be given for the following continuing education activities. Contact hours may be awarded for the following:

1. continuing education activities that meet the criteria for content of continuing education as specified in §3335.F. and which are offered by approved providers as specified in §3335.G or H;

2. academic courses in an accredited post secondary institution which are related to specific knowledge and/or technical skills required for the practice of nursing as specified in §3335.F and, §4507, A.3 and E.2, or which lead to an advanced degree in nursing or to a certificate in advanced nursing practice, with continuing education credit calculated as follows:

a. academic credits leading to a Bachelor of Science Degree in Nursing (BSN), acquired post licensure as a registered nurse, shall be applicable toward meeting the continuing education requirements for relicensure for a maximum of four consecutive years;

b. academic courses recorded as an audit, credit examination, or registration for thesis or dissertation shall not apply toward meeting the continuing education requirements or relicensure;

c. contact hours shall be calculated from credit hours as follows:

i. quarter hours. One credit hour equals 10 contact hours;

ii. trimester hours. One credit hour equals 12 contact hours;

iii. semester hours. One credit hour equals 15 contact hours.

3. program, courses or independent study offerings which have been approved for voluntary or mandatory continuing education by other boards of nursing, the ANCC approval process, or specialty nursing organizations which have equivalent approval criteria;

4. review courses for initial certification in an approved area, such as ACLS, PALS, or advanced IV therapy, etc, provided they meet the criteria for approved offerings (Review courses for recertification do not meet the continuing education requirements for relicensure.); and

5. other continuing education activities as approved or accepted by the Board at its sole discretion;

6. presenting a total continuing education activity shall not be considered continuing education for the presenter. Instructors who present part of a continuing education activity may receive a certificate and credit if the total activity is attended;

7. there is no limit on the number of contact hours that may be earned through independent study.

F. Content of Continuing Education Activities. The following areas are acceptable subject matter to fulfill continuing education requirements for relicensure in Louisiana:

1. nursing practice topics related to counseling, teaching, or care of clients in any setting;

2. sciences upon which nursing practice, nursing education, and nursing research are based, e.g., nursing theories; biological, physical, and behavioral sciences; and advanced nursing in general or specialty areas;

3. professional, social, economic, spiritual, and ethical/legal aspects of nursing; and

4. nursing management, nursing administration, or nursing education.

G. Criteria for Approved Providers. Continuing education providers may be designated by the Board as *Approved Providers* upon showing evidence of meeting the following criteria:

1. have a consistent, identifiable authority, who has the overall responsibility for the operation of the Nursing Continuing Education Provider Unit;

2. have a Continuing Education Nurse Planner with a BSN or higher degree and an active RN license who:

a. has the overall responsibility for planning, implementing, and evaluating the continuing education activity; and

b. accepts full responsibility to ensure that all nursing continuing education activities meet the Board's criteria specified in §3335.H, and including, but not limited to: determining content specified in §3335.F, selecting faculty presenters with expertise in the content area, advertising, issuing certificates, and keeping records.

3. document registered nurse, including RN consumer, participation in the planning and implementation of nursing continuing education activities for which nursing contact hours are awarded. The Nursing Continuing Education Planning Committee shall include, at a minimum, the Nurse Planner and at least one other registered nurse;

4. utilize a program plan which includes a statement of purpose, measurable educational objectives, outline of content, teaching methodology, contact time for each objective, and an evaluation of the attainment of the objectives and of the overall effectiveness of the offering.

5. develop an overall provider unit annual evaluation plan;

6. participate in a Board site visit to validate compliance with provider criteria;

7. maintain participant and program records for a minimum of five years. The record storage system assures confidentiality and allows for retrieval of essential information for each offering including:

- a. title of offering;
- b. names and addresses of participants and number of contact hours awarded to each;
- c. names and titles of planning committee members;
- d. name, title, and curriculum vita for each faculty member;
- e. starting and ending dates;
- f. name and address of facility where offering is held;
- g. program plan as specified in §3335.G.4;
- h. description of target audience;
- i. number of contact hours awarded for the offering;
- j. summary of participants' evaluation; and
- k. copy of any co-providership agreement, if applicable.

8. provide notification of the availability of each continuing education activity as specified in §3335.H.1.d. The Board Approved Provider number shall be included on all advertising materials and certificates. A copy of each brochure/flyer shall be mailed to the Board prior to implementation of the continuing education activity.

9. evidence of accreditation/approval as a provider unit through the ANCC may be submitted in lieu of evidence of meeting the above criteria. Providers approved through the ANCC are recognized by the Board as approved providers of nursing continuing education;

10. initial application for Continuing Education Provider Approval:

a. an application, on a form supplied by the Board, shall be filed, with the required fee, at least six months in advance of the intent to implement the approved provider mode of operation;

b. present evidence of having implemented three approved continuing education activities within the previous one and one half years, or submit applications for three proposed approved continuing education activities;

c. fees payable upon submission of an application for total provider unit review are \$500 for two years, with \$100 being non-refundable.

11. application for Continuing Education Provider Reapproval:

a. an application, on a form supplied by the Board, shall be filed with the Board, at least 90 calendar days prior to the expiration of approval;

b. should an approved provider status expire, no contact hours shall be awarded for nursing continuing education during the interim period of the expiration date and the date of reapproval of the Board Approved Provider Status;

c. fees payable upon submission of an application for total provider unit review are \$500 for two years, with \$100 being non-refundable;

#### H. Individual Continuing Education Activities

1. Agencies or individuals that intend to seek provider approval shall file a preliminary application for Board approved provider status and submit the required fee. Individual offerings will only be approved as a pre-requisite for provider status. Upon showing evidence of meeting the following criteria, the continuing education activity may be approved by the Board, for a period of one year:

a. have a consistent, identifiable authority who has the overall responsibility for the execution of educational offerings;

b. have a Continuing Education Nurse Planner with a BSN or higher degree and an active RN license who:

i. has the overall responsibility for planning, implementing, and evaluating the nursing continuing education activity;

ii. accepts full responsibility for the continuing education activity, including, but not limited to:

(a). determining content as specified in §3335.F,  
(b). selecting faculty presenters with expertise in the content area,

- (c). advertising,
- (d). issuing certificates, and
- (e). keeping records;

iii. have a nursing continuing education planning committee, including at a minimum, the Nurse Planner and at least one other registered nurse;

iv. the continuing education activity utilizes principles of adult education that includes:

- (a). a philosophy of continuing education;
- (b). a statement of purpose;
- (c). selection of a teaching faculty with expertise in the subject matter that includes registered nurses and/or others with expertise in the nursing related subject matter;
- (d). measurable educational objectives;
- (e). topical outline of content;
- (f). teaching methodology;
- (g). contact time appropriate for the content and the objective; and

(h). an evaluation form that includes: attainment of each objective, effectiveness of the speaker(s) and methodology, appropriateness of facilities, relevance of the content to the objectives, and the overall effectiveness of the continuing education activity.

c. maintain participant and program records for a minimum of five years. The record storage system shall maintain confidentiality and allow for retrieval of essential information for the continuing education activity including:

- i. the completed application form;
- ii. the continuing education activity approval letter;
- iii. names and addresses of participants and number of contact hours awarded to each; and
- iv. participant summary evaluation report.

d.i. the following content shall be included on the brochure/flyer and submitted with the Application for Continuing Education Activity Approval:

- (a). date;
- (b). time;
- (c). location;
- (d). target audience;
- (e). registration fee;
- (f). items covered by the fee;
- (g). refund policy;
- (h). objectives;
- (i). agenda;
- (j). speaker credentials;
- (j). contact hours to be awarded;
- (k). the continuing education activity approval statement; and

(l). a statement indicating compliance with the Americans with Disabilities Act (ADA);

ii. a final copy of the brochure/flyer shall be mailed to the Board prior to implementation of the continuing education activity.

## 2. Application Process

a. The Application for Continuing Education Activity Approval shall be submitted to the Board at least 90 calendar days prior to implementation of the continuing education activity.

b. Fees payable upon submission of an application for review of an offering are \$25 (non-refundable) plus \$5 for each contact hour of instruction, up to a maximum of \$700. A fee of 25 percent of the original fee, with a minimum of \$30, is payable for an extension of the approved status.

c. The provider shall submit to the Board immediate written notification of any change in an approved continuing education activity.

d. A continuing education activity approved through the ANCC is recognized by the Board as meeting the continuing education requirements for relicensure.

I. Monitoring System. Fulfillment of the requirements for continuing education/nursing practice for relicensure shall be ascertained as follows.

1. Verification of Continuing Education/Nursing Practice. On the application for relicensure, licensees shall sign a statement certifying compliance and agreeing to supply supporting documents upon request. Maintaining documentation of continuing education for at least five years is the responsibility of each individual. Falsification of the renewal application may result in disciplinary action.

2. Audit of Licensees. The Board shall randomly select no less than 3 percent of the licensees for audit of compliance with the requirements for relicensure. Additionally, the Board has the right to audit any questionable documentation of activities. Such shall be governed by the following.

a. The licensee shall submit verification of compliance with continuing education requirements or exceptions for the

period being audited. Verification includes legible copies of certificates of attendance, and/or transcripts/grade reports, or documentation of compliance with exceptions as provided in §3335.C.2.

b. Licensees who use the nursing practice option as partial evidence of continued competence shall document nursing practice on the audit form provided by the Board. Said documentation shall be signed by an individual who has practiced in a supervisory, collaborative or peer relationship. The staff of the Board will evaluate exceptions to the standard form of documentation on an individual basis.

c. Verification shall be submitted within 30 calendar days of the mailing date of the audit notification letter.

d. Failure to complete the audit satisfactorily by the specified date or falsification of information will result in the licensure being rescinded to become invalid and may result in disciplinary action against the licensee in accord with the process and procedures provided in LAC 46:XLVII.3407.

e. Failure to notify the Board of a current mailing address will not absolve the licensee from the audit requirement.

3. Audit of Approved Providers. The Board reserves the right to audit Approved Providers to ascertain compliance with the criteria for approval. Upon a finding of a deviation from the criteria for approval, after a hearing before the Board, approval status may be withdrawn or the provider may be placed on probation for a specified period of time. Approval status may be restored upon submission of evidence that the provider satisfactorily fulfills the criterion/criteria in question.

4.a. Appeal. A licensee or a provider who wishes to request reconsideration shall do so within 20 calendar days from the date of receipt of notification of the action of the Board. The appellant shall submit a statement which shows cause why action should not have been taken by the Board. This statement shall be acted upon by the Board within 20 calendar days.

b. A final decision of the Board may be appealed in the 19th Judicial District Court within 30 calendar days of the receipt of the decision.

J. Refresher Course. To be approved by the Board, a refresher course shall meet the following criteria.

1. The sponsoring institution shall have access to adequate facilities, resources and qualified educational staff to implement both the required theoretical and clinical components of the refresher course.

2. The course shall be based on clearly stated objectives which are realistic for the time allotted in the course and appropriate for the course content.

3. The course content shall provide a review of basic nursing care concepts, principles, and skills related to patients across the life cycle.

4. The sponsoring institution shall submit the course syllabus for approval at least 90 calendar days prior to implementation of the course, or submit evidence of approval of the course by another board of nursing or by the ANCC at least 20 days prior to the beginning of the course.

5. Fees payable upon submission of a refresher course for approval are \$250 with \$50 being non-refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:911, R.S. 37:918(4)(12) and R.S. 37:920(E).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:74 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998), LR 25:514 (March 1999).

Barbara L. Morvant  
Executive Director

9903#074

## RULE

### Department of Health and Hospitals Board of Veterinary Medicine

#### Dental Operations (LAC 46:LXXXV.710)

The Board of Veterinary Medicine hereby amends LAC 46:LXXXV.710 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, La. R.S. 37:1518 et seq.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXXXV. Veterinarians

#### Chapter 7. Veterinary Practice

#### §710. Dental Operations

A. - B. ...

C. In branches of veterinary medicine other than equine dentistry and livestock dentistry, with proper training and under the direct supervision of a licensed veterinarian, laypeople and registered veterinary technicians employed by a licensed veterinarian may perform supragingival scaling and polishing of teeth, making and developing dental radiographs, taking impressions, production of dental models, and the charting of dental pathology. All other dental operations must be performed by a licensed veterinarian.

D. In the branch of veterinary medicine dealing with equine dentistry, with proper training and under the direct supervision of a licensed veterinarian, laypeople and registered veterinary technicians employed by a licensed veterinarian may perform the rasping (floating) of molar, premolar, and canine teeth, and the removal of deciduous incisor and premolar teeth (caps). All other dental operations, including but not limited to the extraction of teeth, amputation of large molar, incisor, or canine teeth, the extraction of first premolar teeth (wolf teeth) and repair of damaged or diseased teeth must be performed by a licensed veterinarian.

E. In the branch of veterinary medicine dealing with livestock dentistry, with proper training and under the direct supervision of a licensed veterinarian, laypeople and registered veterinary technicians employed by a licensed veterinarian may perform rasping (floating) of premolar and molar teeth, and the removal of deciduous incisor teeth (caps). All other dental operations, including but not limited to the extraction of teeth, amputation of incisors, premolars, and molar teeth, and repair of damaged or diseased teeth must be performed by a licensed veterinarian.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1330 (October 1993), amended LR 25:519 (March 1999).

Charles B. Mann  
Executive Director

9903#079

## RULE

### Department of Health and Hospitals Board of Veterinary Medicine

#### Ketamine—Usage and Storage (LAC 46:LXXXV.704)

The Board of Veterinary Medicine hereby amends LAC 46:LXXXV.704 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, R.S. 37:1518 et seq.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXXXV. Veterinarians

#### Chapter 7. Veterinary Practice

#### §704. Consulting and Providing Legend and Certain Controlled Substances

A.1. - 5. ...

B. Telazol (Tiletamine HCL and Zolazepam HCL) and Ketamine (Ketamine HCL)

1. When an animal control agency which is operated by a state or local governmental agency or which is operated by any duly incorporated humane society which has a contract with a local governmental agency to perform animal control services on behalf of the local governmental agency seeks to administer the controlled substances Telazol (tiltamine HCL and zolazepam HCL) or Ketamine (ketamine HCL), to an animal for the sole purpose of animal capture and/or animal restraint, the animal control agency must have a staff or consulting veterinarian who is licensed to practice veterinary medicine by the Board of Veterinary Medicine, and who is registered with the Drug Enforcement Administration (DEA) and licensed by the state controlled dangerous substances program at the shelter location where the drugs will be stored and administered, who obtains and who is responsible for the Telazol (tiletamine HCL and zolazepam HCL) or Ketamine (ketamine HCL) used.

2. A storage and use plan for Telazol (tiletamine HCL and zolazepam HCL) and Ketamine (ketamine HCL) which meets or exceeds the requirements of all federal or state drug enforcement agencies (including storage of controlled substances in a securely locked, substantially constructed cabinet and the keeping of a perpetual inventory as required by LAC 48:Chapter 39) and the record keeping requirements of this chapter shall be submitted to the Board of Veterinary Medicine for approval.

a. This usage plan shall include a requirement that each use of Telazol (tiletamine HCL and zolazepam HCL) and

etamine (ketamine HCL) shall be documented for review by the licensed veterinarian responsible for the purchase and inventory of that drug.

b.i - vi. ...

c. This usage plan shall include a requirement that a review of each use of Telazol (tiletamine HCL and zolazepam HCL) and Ketamine (ketamine HCL) shall be made by the responsible veterinarian and that said veterinarian shall initial the usage log entries to indicate this review. A review of the usage plan shall be made at least quarterly and the quantities of the drug used and on hand shall be tallied and authenticated. Any variance shall be noted in the log and steps should be taken and documented to correct the problem.

d. This usage plan shall include a requirement that any removal of Telazol (tiletamine HCL and zolazepam HCL) or Ketamine (ketamine HCL) from the securely locked, substantially constructed cabinet shall be in minimal amounts, shall be maintained in a locked container when not in use, and shall be documented in a manner to include, but not be limited to:

i. - iv. ...

C. ...

D. Section 704 does not pertain to any controlled substances listed in any DEA classification schedule or state of Louisiana classification schedule, except Telazol (tiletamine HCL and zolazepam HCL) and Ketamine (ketamine HCL). This section specifically does not apply to sodium pentobarbital, which is regulated for animal control agency use in R.S. 37:1551-1558.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 20:666 (June 1994), amended LR 24:334 (February 1998), LR 25:519 (March 1999).

Charles B. Mann  
Executive Director

9903#080

## RULE

### Department of Health and Hospitals Office of Public Health

#### Sanitary Code—The Control of Diseases (Chapter II)

Under the authority of R.S. 40:5 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health has amended Sections 2:003 and 2:008 in Chapter II (The Control of Diseases) of the Louisiana Sanitary Code.

The actual text changes to the above listed sections in Chapter II of the Sanitary Code are as follows:

#### Sanitary Code

#### Chapter II. The Control of Diseases

**2:003** The following diseases are hereby declared reportable: (*Louisiana Register*, Vol. 23, Number 3, March 20, 1997).

Acquired Immune Deficiency Syndrome (AIDS)  
Amebiasis  
Arthropod Borne Encephalitis (specify type)  
Blastomycosis  
Botulism\*  
Campylobacteriosis  
Chancroid\*\*  
Chlamydial infection\*\*  
Cholera\*  
Cryptosporidiosis  
Diphtheria\*  
Enterococcus (infection; resistant to vancomycin)  
Escherichia coli O157:H7  
Gonorrhea\*\*  
Haemophilus influenzae infection  
Hemolytic-Uremic Syndrome  
Hepatitis, Acute (specify A,B,C or Other)  
Hepatitis B carriage in pregnancy  
Herpes (neonatal)  
Human Immunodeficiency Virus (HIV)  
Legionellosis  
Lyme Disease  
Lymphogranuloma venereum\*\*  
Malaria  
Measles (rubeola)\*  
Meningitis, other bacterial or fungal  
Mumps  
Mycobacteriosis, atypical\*\*\*  
Neisseria meningitidis infection  
Pertussis (whooping cough)  
Rabies (animal and man)  
Rocky Mountain Spotted Fever  
Rubella (German measles)\*  
Rubella (congenital syndrome)  
Salmonellosis  
Shigellosis  
Staphylococcus aureus (infection; resistant to methicillin/oxacillin or vancomycin)  
Streptococcus pneumoniae (infection resistant to penicillin)  
Syphilis\*\*  
Tetanus  
Tuberculosis\*\*\*  
Typhoid Fever  
Varicella (chicken pox)  
Vibrio infections (other than cholera)

Case reports not requiring special reporting instructions (see below) can be reported by Confidential Disease Case Report forms (2430), facsimile, phone reports, or electronic transmission.

\*Report suspected cases immediately by telephone. In addition, all cases of rare or exotic communicable diseases and all outbreaks shall be reported.

\*\*Report on STD-43 form. Report cases of syphilis with active lesions by telephone.

\*\*\*Report on CDC 72.5 (f 5.2431) card.

All reportable diseases and conditions other than the venereal diseases, tuberculosis and those conditions followed by asterisks should be reported on an EPI-2430 card and

forwarded to the local health unit or the Epidemiology Section, P.O. Box 60630, New Orleans, Louisiana 70160, phone 1(800)256-2748 or FAX (504)568-3206.

**OTHER REPORTABLE CONDITIONS**

(Louisiana Register Vol. 23, Number 3 March 20, 1997)

- Cancer
- Complications of Abortion
- Congenital hypothyroidism\*\*\*\*\*
- Galactosemia\*\*\*\*\*
- Hemophilia\*\*\*\*\*
- Lead poisoning
- Phenylketonuria\*\*\*\*\*Reye's Syndrome
- Severe traumatic head injury\*\*\*\*\*
- Severe undernutrition (severe anemia, failure to thrive)
- Sickle cell disease\*\*\*\*\*
- Spinal cord injury\*\*\*\*\*
- Sudden infant death syndrome (SIDS)

Report cases on an EPI-2430 card unless indicated otherwise below.

\*\*\*Report in DDP3 form; preliminary telephone report from emergency room encouraged (504)568-2509.

\*\*\*\*Report to the Louisiana Genetic Diseases Program Office by telephone (504)568-5070 or FAX (505)568-7722. Information contained in reports required under this section shall remain confidential in accordance with the law.

\* \* \*

**2:008** The director of every laboratory whether public, private, hospital or other, within or out of the state, where specimens are examined for the purpose of confirming or aiding in the diagnosis of a communicable disease, shall report to the State Health Officer the following information: (1) all reactive serologic tests for syphilis;

- (2) microscopic findings of *Treponema pallidum*;
- (3) all reactive test for Human Immunodeficiency Virus (e.g. EIA, Western Blot, P24 Antigen, or Immunofluorescent Antibody Assay);
- (4) the results of T Cell subset (e.g CD4 Counts) determinations;
- (5) the results of any nucleic acid based assay or sequencing procedure used for the detection, quantitation (viral load) or analysis of Human Immunodeficiency Virus DNA or RNA (e.g. NASBA, PCR, LCR or bDNA); and
- (6) the results of virus isolation and culture procedures for Human Immunodeficiency Virus. Moreover, the results of all tests which either confirm or suggest the occurrence of reportable diseases as specified in Section 2:003 are to be reported. Such reports shall be submitted within 72 hours after completion of the reportable test and shall contain the name of the physician or person submitting the specimen; the name, age, sex, race and address of the person from whom the specimen was obtained, and the name and degree of reactivity

of the test performed. Persons submitting specimens for reportable laboratory tests are required to supply the laboratories with sufficient information to comply with the provisions of this Section. Laboratory reports shall not be construed as diagnosis. In the case of private patients, follow-up of laboratory reports shall be through the physician(s) submitting the specimen(s).

\* \* \*

David W. Hood  
Secretary

9903#075

**RULE**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

**Adult Denture Program**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

**Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the February 20, 1996 rule clarifying the seven-year requirement to include both complete and partial dentures in the Adult Denture Program.

1. Only one complete or partial denture per arch is allowed in a seven-year period. The seven-year time period begins from the date the previous complete or partial denture for the same arch was delivered. A combination of two complete or partial denture relines per arch or one complete or partial denture and one reline per arch is allowed in a seven-year period, as prior authorized by BHSF or its designee.
2. For relines, at least one year shall have elapsed since the complete or partial denture was delivered or last relined.
3. Cast partial dentures continue to be a non-covered service in the Adult Denture Program.

David W. Hood  
Secretary

9903#029

## RULE

### Department of Public Safety and Corrections Corrections Services

#### Drug-Free Workplace (LAC 22:I.203)

In accordance with the Administrative Procedure Act, R.S. 49:953(B), and in order to implement Executive Order No. MJF 98-38, the Department of Public Safety and Corrections, Corrections Services, hereby adopts regulations dealing with the Drug-Free Workplace.

#### Title 22

### CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

#### Part I. Corrections

#### Chapter 2. Personnel

#### §203. Drug-Free Workplace

A. Purpose. To provide a comprehensive program of substance abuse education and to establish guidelines for employee drug/alcohol testing.

B. Applicability. All Employees of Corrections Services. The Deputy Secretary, Undersecretary, Assistant Secretaries and each Unit Head are responsible for conveying the contents of this regulation to all concerned.

#### C. Definitions

*CAP-FUDT Laboratory*—a laboratory certified by the College of American Pathologists for forensic urine drug testing.

*Custodian of Records*—staff person responsible for the direct accountability of drug test results.

*Drug Testing*—for the purpose of this regulation, drug testing programs will generally be comprised of two testing components preliminary analysis; and formal testing. The application of formal testing may be contingent upon the results of the preliminary analysis. Alcohol testing consists only of administering the approved test and replicating any positive results.

*Employee*—any individual employed by or appointed to a position with the Louisiana Department of Public Safety and Corrections, Corrections Services (including student workers and temporary appointments) or by an outside agency or provider who works in an institution or division or any individual under contract to the Louisiana Department of Public Safety and Corrections, Corrections Services who works in an institution or division. (This does not necessarily confer "employment" status on independent contractors or employees of outside agencies, but serves to define a class of people who are subject to participation in the Drug-Free Workplace Program.)

*Formal Testing*—drug testing conducted by a CAP-FUDT or SAMSHA certified laboratory which usually follows a positive result on a preliminary analysis for the presence of drugs.

*Inmate*—anyone committed to the Department, whether as an adult or juvenile.

*Preliminary Analysis*—the first analytical procedure to detect the presence of drugs or metabolites using approved drug testing instruments. (See §203.H.1 for additional information.) The results of the preliminary analysis are to be used solely to indicate the need for additional formal testing, except for those who are being tested for pre-employment purposes. In this case, when the preliminary analysis is positive, it will be sufficient cause to either remove the prospective employee from consideration for employment or appointment or be cause for conducting formal testing. If formal testing is conducted and the result is positive, then this shall be cause for the prospective employee's elimination from consideration for employment or appointment.

*Safety/Security Sensitive Position*—any job which directly or indirectly affects the safety and security of others. For the purpose of this regulation, safety/security sensitive positions are those which involve direct contact with inmates, offenders and persons under supervision and those having access to confidential information relative to the care, confinement or supervision of inmates, offenders and persons under supervision. All positions within the Department are considered to be safety/security sensitive positions, including those that may require or authorize access to a prison or an incarcerated individual, those with duties that may require or authorize carrying a firearm, those that may require instructing or supervising any person to operate or maintain, or that may require or authorize operating or maintaining, any heavy equipment or machinery and those that may require or authorize the operation or maintenance of a public vehicle, or the supervision of such an employee.

*SAMSHA Certified Laboratory*—a laboratory certified by the Substance Abuse and Mental Health Services Administration for forensic urine drug testing.

*Unit Head*—refers to the head of each operational unit.

D. Policy. Substance abuse is a major contributor to criminal activity and is particularly detrimental to our overall correctional mission in providing for the safety of employees and the public. Staff who engage in substance abuse are less likely to enforce policies and procedures effectively to control or to prevent illicit drug and alcohol use by other employees and inmates. Therefore, it is the Secretary's policy to promote increased employee awareness of substance abuse and to achieve and maintain a workplace free of drugs and alcohol.

E. General. Each Unit Head is responsible for implementation of a substance abuse education program that requires compliance with this regulation. Each employee is responsible for refraining from illegal use, possession, sale or manufacture of controlled substances, and from reporting to work or working while under the influence of or impaired by alcohol or drugs.

#### F. Type of Testing

1. Pre-Employment. Drug testing will be conducted prior to employment. (See §203.C.7 for additional information.)

2. Reasonable Suspicion/Probable Cause. Reasonable suspicion/probable cause screening and subsequent testing, as appropriate, may be based on:

a. observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug or alcohol or when the odor of alcohol, marijuana smoke, or other substance, as appropriate, is present;

b. a pattern of abnormal conduct or erratic behavior;

c. arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking (the term "trafficking" shall also mean "distribution");

d. information provided by reliable and credible sources or independently corroborated;

e. newly discovered evidence that the employee tampered with a previous drug or alcohol test;

f. credible allegation or confirmation of involvement in a significant violation of policy in which judgment may have been impaired.

3. Post Accident. An employee shall be subject to drug testing following an accident that occurs during the course and scope of their employment that:

a. involves circumstances leading to a reasonable suspicion of the employee's drug use;

b. results in a fatality; or

c. results or causes the release of hazardous waste as defined in R.S. 30:2173(2) or hazardous materials as defined in R.S. 32:1502(5);

d. an employee who is involved in an accident that results in bodily injury or property damage may be subject to drug testing.

4. Rehabilitative. As a condition for returning to work after participating in a rehabilitation program, an employee must participate in a substance abuse aftercare program and agree to follow-up testing on a random basis for up to 48 months. (Additionally, medical professionals who are in an impaired program or who have a documented substance abuse history must agree to periodic drug/alcohol testing throughout the course of their employment.) Staff testing positive without legitimate explanation whose employment is not terminated are subject to rehabilitative random testing for a period of 48 months.

5. Random. All employees who occupy safety/security sensitive positions (as defined in this regulation) will be subject to random drug testing. On a quarterly basis, a list of social security numbers representing at least 5% of a Unit's employees will be selected at random by a computer-generated selection process. This list will be provided to each institution, the Division of Probation and Parole, the Division of Youth Services and Prison Enterprises. (Headquarters employees will be included in the EHCC selection process.)

a. The Office of Information Services will generate the list of social security numbers at the prescribed interval and insure that the lists are distributed directly to the Unit Heads. (Alternatively, if a Unit has a drug-testing services contract with a CAP-FUDT certified or SAMSHA certified laboratory, the production of this list may be included as part of those services.)

b. Unit Heads will establish a policy for matching the social security numbers to employee names, notification of selected employees, recording of test results and other appropriate procedures as needed.

c. All tests will be conducted during the selected employees' work hours; no employee will be called in on his day/night off specifically for the purpose of a random drug test.

d. The conduct of this program will be in accordance with §203.H.

6. Promotion. Drug testing will be conducted prior to promotion.

G. Substances to be Tested for. As provided by statute, drug testing may be performed for any of the following classes of drugs: marijuana; opiates; cocaine; amphetamines; and phencyclidine. This does not preclude testing for any other illegal drugs, alcohol, or abused prescription medication.

H. Conduct of the Drug Testing Program. All urine specimens for drug testing shall be collected, stored, and transported pursuant to applicable laws and appropriate safety procedures.

1. The On Trak, Microline, TesTstik, AccuSign DOA series test kits (formerly called AbuSign DOA) Pharmscreen and MCC test kits for drug testing, (five panel only), may be utilized as a preliminary analysis to determine the need for further testing, but may not be used as the basis for any disciplinary action or other adverse action. (Formal testing may be utilized initially in lieu of preliminary analysis when the Unit Head determines that this is the most efficient method.)

#### 2. Collection of Specimens

a. Collection of urine specimens may be done on-site by the operational Unit's staff who have received the appropriate training or by outside laboratory personnel or off-site at an outside laboratory.

b. All collection of urine specimens shall be made with regard to privacy of the individual.

c. Direct observation by the same sex of the individual during collection of the urine specimen may be allowed only under the following conditions:

i. there is reason to believe that the individual may alter or substitute the specimen to be provided; or

ii. the individual has provided a urine specimen that falls outside the acceptable temperature range; or

iii. the last urine specimen provided by the individual was verified by a MRO as being adulterated based upon the determinations of the laboratory; or

iv. the person collecting observes conduct indicating an attempt to substitute or adulterate the sample; or

v. the individual has previously been determined to have a urine specimen positive for one or more of the drugs listed in §203.G and is being tested for the purposes of follow-up testing upon or after return to service; or

vi. the type of drug testing is post-accident or reasonable suspicion/ probable cause.

d. Disposal of biohazardous waste will be handled properly in accordance with appropriate safety procedures.

3. Handling and Storage. This component applies to those tests which require the specimen to be preserved for testing and/or transporting to a laboratory.

a. The person obtaining the urine specimen should sign, date, and record the time the specimen was obtained on an accompanying form and turn over to appropriate personnel, who are responsible for labeling and refrigerating/freezing the specimen.

b. The area where the refrigerator containing urine samples is located is to be secured at all times when not in use by appropriate personnel.

c. Only appropriately designated and trained personnel may retrieve the specimen from the refrigerator for testing.

#### 4. Medical Review Officers

a. A Medical Review Officer (MRO), who must be a licensed physician, will review all positive formal test results and will obtain a list of medication used by the employee at the time of the test. The MRO will give the employee the opportunity to provide a medical history and/or discuss the test results. In the event of a positive result on the formal test, the MRO will give a copy of the results to the employee and to the Unit Head.

b. It is not mandatory that the MRO review the results of a pre-employment preliminary analysis which results in a positive finding.

#### I. Conduct of the Alcohol Testing Program

1. The *Corrections Services Employee Manual, Employee Rule and Disciplinary Procedures*, Rule #11, prohibits employees from reporting for or being on duty under the influence of alcohol or other intoxicants, (or when the odor or effect is noticeable). Towards this end, employees may be required to submit to alcohol testing while on duty under circumstances previously defined in §203.F.2 - 5.

2.a. A portable breathalyzer should be used to determine violation of this regulation. Portable breathalyzers authorized under this regulation are:

- i. Alcocheck;
- ii. Alco-Sensor III;
- iii. Alcotector Mark X; and
- iv. Lion Alcometer S-D2.

b. In the event of a positive reading on the portable breathalyzer, a second test must be conducted. In addition, the Intoxilyzer 5000 is also authorized under this regulation as an approved breath-testing device.

3. The alcohol test can be administered only by those persons specifically authorized by the Unit Head and who have received instruction in the use of the testing instrument(s).

J. Training Required. A minimum of one hour of training per year on the effects and consequences of controlled substance abuse on personal health and safety at the workplace

and indicators of substance use or abuse is required for all full time employees. K. Record Keeping and Reporting Requirements

1. A custodian of records is required to maintain a record of each employee who has submitted to a drug or alcohol test, the date of such test, the name of the person performing the test, the number of tests performed, and a summary of the results of each type of test. This information must be maintained in the employee's confidential medical file.

2. All test results will be retained for five years.

3. All information, interviews, reports, statements, memoranda and/or test results received through the Unit's drug testing program are confidential communications, pursuant to R.S. 49:1012 and may not be used or received in evidence, obtained in discovery or disclosed in any public hearing or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant. All such confidential information shall be maintained in a secure manner.

4. Pre-employment and promotional drug testing will be verified through the Department Regulation No. C-05-003 audit process and reported through the Headquarters Human Resources Annual Program Review.

5. A monthly report of drug testing activities will be compiled for submission in the Department Regulation No. C-05-001 report. The report will reflect the categories of testing conducted, the number of tests conducted by category, number of positives, percentage of positives, number of negatives, and type of drug tested. (See §203.K.5, Employee Drug Testing Report Form.)

6. By October 1 of each year, each Unit Business Office will submit a report to the Headquarters Fiscal Office detailing the number of employees affected by the drug testing program, the categories of testing conducted, the associated costs of testing, and the effectiveness of the program. In conjunction with the Undersecretary's Office, the Headquarters Fiscal Office will compile the Department's Annual Drug Testing Report for submission to the Division of Administration by November 1 of each year. (See §203.M.)

L. Violation of this Regulation. The guidelines provided for in the *Corrections Services Employee Manual* for the application of disciplinary penalties will be utilized in the administration of this regulation. Formal testing with positive results may be cause for initiation of disciplinary action. When a positive formal test result, for which appropriate explanation cannot be provided does not result in termination, referral to the "Employee Assistance Program" or other individual or agency equipped to coordinate accessibility to substance abuse education or counseling is appropriate.

M. Employee Drug Testing Report Form



State of Louisiana  
 Employee Drug Testing Report  
 Agency:  
 Contact:  
 Contact Telephone:

*Executive Order MJF 98-38 directs state department, agencies, boards, commissions, and entities of state government to promulgate a written policy which mandates drug testing of employees, appointees, prospective employees, and prospective appointees pursuant to R.S. 49:1001 et seq. A model drug testing policy and a drug education program have been developed to aid each agency in designing their policy and educating their employees about drug testing. Executive Order MJF 98-38 mandates pre-employment/appointment, reasonable suspicion, post accident/injury, and random for safety and security sensitive drug testing. Executive Order MJF 98-38 also requires that each agency submit to the Office of the Governor, through the Commissioner of Administration, a report on its written policy and progress of its drug testing programs on November 1, 1998. This report shall be updated and submitted each year on November 1.*

TYPES OF TESTING:	Total Employees In Position	Number Of Tests	Number of Positive Results	% of Positive Results	Number of Negative Results
Pre-employment/appointment					
Post Accident/Injury					
Random: Safety or Security Sensitive Positions					
Reasonable Suspicion					
Random: Rehabilitation Program					
Other					
<b>TOTAL:</b>					
<b>ASSOCIATED COSTS:</b>					
Collection					
Testing					
MRO					
Random Selector					
Other					
<b>TOTAL:</b>					

**NARRATIVE DESCRIPTION OF PROGRAM** (please attach policy):

**COMMENTS ON PROGRAM EFFECTIVENESS:**

**SUGGESTIONS FOR THE OFFICE OF THE GOVERNOR:**

Please submit report to: Angels D. Davis, Deputy Commissioner of Administration; P.O. Box 94095; Baton Rouge, LA 70804-9095; Fax (225) 342-1057; [adavis@doa.state.la.us](mailto:adavis@doa.state.la.us)

AUTHORITY NOTE: Promulgated in accordance with Executive Order MJF-98-38.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 25:522 (March 1999).

Richard L. Stalder  
Secretary

9903#035

**RULE**

**Department of Revenue  
Excise Tax Division**

**Direct Shipment of Sparkling or Still Wines  
(LAC 61:I.201)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the authority of R.S. 26:341, 26:344, and 26:359, notice is hereby given that the Department of Revenue, Excise Taxes Division has adopted LAC 61:I.201, pertaining to direct shipments of sparkling or still wines to consumers within the state by authorized manufacturers or retailers.

Act 71 of the 1998 Regular Session of the Louisiana Legislature enacted R.S. 26:359 to impose a tax on the direct sale and shipment of wines by common carrier, provide for the enforcement and collection of the tax, require application and tax payment before shipments can be made, and provide for penalties for unlawful shipments of sparkling or still wines to Louisiana consumers under certain circumstances. This rule provides for identifying and reporting of shipments.

**Title 61**

**REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 2. Alcoholic Beverages**

**§201. Direct Shipments of Sparkling or Still Wines**

**A. Identification of Shipments**

1. All shipments made by an authorized manufacturer or retailer of sparkling or still wines that are shipped directly to any consumer in Louisiana shall be identified as follows:

a. the words "Alcoholic Beverage—Direct Shipment" shall be marked and clearly visible on both the front and back of the package in lettering measuring at least one quarter inch in height; and

b. the words "Unlawful to Sell or Deliver to Anyone under 21 Years of Age" must be clearly visible on the front of the package, in lettering measuring at least one quarter inch in height.

2. The manufacturer's or retailer's Louisiana registration or permit number assigned by the Excise Taxes Division shall be clearly displayed on the front of the package.

3. All shipments shall have affixed to the exterior packaging a notification to the person making the delivery that a signature of the recipient is required prior to delivery. The notice should be at least 3" by 3" and contain words similar to the following:

ATTENTION
Courier
SIGNATURE REQUIRED.
Deliver to RECIPIENT address only. No indirect delivery. Disregard any Signature Release. Recipient MUST be at least 21 years old, and not show signs of intoxication.

**B. Reporting of Shipments**

1. For each shipment made by an authorized manufacturer or retailer of sparkling or still wines that is shipped directly to any consumer in the state of Louisiana, the authorized manufacturer or retailer shall maintain the following records until December 31 of the year following the year in which the shipment was made. These records shall be available for inspection by the Department of Revenue upon request:

a. an invoice detailing the transaction; and  
b. a certification, on a written form as specified by the secretary, by the person receiving the shipment that the recipient is 21 years of age or older.

2. Each certification required by §201.B must be signed and dated at the time of delivery to any consumer in Louisiana.

3. The carrier making the actual delivery of packages of sparkling or still wines shall forward copies of the bills of lading to the Excise Tax Division of the Louisiana Department of Revenue by the 15th day of the month following the month of delivery in the same manner as reports showing the handling of alcoholic beverages as required under R.S. 26:369.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:341, 26:344, and 26:359.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Excise Taxes Division, LR 25:526 (March 1999).

Cynthia Bridges  
Director

9903#006

**RULE**

**Department of Social Services  
Office of Family Support**

**Family Independence Work Program  
(FIND Work)—Support Services  
(LAC 67:III.2913)**

The Department of Social Services, Office of Family Support, has amended LAC 67: III, Subpart 5, Family Independence Work Program, known in Louisiana as "FIND Work."

Under the authority granted to the agency by Public Law 104-193 and R.S. 46:231.10, this rule changes the amount allowed per participant per state fiscal year for items deemed necessary to facilitate the employment of the participant. The funds used to provide such items are currently set at a maximum of \$150 per year. In order to better facilitate the

participant's entry into the workplace, the agency has increased the maximum allowed to \$300 per participant per state fiscal year and added "clothing," in addition to uniforms, as an eligible expense.

**Title 67**  
**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 5. Family Independence Work Program**  
**(FIND Work)**

**Chapter 29. Organization**

**Subchapter C. Activities and Services**

**§2913. Support Services**

A.1. - 2. ...

3. Other Supportive Services

a. ...

b. Payments not to exceed a combined total of \$300 per state fiscal year may be made for certain costs deemed necessary such as eyeglasses, hearing aids and other small medical appliances, uniforms/clothing, tools and training materials, medical exam not provided by Medicaid or other resource, placement test fees and other course pre-requisite costs, safety equipment and transportation-related expenses.

c. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:309 (March 1991), amended LR 17:388 (April 1991), LR 18:244 (March 1992), LR 18:687 (July 1992), LR 18:748 (July 1992), LR 18:1268 (November 1992), LR 19:504 (April 1993), LR 20:793 (July 1994), LR 23:451 (April 1997), LR 24:356 (February 1998), LR 24:1135 (June 1998), LR 25:526 (March 1999).

Madlyn B. Bagneris  
Secretary

9903#046

**RULE**

**Department of Social Services**  
**Office of Rehabilitation Services**

Business Enterprises Program Manual  
(LAC 67:VII.Chapter 5)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Social Services, Louisiana Rehabilitation Services has adopted the following rule in LAC 67:VII.Rehabilitation Services, Business Enterprises Program Manual.

The rule governing Louisiana Rehabilitation Services policy relative to business enterprises is proposed in order to comply with 34 CFR 295.4.

**Title 67**  
**SOCIAL SERVICES**

**Part VII. Rehabilitation Services**

**Chapter 5. Business Enterprises Program Manual**

**§501. Purpose**

A. The purpose of the Business Enterprises Program Manual is to provide uniform rules and regulations for the

administration of Business Enterprises Programs operated by the State Licensing Agency.

B. The purpose of Chapter 5 is to set forth the legal authority from which these rules are derived, to proclaim the mission of the Business Enterprises Program, define terms used in this body of policy, and to set forth the organization of the Business Enterprises Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:527 (March 1999).

**§503. Mission of the Business Enterprises Program**

A. Mission. The mission of the Business Enterprises Program is to establish and maintain business enterprises operated by qualified individuals who are blind.

B. Goals. The goals for the Business Enterprises Program are:

1. provide employment opportunities for qualified persons who are blind by establishing and maintaining Business Enterprises Program Facilities; and

2. administer a continuing process of career development and upward mobility for qualified persons in the Business Enterprises Program.

C. Objectives. The objectives of the Business Enterprises Program are:

1. establish and equip Business Enterprises Program Facilities;

2. assure availability of Business Enterprises Program Licensed Managers;

3. provide management support services to Business Enterprises Program Licensed Managers;

4. develop and maintain standards of conduct and a system of accountability for State Licensing Agency staff;

5. develop and maintain standards of conduct and a system of accountability for Business Enterprises Program Licensed Managers;

6. establish and maintain procedures for quality customer service; and

7. attain the program's financial stability through its administration in an operationally efficient and cost-effective manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:527 (March 1999).

**§505. Federal Legal Authority**

A. The Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1986 and 1992 - In accordance with Federal Law under Title I of the Rehabilitation Act of 1973 (Public Law 93-112) as amended, including the Rehabilitation Act Amendments of 1986 (Public Law 99-506), and the Rehabilitation Act Amendments of 1992 (Public Law 102-569), vocational and other rehabilitation services are offered to individuals with disabilities through the Department of Social Services, Louisiana Rehabilitation Services.

B. Code of Federal Regulations - Volume 34, Sections 361, 363, 365, and 370.

C. The Randolph-Sheppard Act of 1936, as amended (20 U.S.C. Section 107 et seq.), authorizes designated State

icensing Agencies to establish and administer Business Enterprises Programs in their respective states. The law locates the State Licensing Agency (SLA) for the program in the individual state or territorial agency which offers vocational rehabilitation services for individuals who are blind under the Rehabilitation Act of 1973, as amended [29 U.S.C. 31-42].

D. Primary regulatory authority for the Business Enterprises Program is found at 34 CFR Part 395. Other regulatory guidelines impacting the Business Enterprises Program are found at 34 CFR Part 361 and 32 CFR 260.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:527 (March 1999).

### **§507. State Legal Authority**

A. Louisiana Revised Statutes - R.S. 49:664. Section 6B (1)(b) [Legislative Act that created the Department of Health and Hospitals], R.S. 36:477 (c) [Legislative Act that created the Department of Social Services].

B. Louisiana Act 19 of 1988, effected the merger of the Division of Rehabilitation Services with the Division of Blind Services to form Louisiana Rehabilitation Services.

C. LA R.S. 46:333 gives preference to the blind in operation of vending stands, vending machines, and other small business concessions to be operated on the premises.

D. LA R.S. 46:2641 provides for the establishment of the Blind Vendors Trust Fund.

E. LA R.S. 49:950 (et seq.) is the Administrative Procedure Act for the authority to promulgate rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:528 (March 1999).

### **§509. Definitions**

A. The following words or terms, when used in this manual, shall have the following meaning unless the context clearly indicates otherwise:

*Acquired Stock*—that stock in which the licensed manager has accrued equity and which the State Licensing Agency, in conjunction with the licensed manager or licensed managers involved, has determined is suitable for use. Stock in which the licensed manager has not accrued equity is not acquired stock and remains the property of the State Licensing Agency.

*Act*—the Randolph-Sheppard Vending Facility Act (Public Law 74-732), as amended by Public Law 83-565 and Public Law 93-516, 20 U.S.C., Ch. 6A, Sec. 107.

*Active Participation*—a process of good faith negotiations involving the Elected Committee of Licensed Managers and the State Licensing Agency. The Committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which affect licensed managers. The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprises Program.

*BEP*—the Business Enterprises Program of the State Licensing Agency which provides self-employment opportunities for qualified persons who are blind.

*BEP Administrator*—the person who has responsibility for the operation of the Business Enterprises Program in the state.

*Blind Person*—a person who, after examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the person shall select, has been determined to have:

1. not more than 20/200 central visual acuity in the better eye with correcting lenses; or

2. an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

*Blind Services Executive Director*—the person responsible for administering and coordinating services to the blind and severely visually impaired individuals of the State.

*Blind Vendors Trust Fund*—monies collected from certain vending machines located on state, federal, and other property, and the disbursement thereof.

*Board or Commission*—the governing body for the State Licensing Agency.

*Business Consultant (BC)*—an individual who provides consultative and management services to those business enterprises and licensed managers in the area of the State to which the consultant is assigned.

*Business Enterprise*—an approved business administered by the State Licensing Agency. See definition of *Vending Facility*.

*Business Enterprises Program (BEP)*—the Business Enterprises Program services available to establish business enterprises for persons who are blind.

*Cafeteria Facility*—a food dispensing business enterprise capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where customers serve themselves from displayed selections. A cafeteria may be fully automatic or provide limited waiter or waitress service. Table and/or booth seating facilities are always provided.

*Commissioner*—the Commissioner of the Rehabilitation Services Administration (RSA) who exercises approval authority for the Federal government under the Randolph-Sheppard Act.

*Committee*—the State Elected Committee of Licensed Managers.

*Consumer*—any person who has made application for the State Licensing Agency's services and has been determined by the State Licensing Agency to be eligible for services.

*Contract*—a written agreement between the State Licensing Agency and officials in control of Federal or other property to establish a business enterprise.

*Contract Labor*—a person or company that performs duties or services not a part of the regular duties of the business enterprise.

*Counselor*—Rehabilitation Services counselors assigned to the State Licensing Agency's program of Vocational Rehabilitation.

*Director or Executive Director*—the chief administrator of the State Licensing Agency.

*Displaced Licensing Manager*—a licensed manager who has been displaced from his or her business enterprise through no fault of his or her own.

*Dry/Wet Facility*—all facilities providing manual dispensing of prepackaged articles, refreshments, and services.

*Elected Committee of Licensed Managers (ECM)*—the committee elected biennially by licensed managers in accordance with 34 CFR 395.14.

*Equipment, Expendable*—items having a relatively small cost per item and having a relatively short life expectancy.

*Equipment, Non-Expendable*—all necessary equipment which requires a relatively high capital outlay and has a normal life expectancy of several years.

*Federal Property*—any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States.

*Federal Regulations*—the regulations issued pursuant to the Randolph-Sheppard Act.

*Grantor*—a Federal, State, County, Parish, city government, private corporation, company, partnership, or individual who grants a permit or enters into an agreement with the State Licensing Agency to operate a business enterprise on its/their property.

*Grantor's Agreement*—a written document between a grantor and the State Licensing Agency which sets forth the terms, conditions and responsibilities of all parties to the agreement for the operation of a business enterprise on private and/or public property.

*Gross Receipts*—all revenue including sales tax.

*Initial Stock and Supplies*—those resalable items or supplies necessary for the opening and operation of a specific type of business enterprise.

*Interim Manager*—a licensed manager appointed to manage a business enterprise on a temporary basis.

*License*—a written instrument issued by the State Licensing Agency to a person who is blind, authorizing such person to manage a business enterprise.

*Licensed Manager*—a licensed individual who has signed an agreement with the State Licensing Agency to manage a Randolph-Sheppard Business Enterprise under the supervision of the State Licensing Agency, or an individual awaiting assignment to a business enterprise.

*Licensing Agency*—the State Licensing Agency, which has been designated by the Commissioner, pursuant to the Act, to issue licenses to persons who are blind for the management of business enterprises.

*Management Services*—inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve business enterprises operated by licensed managers.

*Manager's Agreement*—an agreement between a licensed manager and the State Licensing Agency, establishing basic terms and conditions for management of a business enterprise.

*Net Earnings or Net Profits*—gross profit after deducting operating expenses and set-aside collected.

*Net Proceeds*—the amount remaining from the sale of articles or services of business enterprises and a vending machine income or other income accruing to licensed managers after deducting the cost of such sales and other authorized expenses excluding set aside charges required to be paid by the licensed managers.

*Net Sales*—the sum total of sales, excluding sales tax.

*Other Income*—money received by a licensed manager from sources other than over the counter and machine sales.

*Other Property*—property which is not Federal property and on which business enterprises are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

*Permit*—the official approval given a State Licensing Agency by a Department, Agency, or Instrumentality in control of the maintenance, operation and protection of Federal property or person in control of other property where the State Licensing Agency is authorized to establish a business enterprise.

*Purveyor*—an approved source of supply for food, beverages, supplies, or services.

*Randolph-Sheppard Act*—Public Law 74-732 as amended by Public Law 83-565, Public Law 93-516, and Public Law 95-602, 20 U.S.C. Chapter 6A, Section 107.

*Routine/Preventive Maintenance*—the regular care, upkeep, and cleaning of equipment used in a business enterprise whether owned by the State Licensing Agency or the licensed manager.

*Rules and Regulations*—the instrument written by the State Licensing Agency and approved by the Secretary of Education setting forth the conduct and operation of the Business Enterprises Program.

*Salable Stock*—products comprising the merchandise available for sale to the public.

*Satellite Business Enterprise*—a business enterprise without a permanently assigned licensed manager which is being operated by a licensed manager who is also operating his/her regularly assigned business enterprise.

*Satisfactory Site*—an area determined by the BEP Administrator to have sufficient space, electrical and plumbing outlets, and other such accommodations as prescribed by the Act, for the location and operation of a business enterprise in accordance with applicable health laws and building codes.

*Secretary*—the United State Secretary of Education.

*Snack Bar Business Enterprise*—a business enterprise engaged in selling limited lines of refreshment and prepared food items necessary for a light meal service.

*State Licensing Agency (SLA)*—the State agency that issues licenses to persons who are blind for the operation of business enterprises on public and/or private property.

*State Property*—lands, buildings, and/or equipment owned, leased, or otherwise controlled by the State.

*Statewide Average Manager Earnings*—the average annual manager earnings as calculated each year for the RSA-15 Report.

*Trainee*—a qualified Vocational Rehabilitation consumer, who when referred to the Business Enterprises Program, is placed in training to prepare for licensing under the rules and regulations of the State Licensing Agency.

*Training Program*—the program of study and/or on-the-job training provided to prospective and/or experienced licensed managers.

*Vending Facility*—automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by licensed managers and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws and including the vending or exchange of changes for any lottery authorized by State Law and conducted by an agency of a State within such State [CFR 34, Part 395.1(x)].

*Vending Machine*—any coin or currency operated machine which dispenses articles or services, except any machine operated by the United States Postal Service for the sale of postage stamps or other postal products and services. Machines providing services of a recreational nature and telephones shall not be considered to be vending machines.

*Vending Machine Facility*—an automatic coin or currency operated business enterprise which dispenses a variety of food and refreshment items and services. Including in this category would be interstate highway locations.

*Vocational Rehabilitation Services*—those services as defined in the Rehabilitation Act, 1973, as amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:528 (March 1999).

#### **§509. Promulgation of Business Enterprises Program Policies**

A. Rules and procedures, that is, the policies governing the administration of the Business Enterprises Program are developed and maintained in accordance with the Randolph-Sheppard Act [20 U.S.C. Section 107 et seq.], the Rehabilitation Act [29 U.S.C. 31-43], and the Louisiana Administrative Procedure Act [R.S. 49:950 et seq.].

B. The rulemaking authority is the Department of Social Services, Louisiana Rehabilitation Services, hereinafter referred to as the State Licensing Agency (SLA). Promulgation of rules and procedures governing the Business Enterprises Program follows the process Louisiana Administrative Procedure Act (R.S. 49:950 et seq.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:530 (March 1999).

#### **§511. Policy of Non-Discrimination**

A. The State Licensing Agency assures that it shall not exclude from participation, deny the benefits of the program or otherwise subject any person to discrimination because of the person's gender, age, physical or mental impairment, religion, race, creed, national origin, or political affiliation in accordance with the Civil Rights Act of 1964, Section 504 of

the Rehabilitation Act of 1973 as amended, and the Americans with Disabilities Act of 1990.

B. Every licensed manager of a Business Enterprises Program Facility shall operate the business enterprise in such a manner that no person shall be subject to discrimination because of the person's gender, age, physical or mental impairment, religion, race, creed, national origin, or political affiliation whether that person is a present or prospective supplier, customer, employee or other individual who might come into contact with the enterprise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:530 (March 1999).

#### **§513. Accessibility of Written Materials**

A. Upon advance request, all written materials will be provided to each licensed manager in a format accessible to that Manager, to the extent practical. It is the responsibility of the licensed manager to inform the business consultant of the accessible format needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:530 (March 1999).

#### **§515. Organization of State Licensing Agency**

A. Louisiana Department of Social Services, Louisiana Rehabilitation Services (LRS), is designated as the sole state agency under a state plan for vocational rehabilitation services approved pursuant to the provisions of the Rehabilitation Act of 1973, (29 U.S.C., Ch. 16) and approved by Rehabilitation Services Administration as the State Licensing Agency.

1. Louisiana Rehabilitation Services Director. The Senior Administrative official of the Agency.

2. Blind Services Executive Director. Administers and coordinates services to the blind.

3. Central Office Staff. The program is administered by the Randolph-Sheppard Program Manager who reports to the Blind Services Executive Director.

4. Field Staff. The state is divided into specific geographic areas for the purpose of administering the Business Enterprises Program, and a business consultant (Randolph-Sheppard Management Analyst) is assigned to each area. The RSMA provides the link between the licensed managers and the central office and is authorized to provide the services and is obligated to assist and support the licensed managers in complying with the rules and regulations of the Rehabilitation Services Administration and the SLA relative to business enterprises established under the Randolph-Sheppard Act.

5. Licensed Managers. The individual enterprises established by the Business Enterprises Program are managed by licensed managers who derive their livelihood from net profits of the operations. Licensed managers are subject to instructions, policies, rules and regulations of the Business Enterprises Program, but are not employees of the program, the SLA, or the State of Louisiana. They do, however, have a contractual relationship with the SLA and are required to manage the facilities in accordance with established rules and regulations.

6. Duties of the Business Enterprises Program Administrator. The duties of the Business Enterprises Program Administrator are:

- a. assures compliance with all applicable rules, regulations and statutory provisions;
- b. prepares program budgets and approves expenditures;
- c. plans for the development and expansion of the program and upgrading of existing facilities;
- d. drafts program policy, operating instructions and regulation changes as needed to make the program more efficient or to conform to current legislative mandates;
- e. promotes the program to the general public; and
- f. actively participates with the ECM in accordance with 34 CFR 395.14.

7. Duties of the RSMA. The duties of the Randolph-Sheppard Management Analyst are:

- a. assists each licensed manager to operate the business enterprise within applicable rules and regulations;
- b. initiates negotiations for new facilities;
- c. oversees the development of new installations;
- d. conducts public relations activities which promote a positive image of the program to existing and potential host organizations, rehabilitation workers, consumers, and the general public;
- e. provides management services to licensed managers;
- f. collects and analyzes data on the operation of each business enterprise in order to provide technical assistance and for monitoring and reporting purposes; and
- g. communicates with the district EMC on district operations.

8. Guidelines for Communication. Communication of information is to occur so that the best interests of the Business Enterprises Program are served. This is best accomplished when information is shared and acted upon by those who can respond most effectively in the circumstances. The administrative staff of the SLA is responsible for assuring that active communication among SLA staff and licensed managers contributes to the effective operation of the entire Business Enterprises Program. Management services and operational matters are best handled by communicating with the appropriate RSMA. Section 515.A.8.a-c describe appropriate levels to which various types of communication should be directed.

a. Communications originated by a licensed manager. The licensed manager is to maintain appropriate and professional communication with customers and building management personnel. The point of communication for licensed managers with the SLA is the RSMA. Circumstances in which a licensed manager may contact the Business Enterprises Program Administrator are:

- i. when a problem cannot be resolved through normal channels;
- ii. when there is a specific complaint concerning the conduct and/or behavior of a RSMA; or
- iii. when an emergency develops and the RSMA is not available.

b. Randolph-Sheppard Management Analyst Communication. An RSMA is expected to maintain open and ongoing communications with all the licensed managers in his/her area. Should a situation require immediate action beyond the RSMA's authority, he/she may contact the proper administrative official. All significant information will be communicated to the BEP Administrator at the earliest opportunity.

c. Written Communications. Any communication of major consequence is to be documented in writing. Situations needing immediate action are to be addressed promptly by the appropriate official and subsequently documented in writing. Records of written documentation will be maintained in accordance with agency policy. Written requests require written responses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:530 (March 1999).

### **§517. Management Services Provided by the State Licensing Agency**

A. Overview of Management Services. Management services include inspection, quality control, consultation, accounting, regulating, in-service training, and other related services on a systematic basis to support and improve vending facilities.

B. Technical Assistance Services. The SLA shall provide each licensed manager with:

1. recommendations for optimizing business enterprise profitability;
2. recommendations and feedback on business enterprise operations including quality, service and cleanliness;
3. possible solutions to problems recognized by the licensed manager or brought to the licensed manager's attention by BEP staff or the Grantor;
4. providing upward mobility and in-service training; and
5. explanation of the SLA's procedures, policies, and standards.

C. Responsibilities of the Randolph-Sheppard Management Analyst. The RSMA will consult with the respective ECM representative on district issues, as appropriate. RSMAs are required to assist licensed managers in their district to meet Business Enterprises Program requirements through review and consultation on:

1. compliance with applicable laws and program regulations;
2. hiring employees in accordance with rules and regulations;
3. compliance with all conditions in the licensed manager's license;
4. assuring that merchandise is:
  - a. sold in accordance with the grantor's agreement;
  - b. neither purchased or sold on credit; and
  - c. of high quality, adequately stocked, and properly displayed;
5. standards for employee personal appearance and hygiene;

6. quality customer service;
7. maintenance of sanitation and safety standards;
8. proper maintenance of equipment;
9. communications and working relationships between the licensed manager and customers, suppliers, employees, grantor, and the general public;
10. SLA and other agency requirements for record keeping; and
11. licensed manager performance evaluations.

D. Business Consultant Business Enterprise Visits. Business consultant business enterprise visits shall be made as often as necessary to ensure the continued success of the business enterprise. The business consultant will work with licensed managers to maximize profits. Each time the business consultant visits a business enterprise, he/she will complete a business enterprise visitation report.

E. Business Enterprise Reviews. The business consultant shall complete an inspection of the business enterprise using a standard form as needed. The report shall be discussed with and signed by the licensed manager.

F. Visits by the Program Administrator. The Program Administrator will periodically visit business enterprise facilities.

G. Assistance of Rehabilitation Staff. At the request of the business consultant or other BEP staff member, rehabilitation staff will provide necessary assistance to the program when the best interest of the licensed manager or the SLA needs such assistance.

H. SLA Provision of Training. The SLA shall ensure that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, shall be provided to trainees as vocational rehabilitation services. Such programs shall include on-the-job training in all aspects of business enterprise operations for licensed managers, and upward mobility training including further education and additional training or retraining for improved work opportunities for all licensed managers. (34 CFR 395.11)

1. Training for New or Potential Licensed Managers. Training for potential or new licensed managers will cover the basic and common knowledge, skills, and abilities necessary to operate a business enterprise. This training will use instruction and on-the-job training to cover such topics as the history and statutory foundations of the BEP, acceptable business practices, the rules and regulations of the BEP, employee supervision, food preparation and handling, operation and maintenance of equipment and furnishings, merchandising, and quality customer service.

2. Training for Present Licensed Managers. Post-employment training will be provided by the SLA to encourage greater professional competence and to promote the upward mobility of the licensed manager. The training will, through instruction and on-the-job training, enhance the knowledge, skills, and abilities needed to operate and improve the operation of present enterprises, and to prepare for the operation of a more comprehensive enterprise, supervisory practices relevant to larger operations, changing policies and

laws, and state of the art merchandising techniques and equipment. Such a training program will also incorporate the use of peer trainer workshops in best practices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:531 (March 1999).

### **§519. State Licensing Agency Responsibilities for Business Enterprise Operations**

A. Business Enterprise Equipment and Fixtures. The SLA will provide each business enterprise with fixtures and equipment in such quantity and quality so as to give reasonable assurance of successful operation by the licensed manager.

B. Additions, Deletions, or Modifications to Equipment. The licensed manager will make no additions, deletions or modifications to the business enterprise and its operation, in the form of equipment, fixtures or facilities, without first obtaining written authorization from the SLA.

C. Maintenance and Replacement of Business Enterprise Equipment. The SLA shall maintain, or cause to be maintained, all business enterprise equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the business enterprise. (34 CFR 395.10)

D. Initial Inventory and Supplies. The SLA shall provide for initial inventory of merchandise for resale and for operating a business enterprise by a licensed manager.

E. Assignment, Transfer of Licensed Managers. The SLA will carry out assignment and transfer of licensed managers through business enterprise vacancy announcements, eligibility verification, and establishing and convening a screening committee.

#### 1. Business Enterprise Vacancy Announcement

a. The SLA will develop minimum qualifications specific to the characteristics of the vacant enterprise. These minimum qualifications will establish the level of accomplishment expected of the applicant for the vacant business enterprise in each of the areas to be considered by the Screening Committee as described in §519.E.2. Priority will be given to displaced licensed managers:

- i. location, type of enterprise, and general description of operations;
- ii. minimum qualifications;
- iii. for a new enterprise, estimates of monthly net sales based upon potential patronage, with disclaimer this estimate is not a guarantee of sales; and
- iv. application due date.

2. Eligibility Verification and Referral to Screening Committee. The SLA shall provide a list of eligibility criteria and refer eligible applicants to the Screening Committee. Selection shall be based upon:

- a. managerial and other skills and abilities demonstrated by the licensed managers under consideration as they fit the available business enterprise, including:
  - i. handling labor needs;
  - ii. complexity of financial skills;

- iii. food preparation and production; and
- iv. customer relations;
- b. previous records of the licensed manager under consideration, including:
  - i. consideration of the timeliness and accuracy of record keeping;
  - ii. customer satisfaction;
  - iii. improvements in profits;
  - iv. safety and sanitation inspections;
  - v. fees, taxes, and bill payment history;
  - vi. initiative shown in upgrading skills;
  - vii. regularity of work attendance;
  - viii. compliance with applicable rules and laws; and
  - ix. past evaluations by the SLA;
- c. seniority of eligible licensed manager.

3. Screening Committee and Recommendation for Assignment. The Screening Committee shall be established and convened by the SLA. The Screening Committee will consider applicants for assignment and transfer. The committee shall make recommendation(s) to the SLA or designee. At least one member of the Screening Committee shall be a representative of the Elected Committee of Managers.

F. Vending Machine Income. Vending machine income will be managed by the following.

1. Vending machine income from vending machines on Federal property which has been disbursed to the SLA by a property manager under the vending machine income sharing provisions of the Federal Regulations shall accrue to each licensed manager operating a business enterprise on Federal property in an amount not to exceed the average net income of the total number of licensed managers, as determined each fiscal year on the basis of each prior year's operations, except that vending machine income shall not accrue to any licensed manager in any amount exceeding the average net income of the total number of licensed managers in the United States. [34 CFR 395.8(a)]

2. No licensed manager shall receive less vending machine income than he/she was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling. (34 CFR 395.32)

3. One-hundred percent (100%) of all vending machine income from vending machines on Federal property which are in direct competition with a business enterprise operated by a licensed manager will accrue to the SLA which shall disburse such income to such licensed manager operating such business enterprise on such property provided that the total amount of such income accruing to such licensed manager does not exceed the maximum amount determined under 34 CFR 395.8(a). In the event that there is income in excess of the maximum amount which may be disbursed to the licensed manager under 34 CFR 395.8(a), such additional income shall accrue to the SLA for purposes determined in accordance with 34 CFR 395.8(c). [34 CFR 395.32(b)]

4. The SLA will disburse vending machine income to qualifying licensed managers on at least a quarterly basis. [34 CFR 395.8(b)]

5. Vending machine income retained by the SLA will be sued in accordance with applicable Federal regulations. [34 CFR 395.8(c)]

6. Unassigned income from non-Federal property is used to develop and enhance the BEP.

G. Due Process. The SLA provides procedures for fair hearings of licensed managers' grievances. These procedures provide each licensed manager the opportunity to seek remediation of dissatisfaction with any SLA action arising from the operation of the BEP and are set forth in the following.

1. Informal Administrative Review. It is the policy of the SLA to resolve complaints in an expeditious and facilitative manner. These resolutions shall be accomplished through the informal administrative review process whenever possible. A licensed manager has the right to request a full evidentiary hearing at any time within established due process time lines.

a. Information administrative reviews are conducted by the SLA staff person closest to the problem who was not involved in the action resulting in the complaint, and who can resolve the complaint in the most expeditious manner.

b. The information administrative review is to be completed within 45 calendar days of receipt of the written complaint to the appropriate SLA staff person.

c. The results of the informal administrative review are to be reported in writing to the BEP Administrator, with a copy going to the licensed manager affected.

2. Full Evidentiary Hearings. Licensed managers have the right to a full evidentiary hearing to resolve dissatisfaction with any SLA action arising from the operation or administration of the Business Enterprises Program. Evidentiary hearings shall be conducted as set forth in the following.

a. If the complaint cannot be resolved with an informal administrative review, or in the absence of an information administrative review, the licensed manager may request a full evidentiary hearing. The request for a full evidentiary hearing must be made to the BEP Administrator in writing within 30 calendar days from the date the licensed manager receives the written notification of adverse action, or the written report of the information administrative review. The request for a full evidentiary hearing is to be sent by certified mail.

b. The licensed manager may be represented in the evidentiary hearing by legal counsel, or other representation of the licensed manager's choice, and at the licensed manager's expense.

c. Reader services or other reasonable accommodations will be arranged by the SLA upon the request of the licensed manager.

d. The hearing will be scheduled by the SLA for a time and place convenient and accessible to the licensed manager and the SLA staff involved in the hearing. The licensed manager will be notified of the place and time of the hearing and the right to be represented by legal or other counsel in writing.

e. The hearing will be conducted by an impartial and qualified official with no involvement or vested interest in the SLA, action at issue, or with the operation of the affected business enterprise. The presiding officer will conduct the hearing in accordance with State and/or Federal laws and rules governing the conduct of such proceedings. In any case, the hearing will be conducted in a manner that avoids delay, maintains order, and provides for a full recording and reporting of the proceedings so that a full and true disclosure of the facts and issues occurs.

f. The hearing officer's determination will be based upon the facts as presented by both parties and upon applicable law, and the existing rules of the SLA. The hearing officer does not have the power to rule upon the legality or construction of the rules themselves. The officer's decision will determine the relevant issues and facts to be ruled upon.

g. The hearing officer shall make a written report of the evidence presented, the laws and rules used in determining a resolution, and the resolution itself. This report shall be issued to the BEP Administrator and the licensed manager, or his/her authorized representative within 15 calendar days of the conclusion of the full evidentiary hearing.

h. If the licensed manager is dissatisfied with the decision, she or he may request that the Secretary (USDE) convene an arbitration panel.

3. Arbitration of Complaints after the Evidentiary Hearing. The licensed manager has the right to file a request for arbitration with the Secretary (USDE) if dissatisfied with the outcome of the evidentiary hearing. By filing a complaint with the Secretary, the operator consents to the release of information necessary for the conduct of an ad hoc arbitration panel.

a. The complaint must be filed in writing and must contain:

- i. statement of the grievance;
- ii. the date and place of the full evidentiary hearing;
- iii. a copy of the decision and what actions have been taken because of the decision;
- iv. the part of the decision which is causing the dissatisfaction and reason for the dissatisfaction; and
- v. a statement as to what is required to remedy the situation.

b. The Secretary (USDE) will convene an arbitration panel after receiving a complaint which meets the requirements in §519.G.3.a.i. - v. The decision of the panel will be final, except as provided for in 20 U.S.C. 107d-2. The Secretary will pay the reasonable costs for the arbitration. An abstract of the arbitration decision will be published in the *Federal Register*. The panel will be convened by the Secretary in accordance with the following:

- i. the SLA shall designate one member of the panel;
- ii. the licensed manager shall designate one member of the panel;
- iii. the designees of the SLA and the licensed manager shall together designate the third panel member who shall not be an employee of the SLA or its parent agency. This member shall be the chairperson of the panel; and

iv. if the SLA or licensed manager does not select a member for the panel, the Secretary will designate such a member on the applicable party's behalf.

4. Arbitration of SLA Complaints Against Federal Agencies. The SLA is to resolve problems related to the operation of a business enterprise with the full participation of the licensed manager and the appropriate property manager. The SLA may file a complaint with the Secretary (USDE) if it determines that an agency controlling Federal property is not complying with the provisions of the Randolph-Sheppard Act of U.S. Department of Education regulations. After the complaint is received, the Secretary will convene an arbitration panel. If the panel finds that the Federal agency is in violation of the Act or USDE regulations, that Federal agency will be notified that it is expected to correct the violation according to 20 U.S.C. 107d-2. The Secretary pays the reasonable costs of this arbitration. The decision resulting from the arbitration will be published in the *Federal Register*. The arbitration panel will be convened by the Secretary in accordance with the following:

- a. the SLA will designate one member of the panel;
- b. the agency controlling the Federal property over which the dispute arose will designate one member of the panel;
- c. the designees of the SLA and the agency controlling the property will designate a third member who is not an employee of the agency. This member will chair the panel; and
- d. if either the SLA or the head of the Federal department, agency, or instrumentality fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:532 (March 1999).

### **§521. Licensed Managers**

A. Licensing Requirements for Operating a Business Enterprise

1. Definition of License. A license is a written instrument issued by the SLA to a licensed manager, authorizing such person to operate a business enterprise on Federal or other property. (34 CFR 395.1)

2. Issuance and Conditions of License. A license shall be issued by the SLA in accordance with Federal regulations making the individual eligible to operate a business enterprise. The license shall be prominently displayed in the licensed manager's business enterprise. The license remains effective for an indefinite length of time, unless terminated, suspended, or revoked by the SLA in accordance with State and Federal regulations. A license issued to a qualified individual is non-transferable. (34 CFR 395.7) Requirements for the issuance of a BEP license are that the individual:

- a. must be blind as verified by documentation (34 CFR 395.7);
- b. must be a U.S. citizen residing in the State in which he/she desires to be trained and licensed. Birth certificate or other applicable documentation must be submitted with application (34 CFR 395.7);

- c. be at least 18 years of age or older;
- d. have completed all services on the Individualized Written Rehabilitation Program which are prerequisite for the training program;
- e. have documentation of independent living skills;
- f. be a high school graduate or have a GED;
- g. have basic math skills; and
- h. have successfully completed the BEP Training Program.

3. Termination of Agreement or Removal from an Enterprise. The SLA may terminate a manager's agreement and/or immediately remove the licensed manager from operation of a business enterprise for cause shown. Termination of a manager's agreement or removal from operation of a business enterprise does not necessarily mean that the manager's license will be suspended or terminated. The licensed manager has the right to a full evidentiary hearing when dissatisfied with any State Licensing Agency action in accordance with BEP, State, and Federal regulations.

4. Termination of License. A license automatically expires when the licensed manager is no longer a U.S. citizen, no longer meets the definition of legal blindness, surrenders his/her license, resigns, retires, or dies. A license may be terminated or suspended by the SLA, after affording the licensed manager an opportunity for a full evidentiary hearing, in accordance with BEP, State, and Federal regulations. [34 CFR 395.7(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:534 (March 1999).

**§523. Operation Standards for Licensed Managers**

A. The licensed manager is expected to operate in accordance with the established rules and regulations of the BEP, within the terms of the licensed manager's agreement with the SLA and the grantor's agreement, contract, or permit. The licensed manager may not act as an agent of the SLA. Specifically, the licensed manager will:

- 1. work cooperatively with authorized representatives of the SLA in connection with their official responsibilities;
- 2. operate the business enterprise in accordance with all applicable health laws and regulations, safety regulations and other Federal, State, county, and municipality laws and regulations applicable to the business enterprise;
- 3. dress and maintain a level of personal hygiene which will convey a positive public image;
- 4. supervise employees in a manner that promotes quality customer service;
- 5. operate the business enterprise on a cash basis unless otherwise authorized by the SLA;
- 6. arrange for continued operation of the enterprise in the case of absences;
- 7. maintain daily records of gross receipts, merchandise purchased, cash on hand, and personal withdrawals from the business enterprise, and other records as established by the BEP;
- 8. maintain and display current licenses and permits, including BEP license, in the business enterprise;
- 9. complete and submit all required Federal and State reports and payments for each business enterprise;

10. comply with all regulations and laws governing the possession and/or use of firearms, weapons, alcohol and other drugs; and

11. maintain appropriate professional relationships with suppliers, customers, and building officials as in §523.B - D.

B. Relationships with Suppliers/Purveyors. The licensed manager is free to choose the suppliers from whom he/she is to make purchases, provided, however, that such suppliers are established and reputable.

C. Relationships with Customers. To serve the best interest of the public, the licensed manager and his/her employees must:

1. provide prompt, cheerful and courteous service to all customers and accommodate, within reasonable limits, such other persons who may come to the business enterprise requesting change, information, or other services; and

2. operate on a cash basis.

D. Relationships with Building Officials. Section 523.D.1-2 provide guidance in maintaining a productive relationship with building officials.

1. The licensed manager must comply with all reasonable requests concerning the operation of a business enterprise that may be made by officials of the building in which the enterprise is located, provided that such requests do not conflict with the agreement and the rules and regulations issued by the SLA as contained herein.

2. If differences should arise between the licensed manager and building management, the licensed manager shall bring the matter to the immediate attention of the business consultant for appropriate action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:535 (March 1999).

**§525. Grounds for Suspension or Termination of a License**

A. A BEP license may be suspended or terminated for:

1. failure to open the assigned business enterprise as stated in the permit/contract with the grantor agency, without prior proper approval from the SLA (abandonment of business enterprise);

2. defrauding any agency of the government (including the SLA) or any supplier or failure to pay monies due including taxes, fees, or assessments to any governmental entity or supplier;

3. failure to file required financial and other records with the SLA or to preserve them for a specified time and failure to comply/cooperate with audits conducted by the SLA or other State or Federal agencies;

4. failure to maintain the required insurance coverage;

5. the business enterprise is not being operated in accordance with the rules and regulations, terms and conditions of the permit with the grantor agency, or the terms and conditions of the business enterprise manager's agreement;

6. intentional abuse, neglect, unauthorized use or removal of the business enterprise equipment; or failure to properly maintain the equipment in a clean and operating manner within the scope of the licensed manager's level of maintenance authorization;

7. substance abuse (alcoholic beverages, illegal drugs, etc.) while operating the business enterprise; or other substance abuse that interferes with the operation of a business enterprise;

8. operation of a business enterprise in such a way that the SLA's investment is obviously endangered;

9. an attempt by a licensed manager to derive personal benefit from privileged information acquired through participation in the Business Enterprises Program;

10. failure to comply with all Federal and State laws prohibiting discrimination and failure to assure services without distinction on the basis of race, gender, color, national origin, religion, age, political affiliation, or disability;

11. determination by the SLA that the licensed manager no longer has the necessary skills and abilities for effectively managing a business enterprise;

12. use of the business enterprise to conduct unlawful activities;

13. failure to personally operate and manage the business enterprise in accordance with the manager's agreement; or

14. does not actively operate a business enterprise in the Business Enterprises Program for 5 years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:535 (March 1999).

#### **§527. The Elected Committee of Managers**

A. Authority for Establishing an Elected Committee of Licensed Managers is found in Section 107-B1 of Chapter 6A of Title 20 U.S., commonly referred to as the Randolph-Sheppard Act.

B. Section 527.B.1 - 2 provide guidance in approaching the degree of participation by the ECM.

1. Active participation means a process of good faith negotiations involving the ECM and the SLA. The committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which affect licensed managers.

2. The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprises Program.

C. Functions of the Elected Committee of Licensed Managers include:

1. actively participate with the SLA in the major administrative, policy, and program development decisions affecting the overall administration of the Business Enterprises Program;

2. to receive and transmit to the SLA grievances at the request of licensed managers and to serve as advocates for such managers in connection with such grievances;

3. to actively participate with the SLA in the development and administration of a State system for the transfer and promotion of licensed managers;

4. to participate with the SLA in developing training and retraining programs for licensed managers;

5. to sponsor, with the assistance of the SLA, meetings and instructional conferences for licensed managers;

6. to participate in setting out the method of determining the charge for each of the purposes listed below:

a. maintenance and replacement of equipment;

b. the purchase of new equipment;

c. management services;

d. assuring a fair minimum of return to licensed managers; or

e. the establishment and maintenance of retirement or pension funds, health insurance contributions, and provisions for paid sick leave and vacation time, it is so determined by a majority vote of licensed managers, after the SLA provides to each licensed manager information on all matters relevant to such proposed purposes. [34 CFR 395.9(b) and (c)]

D. The ECM will be composed of licensed managers in the program based on such factors as geography and business enterprise type with a goal of providing for proportional representation of licensed managers on Federal property and other property. There will be an executive committee with their duties and terms of office specified in the by-laws of the ECM.

E. The SLA shall provide for the biennial election of a State committee of licensed managers which shall be fully representative of all licensed managers in the State Program. (34 CFR 395.14)

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:536 (March 1999).

Madlyn B. Bagneris  
Secretary

9903#047

### **RULE**

#### **Department of Transportation and Development Office of General Counsel**

##### **Substance Abuse and Drug-Free Workplace Policy (LAC 70:XXI.101-121)**

In accordance with the applicable provisions of the Administrative Procedure Act R.S. 49:950 et seq., the Department of Transportation and Development hereby promulgates a rule entitled Department of Transportation and Development Substance Abuse and Drug-Free Workplace Policy, in accordance with R.S. 49:1015 and Executive Order MJF 98-38.

#### **Title 70**

#### **TRANSPORTATION**

#### **Part XXI. Office of Personnel**

#### **Chapter 1. Substance Abuse and Drug-Free Workplace Policy**

#### **§101. Philosophy**

A. The use of illegal and unauthorized drugs and the misuse of alcohol are serious social problems that are even more unacceptable in the workplace. The Department of Transportation and Development has a compelling interest in the welfare and safety of its employees and the traveling public, the maintenance of a high level of productivity, and quality service to the general public. The establishment of a drug-free work environment in compliance with Executive Order Number MJF 98-38 and R.S. 49:1001, et seq.,

reserves property and equipment, promotes public safety, and reduces absenteeism and job-related accidents and injuries, while enhancing overall job performance, productivity levels, and the image and reputation of the Department.

B. To enhance national highway transportation safety, Congress passed the Omnibus Transportation Employee Testing Act of 1991. This act requires alcohol and drug testing of certain safety-sensitive employees in the aviation, motor carrier, railroad and mass transit industries. The Departmental positions subject to these federal drug and alcohol testing requirements primarily include pilots, drivers who are required by State or Federal law to have a Commercial Driver's License (CDL) and who operate Commercial Motor Vehicles (CMVS), and crew members operating a commercial marine vessel that receives funds from the Federal Transit Administration.

C. This policy applies to all Department of Transportation and Development employees, but those employees who are in safety-sensitive positions or who are being tested under federal authority will receive a separate employee information package which explains the program in greater detail. Following a job offer, all potential employees are subject to a pre-employment drug test. Additionally, all employees are subject to post-accident/incident, reasonable suspicion, return-to-duty, and follow-up drug and alcohol tests. Employees in safety-sensitive positions are further subject to random drug and alcohol tests. A list of the safety-sensitive positions being tested under federal authority is attached as Appendix A. Additional positions designated by DOTD as safety-sensitive are listed in Appendix B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of General Counsel, LR 25:536 (March 1999).

### **§103. Employment Requirements**

A. To maintain a safe work environment, all Department employees are required to do the following:

1. report for duty in a physical and emotional condition that maximizes his/her ability to perform assigned tasks in a competent and safe manner;
2. submit to the drug/alcohol tests and screens described in this policy when required by supervisor or appointing authority;
3. notify supervisor prior to reporting for duty that he/she believes, or has been advised by a physician or pharmacist, that prescription or over-the-counter drugs/medication may impair the employee's ability to perform usual job duties;
4. maintain prescription drugs in prescribed quantity and be able to produce original prescription containers, when required;
5. notify supervisor at the beginning of the next scheduled work day of any arrest or conviction of a criminal, drug or drug-related offense, which occurs on- or off-duty, including DWI (Driving While Under the Influence) arrests.

B. The Department prohibits the use, abuse and presence of alcohol, illegal or unauthorized drugs, and other prohibited controlled substances in the bodies of its employees while on duty, on call, or engaged in Departmental business, on- or off

department/State premises. The presence of alcohol, illegal or unauthorized drugs, and other prohibited controlled substances, in a state vehicle while on- or off-duty, is also prohibited.

C. The presence of alcohol is indicated by a confirmed blood alcohol concentration of 0.02 or greater. Prohibited drugs include any drug which is not legally obtainable; any drug which is legally obtainable, but has been illegally obtained; prescription drugs not being used in accordance with the prescription; or, any substance which affects an employee's ability to safely and competently perform assigned job duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of General Counsel, LR 25:537 (March 1999).

### **§105. Drug/Alcohol Testing**

A. Applicants and employees may be required to submit to drug and alcohol tests as a condition of employment, as a condition of continued employment, or as a condition of promotion or reassignment to a safety-sensitive position. Whether announced or unannounced, tests will be administered under the following circumstances.

1. Pre-Employment Testing. Drug tests are required of all applicants, to include students, restricted and unclassified appointments, as a condition of employment or re-employment with DOTD. Current employees are required to undergo drug testing prior to being reassigned, temporarily detailed, reallocated, promoted, or demoted to a safety-sensitive position. An offer of employment or promotion, reassignment, detail, reallocation, or demotion will be withdrawn if a positive drug test result is reported, and employees are further subject to disciplinary action as specified in §113, Enforcement.

#### **2. Post-Accident/Incident Testing**

a. Any employee who is directly involved in a potentially serious accident or incident in which the employee's action or inaction may have been a causative factor is subject to drug/alcohol tests. Only an appointing authority may require an employee to submit to such tests. Trained supervisors and safety officers may, however, recommend to the appointing authority that drug/alcohol tests be conducted, based on their knowledge of the circumstances resulting in the accident/incident. The appointing authority, using the information available at the time, makes the decision as to whether tests will be required.

b. When certain conditions are present, however, certain federal agencies require that drug/alcohol tests be conducted. (Any post-accident/incident tests conducted that do not meet the below-listed criteria are being conducted under the Department's authority, and the appropriate chain-of-custody and breath alcohol testing forms must be used.) Appointing authorities are therefore required to arrange for post-accident/incident tests as follows.

i. The Federal Highway Administration (governing drivers with Commercial Driver's Licenses) requires that the operator of a commercial motor vehicle which requires a commercial driver's license be drug/alcohol tested when as follows:

(a). a fatality occurs, whether or not the driver caused the accident; or

(b). when the driver is cited for a moving traffic violation arising out of the accident. (Accident is further defined as an incident involving a commercial motor vehicle in which there is either a fatality, injury treated away from the scene, or a vehicle is required to be towed from the scene.)

ii. The United States Coast Guard (governing marine vessels) requires that drug/alcohol tests be conducted when there is as follows:

(a). one or more deaths;

(b). an injury to any person (including passengers) which requires medical treatment beyond first aid, and in the case of an employee, which renders the employee unable to perform routine job duties;

(c). damage to property in excess of \$100,000, or actual or constructive total loss of either an inspected vessel or any vessel of 100 gross tons or more;

(d). a discharge of any reportable quantity of a hazardous substance into navigable waters, whether or not resulting from a marine casualty.

iii. The Federal Transit Administration (governing public transportation provided by the Crescent City Connection, a division of the Department) requires that drug/alcohol tests be conducted when, as a result of an occurrence associated with the operation of a transit vehicle (vessel), there is as follows:

(a). a fatality. Employees to be tested include the following:

(i). each surviving employee on duty on the vessel at the time of accident;

(ii). any other covered employee (i.e., mechanic) whose performance could have contributed to the accident;

(b). bodily injury or property damage. Employees to be tested include:

(i). each covered employee on duty on the vessel unless it is determined by the Department that their performance may be completely discounted as a contributing factor;

(ii). any other covered employee (i.e., mechanic) whose performance could have contributed to the accident.

3. Random Testing. Random alcohol and drug testing is required of employees who hold safety-sensitive positions, as listed in §119 and §121. Random tests are unannounced and spread throughout the calendar year.

4. Testing Based Upon Reasonable Suspicion. Drug and alcohol testing will be conducted when a trained supervisor or a trained safety officer observes behavior or appearance that is characteristic of drug use or alcohol misuse. The decision to test must be based on specific observations concerning the employee's appearance, behavior, speech, or body odor. (The possession of alcohol, although a violation of this policy, does not constitute a need for reasonable suspicion testing.) A written record must be made of the observations leading to either a drug or alcohol test, and signed by the observing supervisor and, when practicable, by two supervisors. Prior to subjecting any employee to reasonable suspicion testing, however, the supervisor(s) must obtain verbal approval from the appropriate appointing authority. Affected supervisors and

afety personnel are trained to recognize signs and symptoms of drug use and alcohol misuse, and a written record of the training is made and retained for documentation.

5. Return-to-Duty. Following a violation of this policy's provisions, and in the event the employee retains his/her job, the employee is required (at his/her own expense) to undergo and complete any treatment prescribed by a Substance Abuse Professional (as defined by federal law), and is additionally subject to drug and/or alcohol testing prior to returning to duty. The employee will also be required to certify in writing his/her understanding and acceptance of a rehabilitative (or return-to-work) agreement.

6. Follow-up. Employees who voluntarily, or as a condition of continued employment, participate in an alcohol/substance abuse rehabilitation program are subject to unannounced drug and/or alcohol tests for a minimum of one (1) year but not more than five (5) years, as determined by the treating Substance Abuse Professional. As a condition of continued employment, employees are required to certify in writing their understanding and acceptance of these testing and rehabilitation requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of General Counsel, LR 25:537 (March 1999).

#### **§107. Drug Testing Procedures**

A. The Department contracts with neutral, professional medical personnel and certified laboratories for the collection, custody, storage, and analysis of urine specimens. A split sample collection method is used, with both the primary and split specimens shipped to the laboratory. The primary urine sample is analyzed for the presence of marijuana, opiates, amphetamines/methamphetamines, cocaine, and phencyclidine (PCP), by SAMSHA (Substance Abuse Mental Health Services Administration) certified laboratory, and in strict compliance with SAMSHA guidelines. A dual testing procedure is also used, where each primary sample that tests positive during an initial test is subjected to an additional, more precise confirmatory test. Any urine sample that is confirmed positive (i.e., exceeds federally adopted cutoff levels) is reported to the Department's Medical Review Officer (MRO), a licensed, contracted physician.

B. Upon receipt of a positive report, the MRO reviews the collection procedure, chain of custody, and testing methodology to exclude all possible medical explanations for the positive result. The MRO also contacts the employee/applicant to rule out the possibility that medications, medical history, or any other conditions may have caused the positive result, prior to reporting a positive test result to the Department.

C. If the confirmed test result is reported as positive by the MRO, the employee may, within 72 hours, request in writing to the MRO that the split specimen (initially collected but separated and stored during the collection process) be tested in a different SAMSHA-certified laboratory for the drug for which a positive result was reported. This split sample testing is done at the employee's expense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of General Counsel, LR 25:538 (March 1999).

### **§109. Alcohol Testing Procedures**

A. Evidential Breath Testing Devices (EBTs), approved by the National Highway Traffic Safety Administration (NHTSA), will be used by certified Breath Alcohol Technicians (BATS) on contract with the Department. Testing sites will provide visual and aural privacy, unless prevented by unusual circumstances. The employee must provide a photo identification or be identified by an Employer Representative.

B. A breath screening test will be conducted, and the employee will be told the results. If the results are less than 0.02 alcohol concentration, no further testing is necessary, and the test results are reported as negative. If the screening test indicates an alcohol concentration of 0.02 or greater, a confirmation test will be performed within 20 minutes, but not less than 15 minutes, of completion of the screening test. If the confirmatory test again indicates an alcohol concentration of 0.02 or greater, the results will be reported as positive to the appointing authority or designated representative. Employees occupying safety-sensitive positions will not be allowed to perform safety-sensitive functions and will be subject to disciplinary action specified under §113 of this rule.

C. Positive test results will also be reported to the appointing authority or designee whenever an employee refuses to complete or sign the breath alcohol confirmation testing form, provide breath, provide an adequate amount of breath (excludes medical inability), or fails to cooperate with the testing procedures in any way that prevents the completion of the test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of General Counsel, LR 25:539 (March 1999).

### **§111. Confidentiality**

A. All drug and alcohol testing results and records are maintained under strict confidentiality by the Department, the drug testing laboratory, and the MRO. They cannot be released to others without written consent of the employee. Exceptions to these confidentiality provisions are limited to Federal Department of Transportation agencies, when license or certification actions are required, or to a decision-maker in arbitration, litigation, or administrative proceedings arising from a positive drug test.

B. Employees have the right to access all written information and documentation within seven (7) days, as required by Louisiana Revised Statutes 49:1001.

C. Statistical records and reports are also maintained by the Department, contracted physicians, and drug testing laboratories. This information is aggregated data and is used to monitor compliance with the rules and to assess the effectiveness of the drug testing program.

D. The Department has no interest in informing law enforcement authorities of a positive drug test. However, nothing contained in this rule will be construed to preclude the delivery of any illegal drug, controlled dangerous substance, or other substance prohibited by this policy, discovered on

departmental/State property, or on the person of a Departmental employee to appropriate law enforcement agencies. Likewise, any employee engaged in the sale, attempted sale, distribution, or transfer of illegal drugs or controlled substances while on duty or on Department/State property will be referred to appropriate law enforcement authorities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of General Counsel, LR 25:539 (March 1999).

### **§113. Enforcement**

A. The use of illegal drugs and misuse of alcohol and other controlled or unauthorized substances will not be tolerated at the Department. Substance abuse, which endangers the health and well-being of Departmental employees and the traveling public, prevents quality service to the public and is inconsistent with this Department's mission. While the Department's position is firm, it will also resolve any reasonable doubt issues in the employee's favor.

B. Disciplinary actions will be taken after a complete and thorough review of all applicable data, and in accordance with Chapter 12 of the Civil Service Rules and Secretary's Policy and Procedure Memorandum Number 26 (Disciplinary System).

1. Violations for which employee is subject to termination are as follows:

- a. refusal to submit to a drug or alcohol test, or failure to cooperate in any way that prevents the completion of a test;
- b. submission of an adulterated or substitute urine sample for drug testing;
- c. buying, selling, dispensing, distributing, or possessing alcohol or any illegal or unauthorized controlled substance while on duty or on Department/State premises;
- d. unjustifiable possession of drug-related paraphernalia while on duty or on Department/State premises;
- e. unjustifiable possession of prescription drugs or any dangerous, controlled substances;
- f. driving a state vehicle or operating state equipment (or driving personal vehicle while on duty) while under the influence of drugs or alcohol, where tests administered by authorized officials confirm a policy violation;
- g. the presence of alcohol, illegal or unauthorized drugs, and other prohibited controlled substances, in a state vehicle, while on or off-duty;
- h. positive drug test result or confirmed 0.02 blood alcohol concentration;
- i. under all of the above circumstances, the employee will be referred to a Substance Abuse Professional.

2. A violation for which employee is subject to a minimum one (1) week suspension, possible return-to-duty agreement, or more severe disciplinary action, including termination, occurs when the employee fails to notify his/her supervisor of any prescribed drugs/medications when the employee believes, or has been advised by a physician or pharmacist, that the prescribed drugs/medication may impair the employee's ability to perform his/her usual duties and responsibilities.

3. Violations for which employee is subject to a minimum 1-day suspension:

a. failure to notify supervisor of off-duty arrest or conviction of a driving-while-intoxicated, drug, or drug-related offense at the beginning of the next scheduled work day, when the employee occupies a safety-sensitive position. (See positions listed in §119 and §121.);

b. failure to maintain prescribed drugs/medication in prescribed quantity and unable to produce original prescription container.

4. Violation for which employee is subject to written reprimand is the failure to notify supervisor of off-duty arrest or conviction of a driving-while-intoxicated, drug, or drug-related offense at the beginning of the next scheduled workday, when the employee occupies a non-safety-sensitive position.

5. For employees whose positions require a Commercial Driver's License (CDL) or for employees who are required to operate departmental vehicles on a regular and recurring basis, the loss of that license may result in employee being placed on leave or in a bonafide vacant position (not requiring a driver's license) for which they qualify. This may be accomplished by the following:

- a. reassignment;
- b. voluntary demotion;
- c. detail or placement on leave (annual, compensatory, or leave without pay), if situation is deemed temporary;
- d. if none of these options are available or reasonable, the employee will be removed in accordance with Civil Service Rule 12.6(b), and Secretary's Policy and Procedure Memorandum Number 26.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of General Counsel, LR 25:539 (March 1999).

### **§115. Employee Assistance Program (EAP)**

A. Early recognition and treatment of drug dependency are essential to successful rehabilitation. Those employees recognizing a substance abuse problem should seek assistance from the Department's EAP Coordinator in the Human Resources Section. Referrals are held in strict confidence, but supervisors and appointing authorities who need to know will be kept abreast of the employee's treatment, leave needs, and prognosis on a case-by-case basis.

B. Employees who are referred to the EAP Coordinator by their supervisor, or who, as a condition of continued employment, participate in an alcohol/substance abuse rehabilitation program are subject to the return-to-duty and follow-up tests, as specified in §105.F and G.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of General Counsel, LR 25:540 (March 1999).

### **§117. General Provisions**

A. Prior to employing an applicant for a position which requires a Commercial Driver's License (CDL), the Department must obtain the prospective employee's written

consent to obtain from the prospective employee's previous employers the results of any drug/alcohol testing administered during the past two (2) years. This regulation also applies to current employees who are being reassigned, promoted, detailed, reallocated or demoted to a position that requires a CDL.

1. Should an applicant fail to provide the release, the offer of employment will be withdrawn. Should an existing employee fail to provide the release, the offer of promotion, reassignment, reallocation, or demotion will also be withdrawn.

2. Upon receipt of information from a previous employer that the prospective applicant or employee (moving to a job that requires a CDL) tested positive on either a drug or alcohol test or refused to submit to testing within the past two (2) years, the offer of employment or promotion will be withdrawn, unless the applicant has completed a drug/alcohol rehabilitation program and provides a written, positive evaluation by a Substance Abuse Professional.

B. The Department reserves the right to have a licensed physician of its own choice determine if use of a prescription drug/medication produces effects which may impair the employee's performance or increase the risk of injury to the employee or others. If such is the case, the Department will suspend the work activity of the employee during the period in which the employee's ability to safely perform his/her job may be adversely affected. The employee may be allowed to use accrued leave; may be placed on leave without pay; or where possible, modification of the employee's job duties may be made.

C. Although substance abuse testing outlined in this rule is restricted to the five previously specified drugs and alcohol (See §107.A), the Department reserves the right to require employees to submit to additional tests if circumstances warrant. Such tests will only be administered when post-accident and reasonable suspicion drug/alcohol testing produce negative results, and the employee's action/inaction clearly reveals impairment of ability to safely perform job duties. Separate samples will be collected for these additional tests, and the testing process will comply with all SAMSHA regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of General Counsel, LR 25:540 (March 1999).

### **§119. Appendix A**

A. Positions subject to drug and alcohol tests, including random, as mandated by the United States Department of Transportation. For post-accident/incident test, refer to §105.A.2 to determine if federal agency or LA DOTD is requiring test.

#### **B. Jobs Requiring Commercial Driver's License**

1. Bridge Maintenance Assistant Supervisor/Statewide
2. Bridge Maintenance Supervisor/Statewide
3. Bridge Repairer
4. Electrician (all signal except Section 45/Gang 761) (Section 59/Gang 007 w/air brake endorsement)

5. Electrician Foreman (all signal except Section 45/Gang 761)
6. Electrician Specialist (all signal except Section 45/Gang 761) (Section 59/Gang 007 w/air brake endorsement)
7. Electrician Specialist Foreman (all signal except Section 45/Gang 761) (Section 59/Gang 007 w/air brake endorsement)
8. Electrician Specialist Leader (all signal except Section 45/Gang 761) (Section 59/Gang 007 w/air brake endorsement)
9. Engineering Technician 1 (Section 22/Gang 041)
10. Engineering Technician 2 (Section 22/Gang 041)
11. Engineering Technician 3 (Section 22/Gang 041)
12. Engineering Technician 4 (Section 22/Gang 041)
13. Engineering Technician Supervisor 1 (Section 22/Gang 041)
14. Equipment Inspector (except Section 09)
15. Equipment Superintendent
16. Geotechnical Exploration Supervisor 2 (Section 22/Gang 041)
17. Highway Foreman 1
18. Highway Foreman 2 (except former District Sign/Traffic Supervisor and Tunnel Maintenance/Operator Supervisor)
19. Marine Welder (Section 51/Bridge)
20. Marine Welder Foreman (Section 51/Bridge)
21. Marine Welder Master (Section 51/Bridge)
22. Mobile Equipment Maintenance Mechanic
23. Mobile Equipment Master Mechanic
24. Mobile Equipment Master Mechanic Leader
25. Mobile Equipment Operator 1/Heavy
26. Mobile Equipment Operator 2/Heavy
27. Mobile Equipment Operator 1 (Section 51)
28. Mobile Equipment Operator 2 (except Section 70)
29. Mobile Equipment Overhaul Mechanic
30. Mobile Equipment Shop Foreman
31. Mobile Equipment Shop Superintendent
32. Painter (bridge)
33. Painter Foreman (bridge)
34. Painter Master (bridge)
35. Roadside Development Herbicide Applicator
36. Trades Apprentice (Section 51/Bridge) (All signal except Section 45/Gang 761) (Section 59 w/air brake endorsement)

#### C. Aviation Personnel

1. Aircraft Fleet Chief Pilot

#### D. Crescent City Connection Division (CCCD)— Safety Sensitive Marine Personnel

1. Maintenance Repairer 1 (Gang 005)
2. Maintenance Repairer 2 (Gang 005) (also requires CDL)
3. Maintenance Foreman (Gang 005)
4. Marine Chief Engineer 1
5. Marine Chief Engineer 2
6. Marine Deckhand
7. Marine Deckhand/Toll Collector
8. Marine Engineer 1
9. Marine Engineer 2
10. Marine Engineer 3
11. Marine Engineering Supervisor
12. Marine Maintenance Superintendent 1 (Gang 005)
13. Marine Master 1
14. Marine Master 2
15. Marine Master 3
16. Marine Oiler
17. Marine Operations Superintendent 1 and 2
18. Marine Trades Helper (Gang 005)
19. Welder

#### E. CCCD Law Enforcement Personnel

1. Police Captain—Bridge
2. Police Chief—Bridge
3. Police Lieutenant—Bridge
4. Police Officer 1—Bridge
5. Police Officer 2—Bridge
6. Police Sergeant—Bridge

#### F. Rural Ferries/Fleet Landing

NOTE: U.S. Coast Guard does not mandate random alcohol tests, so random alcohol tests are being conducted under LA DOTD's authority. For post-accident/incident tests, refer to §105.C to determine whether accident/incident meets criteria of U.S. Coast Guard. If not, and test is conducted, it is under LA DOTD authority.

1. Marine Chief Engineer 1
2. Marine Chief Engineer 2
3. Marine Deckhand
4. Marine Deckhand/Toll Collector
5. Marine Engineer 1
6. Marine Engineer 2
7. Marine Engineer 3
8. Marine Maintenance Superintendent 1
9. Marine Maintenance Superintendent 2

10. Marine Mechanic 1
11. Marine Mechanic 2
12. Marine Master 1
13. Marine Master 2
14. Marine Master 3
15. Marine Oiler
16. Marine Operator
17. Marine Operations Superintendent 1
18. Marine Operations Superintendent 2
19. Marine Trades Helper
20. Marine Welder 1
21. Marine Welder 2
22. Marine Welder Foreman

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:1015.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Office of General Counsel, LR 25:540 (March 1999).

**§121. Appendix B**

A. Additional positions subject to drug and alcohol tests, including random, as determined by LA DOTD.

1. Bridge Inspection Program Manager
2. Bridge Inspection Team Leader
3. Bridge Maintenance and Inspection Supervisor
4. Bridge Operator 1
5. Bridge Operator 2
6. Bridge Operator Foreman
7. DOTD Engineer Program Manager (Section 51)
8. DOTD Staff Engineer Admin. 1 (Section 51)
9. DOTD Staff Engineer Supervisor (Section 51)
10. EIT 1/2/Engr./DOTD Staff Engr. Advanced (Section 51)
11. Engineering Technicians 1 - 4 (Districts, Gang 051 and Section 51 employees performing bridge inspection duties)
12. Maintenance Repairer 1 (Navigational Locks only)
13. Maintenance Repairer 2 (Navigational Locks only)
14. Mobile Equipment Operator 1
15. Navigational Lock Master
16. Navigational Lock Operator 1
17. Navigational Lock Operator 2
18. Staff Engineer Specialist Advanced—Bridge Maintenance (Section 51)

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:1015.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Office of General Counsel, LR 25:542 (March 1999).

Kam K. Movassaghi, Ph.D., P.E.  
Secretary

9903#042

**RULE**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

Billfishes (LAC 76:VII.355)

The Wildlife and Fisheries Commission hereby adopts a rule (LAC 76:VII.355) providing for regulations on the harvest of billfishes, including marlins, sailfish and swordfish. Authority for adoption of this rule is included in R.S. 56:6(25)(a), 56:326.1 and 56:326.3.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 3. Saltwater Sport and Commercial Fishery**

**§355. Harvest Regulations—Billfishes**

A. The Louisiana Wildlife and Fisheries Commission does hereby adopt the following rules and regulations regarding the harvest of billfishes including marlins, sailfish and swordfish within and without Louisiana's territorial waters. For purposes of this Section, the following words and phrases have the meaning ascribed to them in this Subsection, unless the context clearly shows a different meaning:

*Carcass Length*—curved measure from posterior edge of gill opening to anterior portion of caudal keel.

*Dressed Weight*—the weight of the carcass after it has been gutted, headed, and finned.

*Lower Jaw Fork Length (LJFL)*—straight-line length from the tip of the lower jaw to the fork of the tail.

*Trip*—a fishing trip, regardless of the number of days duration, that begins with departure from a dock, berth, beach, seawall or ramp and that terminates with return to a dock, berth, beach, seawall or ramp.

B. **Minimum Size Limits.** No person shall possess any fish smaller than the minimum size limit.

Species	Minimum Size Limit
1. Blue Marlin	96 inches Lower Jaw Fork Length (LJFL)
2. White Marlin	66 inches Lower Jaw Fork Length (LJFL)
3. Sailfish	57 inches Lower Jaw Fork Length (LJFL)
4. Swordfish	29 inches carcass length or 33 pounds dressed weight

C. Recreational Creel Limit. Recreational fishing vessels shall not possess more than five swordfish per vessel per trip. Swordfish taken under a recreational bag limit shall not be sold, purchased, exchanged, bartered, or attempted to be sold, purchased, exchanged or bartered.

D. Gamefish. Louisiana Revised Statutes Title 56 §327(A)(1)(b)(i) designates sailfish (*Istiophorus platypterus*), blue marlin (*Makaira nigricans*), black marlin (*Makaira indica*), striped marlin (*Tetrapturus audax*), hatchet marlin (*Tetrapturus* spp.), and white marlin (*Tetrapturus albidus*) as saltwater gamefish. This rule does not affect the designation of gamefish status, which is retained by the legislature [R.S. 56:6(25)(a)]. Vessels engaged in commercial fishing shall not possess any of these species.

E. Permits

1. Recreational

*Tournament Operators*—a person conducting a tournament involving scorekeeping or awards for Atlantic billfish (whether or not retained), must register with the National Marine Fisheries Service.

2. Commercial—Swordfish:

a. The owner of a vessel of the United States or a vessel that fishes for or possesses swordfish, or takes swordfish as incidental catch, regardless of whether retained, must possess a valid commercial permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic Swordfish. This permit must be aboard the vessel and available for inspection by agents of the Department of Wildlife and Fisheries Enforcement Division. The captain of the vessel is also responsible to ensure the validity and possession of the permit aboard the vessel before retaining, possessing, selling or attempting to sell swordfish.

b. A wholesale/retail dealer who first receives swordfish must have been issued a valid dealer permit under the Federal Fishery Management Plan for Atlantic Swordfish. This dealer permit must be in possession of the wholesale/retail dealer and available for inspection by agents of the Department of Wildlife and Fisheries Enforcement Division.

F. All persons fishing for swordfish, or persons receiving any swordfish from fishermen, who do not possess a permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic Swordfish shall not sell, barter, trade, exchange or attempt to sell, barter, trade or exchange any swordfish, or possess any swordfish in excess of a recreational creel limit.

G. No person aboard any vessel shall transfer or cause the transfer of swordfish between vessels on state or federal waters.

H. No person shall purchase, sell, exchange, barter or attempt to purchase, sell, exchange, or barter any swordfish in excess of any possession limit for which a commercial permit was issued.

I. Seasonal Closures. The secretary of the Department of Wildlife and Fisheries is hereby authorized to close any recreational or commercial fishery for marlins or swordfish, within and without Louisiana's territorial waters, when the secretary is notified by the National Marine Fisheries Service

that the seasonal quota for that species and fishery has been met. The closure order shall close the fishery until the date projected for the reopening of that fishery in the adjacent federal waters. The secretary is also hereby authorized to modify any such closure order to maintain consistency with reopening dates in the adjacent federal waters, should the federal closure dates be modified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), 56:326.1 and 326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:542 (March 1999).

James H. Jenkins, Jr.  
Secretary

9903#072

**RULE**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**Sharks and Sawfishes—Daily Take and Possession Limits  
(LAC 76:VII.357)**

The Wildlife and Fisheries Commission does hereby promulgate rules and regulations for the taking of sharks from Louisiana waters.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 3. Saltwater Sport and Commercial Fishery**

**§357. Sharks and Sawfishes Daily Take and Possession  
Limits, Quotas and Special Permit Requirements**

A. The Wildlife and Fisheries Commission adopts the following rules and regulations for the taking of sharks (including sawfishes) (Class *Elasmobranchiomorphi*: Orders *Hexanchiformes*, *Lamniformes*, *Squaliformes*, and *Rajiformes*) from Louisiana waters. The provisions of §357 shall not apply to shrimp or menhaden harvest, and nothing contained herein is intended or shall be construed to repeal, amend, or otherwise modify the provisions of law applicable to shrimp or menhaden fishing, *except for provisions*:

1. outlawing finning of shark;
2. requiring a Shark Permit for sale, barter or exchange;
3. limiting sale, barter, or exchange of sharks during closed seasons;
4. limiting shark retained by non-permit holders to be only as a mixed part of the total harvest, and only retained, held, or sold, purchased, bartered, traded, or exchanged as such; and
5. outlawing transfer of sharks between vessels at sea.

B. For management purposes, sharks are divided into the following categories.

1. Small Coastal Sharks—Atlantic Angel Shark, Bonnethead Shark, Atlantic Sharpnose Shark, Blacknose Shark, Caribbean Sharpnose Shark, Finetooth Shark, Smalltail Shark.

2. Large Coastal Sharks—Great Hammerhead, Scalloped Hammerhead, Smooth Hammerhead, Nurse Shark,

ignose Shark, Blacktip Shark, Bull Shark, Caribbean Reef Shark, Dusky Shark, Galapagos Shark, Lemon Shark, Narrowtooth Shark, Night Shark, Sandbar Shark, Silky Shark, Spinner Shark, Tiger Shark.

3. Pelagic Sharks—Bigeye Sixgill Shark, Sevengill Shark, Sixgill Shark, Longfin Mako, Porbeagle Shark, Shortfin Mako, Blue Shark, Oceanic Whitetip Shark, Bigeye Thresher Shark, Thresher Shark.

4. Prohibited Species—Basking Shark, White Shark, Bigeye Sand Tiger, Sand Tiger, Whale Shark, Smalltooth Sawfish, Largetooth Sawfish.

C. In addition to all other licenses and permits required by law, a valid original Shark Permit shall be annually required for persons commercially taking shark from Louisiana waters and for persons selling, exchanging, or bartering sharks to Louisiana Wholesale/Retail dealers; the valid original permit shall be in immediate possession of the permittee while engaged in fishing for or possessing shark. Each Shark Permit holder shall on or before the tenth of each month submit an information return to the Department on forms provided or approved for this purpose, including the number and weight of each species of shark taken commercially from Louisiana waters during each trip of the preceding month, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

D. No person shall purchase, sell, exchange, barter or attempt to purchase, sell, exchange, or barter any sharks in excess of any possession limit for which a commercial permit was issued.

E.1. All persons who do not possess a Shark Permit issued by the Department of Wildlife and Fisheries, and, if applicable, a Federal Shark Permit issued by the National Marine Fisheries Service, are limited to a possession limit. All persons who do not possess a Louisiana Shark Permit and, if applicable, a permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic Sharks, shall not sell, barter, trade, exchange or attempt to sell, barter, trade or exchange any sharks, or possess any sharks in excess of a possession limit. Sharks taken incidental to menhaden fishing, that are retained on the vessel as part of the harvest, shall be retained and sold only as a mixed part of the total harvest, and shall not be retained, held, or sold, purchased, bartered, traded, or exchanged separately. Sharks retained as a result of menhaden fishing shall not exceed legal by-catch allowances for menhaden fishing as provided for in R.S. 56:324.

2. Legally licensed Louisiana wholesale/retail seafood dealers, retail seafood dealers, restaurants, and retail grocers are not required to hold a "Shark Permit" in order to purchase, possess, exchange, barter and sell any quantities of sharks, so long as they maintain records as required by R.S. 56:306.4 and 56:306.5.

F. Sharks taken under a recreational bag limit shall not be sold, purchased, exchanged, bartered, or attempted to be sold, purchased, exchanged or bartered. A person subject to a bag limit shall not possess at any time, regardless of the number of trips or the duration of a trip, any shark in excess of the bag limits as follows.

1. The aggregate daily take and possession limit for Atlantic Sharpnose Sharks caught recreationally within or without Louisiana waters shall be two fish per person per day and in possession.

2. The aggregate daily take and possession limit for all other Small Coastal, Large Coastal and Pelagic sharks combined, caught recreationally within or without Louisiana waters, shall be two fish per vessel per trip and in possession.

G. Those persons possessing a Federal Shark Permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic Sharks are limited to daily take, trip and possession limits as specified in that Federal Permit. A person aboard a vessel for which a Federal Shark Permit has been issued shall not retain shark of any species group for which the commercial quota has been reached and the season closed in Federal waters.

H.1. A vessel that has been issued or possesses a federal shark permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic Sharks shall not possess on any trip, or land from any trip, or sell, Large Coastal Species in excess of 4,000 pounds, dressed weight.

2. Persons possessing a Louisiana Shark Permit shall not possess on any trip, or land from any trip, or sell, Large Coastal Species in excess of 4,000 pounds, dressed weight.

I. A person aboard a vessel for which a federal shark permit has been issued, or persons aboard a vessel fishing for or possessing shark in the EEZ shall comply with all applicable federal regulations.

#### J. Fins

1. The practice of *finning*, that is, removing only the fins and returning the remainder of the shark to the sea, is prohibited within and without Louisiana waters.

2. Shark fins that are possessed aboard or offloaded from a fishing vessel must not exceed five percent of the weight of the shark carcasses. All fins must be weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing and such weights of the fins landed must be recorded on dealer records in compliance with R.S. 56:306.5. Fins from shark harvested by a vessel that are disproportionate to the weight of the carcasses landed shall not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

3. Shark fins shall not be possessed aboard a fishing vessel after the vessel's first point of landing.

#### K. Prohibited Species

1. No person shall take, possess, purchase, sell, barter, exchange or attempt to possess, purchase, sell, barter, or exchange any of the following species or parts thereof.

- a. Basking Shark—*Cetorhinus maximus*
- b. White Shark—*Carcharodon carcharias*
- c. Bigeye Sand Tiger—*Odontaspis noronhai*
- d. Sand Tiger—*Odontaspis taurus*
- e. Whale Shark—*Rhincodon typus*
- f. Smalltooth Sawfish—*Pristis pectinata*
- g. Largetooth Sawfish—*Pristis pristis*

2. Notwithstanding other provisions of Part VII, a person may fish for, but not retain, white sharks (*Carcharodon carcharias*) with rod and reel only under a catch and release

rogram, provided the person releases and returns such fish to the sea immediately with a minimum of injury.

3. Notwithstanding other provisions of Part VII, smalltooth sawfish or largetooth sawfish may be possessed as authorized by a special Scientific and Educational Collecting Permit issued by the department under R.S. 56:318, including whatever conditions that the department may deem necessary to ensure the maintenance and protection of the species. Nothing herein shall prohibit the possession of smalltooth sawfish or largetooth sawfish, or parts thereof, that were possessed prior to the effective date of this rule.

L. No person aboard any vessel shall transfer or cause the transfer of sharks between vessels on state or federal waters. Standard menhaden harvesting activities do not constitute transfer of sharks between vessels at sea.

#### M. Seasonal Closures

1. All Louisiana State waters out to the seaward boundary of the Louisiana Territorial Sea shall be closed to the recreational and commercial harvest of all sharks between April 1 and June 30 of each year. A holder of a Federal Shark Permit may legally harvest sharks from Federal waters beyond the Louisiana Territorial Sea and bring those sharks into Louisiana waters for sale within the provisions of that Federal Shark Permit. Effective with this closure, no person shall commercially harvest, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell sharks from the closed area. Effective with the closure, no person shall retain or possess

any sharks in the closed area. Sharks taken incidental to shrimp or menhaden fishing in the closed area, that are retained on the vessel as part of the harvest, may be retained only as a mixed part of the total harvest, and shall not be retained, held, purchased, bartered, traded, exchanged, sold or attempted to be purchased, bartered, traded, exchanged or sold.

2. The Secretary of the Department of Wildlife and Fisheries is hereby authorized to close any recreational or commercial fishery for sharks, within and without Louisiana's territorial waters, when the Secretary is notified by the National Marine Fisheries Service that the seasonal quota for that species group and fishery has been met. The closure order shall close the fishery until the date projected for the re-opening of that fishery in the adjacent Federal waters. The Secretary is also hereby authorized to modify any such closure order to maintain consistency with re-opening dates in the adjacent Federal waters, should the Federal closure dates be modified.

N. The fishing year for shark shall begin on January 1, 1998 and every January 1 thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:326(E)(2), R.S. 56:326.1, R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:543 (March 1999).

James H. Jenkins, Jr.  
Secretary

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