

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Repeal of LAC 33:III.501.B.8
(LAC 33:III.501.B.8) (AQ323)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.501.B.8 (AQ323).

On September 13, 2004, EPA promulgated 40 CFR 63, Subpart DDDDD – National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (69 FR 55253). Subpart DDDDD was subsequently vacated and remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit on June 8, 2007. The Court made its ruling effective on July 30, 2007.

Prior to the Court's ruling, LDEQ had incorporated the provisions of Subpart DDDDD into numerous Part 70 Operating Permits. Therefore, LDEQ promulgated LAC 33:III.501.B.8 to specify that "any term or condition in a permit that references 40 CFR Part 63, Subpart DDDDD shall be null and unenforceable."

In response to the Court's vacatur and remand, EPA re-promulgated Subpart DDDDD on March 21, 2011 (76 FR 15608). Because provisions of the final rule must be incorporated into certain Part 70 permits as "applicable requirements" per 40 CFR 70.6(a), LAC 33:III.501.B.8 must be repealed. The basis and rationale for this rule are to repeal and reserve LAC 33:III.501.B.8. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on September 27, 2011, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Perry Theriot at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ323. Such comments must be received no later than October 4, 2011, at 4:30 p.m., and should be sent to Perry Theriot, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-4068 or by e-mail to perry.theriot@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225)

219-3168. Check or money order is required in advance for each copy of AQ323. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 5. Permit Procedures

§501. Scope and Applicability

A. - B.7. ...

8. ~~Any term or condition in a permit that references 40 CFR Part 63, Subpart DDDDD shall be null and unenforceable, unless the condition was included in the permit in lieu of an alternative applicable, enforceable condition. Such terms or conditions shall be removed or modified, as appropriate, in the next modification or renewal of the permit.~~

C. - C.14. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 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 by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 33:2082 (October 2007), LR 33:2626 (December 2007), LR 35:461 (March 2009), LR 35:2351 (November 2009), LR 37:**.

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

LOG #: AQ323

Person

Preparing

Statement:	<u>Bryan D. Johnston</u>	Dept.:	<u>Environmental Quality</u>
Phone:	<u>(225) 219-3450</u>	Office:	<u>Environmental Services</u>

Return

Address:	<u>602 North Fifth Street</u>	Rule Title:	<u>Repeal of LAC 33:III.501.B.8</u>
	<u>Baton Rouge, LA 70821</u>		<u></u>
			<u></u>

Date Rule

Takes Effect: Upon Promulgation

SUMMARY

(Use complete sentences)

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

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

The proposed rule change will have no impact on state or local government expenditures. The proposed rule change is a technical amendment that eliminates the current regulation pertaining to permit terms or conditions impacting boilers and process heaters at major sources of hazardous air pollutants. The rule was promulgated in response to the U.S. Court of Appeals for the District of Columbia Circuit ruling that declared 40 CFR 6, subpart DDDDD null and void. In response to the ruling, the Environmental Protection Agency re-promulgated federal standards for these sources. The Department of Environmental Quality still monitors major sources with boilers and process heaters, as each is required to conform to the new Federal rule.

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

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

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

There will be no costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed rule change. The boilers located at major sources of hazardous air pollutants will still have to comply with the new Federal rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment in the public or private sector because of the proposed rule change.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

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

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

This rulemaking will repeal and reserve LAC 33:III.501.B.8.

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

On September 13, 2004, EPA promulgated 40 CFR 63, Subpart DDDDD – National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (69 FR 55253). Subpart DDDDD was subsequently vacated and remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit on June 8, 2007. The Court made its ruling effective on July 30, 2007.

Prior to the Court's ruling, LDEQ had incorporated the provisions of Subpart DDDDD into numerous Part 70 Operating Permits. LDEQ promulgated LAC 33:III.501.B.8 to specify "any term or condition in a permit that references 40 CFR Part 63, Subpart DDDDD shall be null and unenforceable."

In response to the Court's vacatur and remand, EPA repromulgated Subpart DDDDD on March 21, 2011 (76 FR 15608). Because provisions of the final rule must be incorporated into certain Part 70 permits as "applicable requirements" per 40 CFR 70.6(a), LAC 33:III.501.B.8 must be repealed.

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

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

The proposed rule will not result in any increase in the expenditure of funds.

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

(a) Yes. If yes, attach documentation.

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

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

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

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

There is no anticipated increase or decrease in costs to state agencies as a result of this proposed rule.

COSTS	FY 10-11	FY 11-12	FY 12-13
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSES	-0-	-0-	-0-
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR. POSITIONS (#)	-0-	-0-	-0-

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

There is no anticipated increase or decrease in costs associated with the proposed rule. No increase or reduction in workload or additional paperwork is anticipated.

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

SOURCE	FY 10-11	FY 11-12	FY 12-13
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
OTHER (Specify)	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

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

No funds are required to implement the proposed action.

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

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

No impact on local governmental units is anticipated, including adjustments in workload and paperwork requirements.

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

There are no costs or savings to local governmental units. Therefore, no funding is needed.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

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

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

There will be no effect on revenue collections of state or local governmental units from the proposed rule.

REVENUE INCREASE/DECREASE	FY 10-11	FY 11-12	FY 12-13
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
RESTRICTED FUNDS*	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
LOCAL FUNDS	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

*Specify the particular fund being impacted.

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

No increase or decrease in revenues will be realized.

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

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

Owners or operators of industrial, commercial, and institutional boilers and process heaters as described in 40 CFR 63 Subpart DDDDD (76 FR 15608) and located at major sources of hazardous air pollutants (HAP) will be affected by the proposed rule. There will be no effect on costs, including workload adjustments and additional paperwork, as a result of the proposed action.

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

There will be no impact on receipts or income resulting from the proposed rule.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

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

There will be no effect on competition or employment in the public or private sectors resulting from the proposed rule.