

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of the Secretary

Offset Requirements (LAC 33:III.504, 603, and 607) (AQ327E1)

In accordance with R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality to use emergency procedures to establish rules, and R.S. 30:2011 and 2054, which authorize the department to promulgate rules and regulations, the secretary of the department hereby declares that an emergency action is necessary to implement transitional permitting procedures between the effective date of the redesignation of the Baton Rouge area to attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the effective date of the area's (or portion thereof) nonattainment designation with respect to the 2008 8-hour ozone NAAQS. This is a renewal of Emergency Rule AQ327E, which was effective on December 30, 2011 and published in the *Louisiana Register* on January 20, 2012.

The Baton Rouge area (i.e., the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge) was formerly designated as nonattainment with respect to the 1997 8-hour ozone NAAQS of 0.08 parts per million (ppm). As such, increases of NO_x and VOC emissions were governed by nonattainment new source review (NNSR) procedures provided by LAC 33:III.504. Under NNSR, prior to the construction of a new major stationary source or a major modification of an existing major stationary source, an owner or operator must obtain offsets for significant increases in emissions of NO_x and VOC in the form of emission reduction credits (ERC) banked in accordance with LAC 33:III.Chapter 6.

On November 30, 2011, the U.S. Environmental Protection Agency (EPA) redesignated the Baton Rouge area to attainment of the 1997 ozone NAAQS, effective December 30, 2011. At the same time, EPA approved LDEQ's ozone maintenance plan, which projected no net growth in point source NO_x and VOC emissions in the five parish area through 2022.

At the present time, NNSR provisions, including those requiring offsets for significant NO_x and VOC increases, are no longer mandated by the Clean Air Act (CAA). However, another ozone standard, with which the Baton Rouge area is not in compliance, will soon be implemented.

On March 27, 2008, EPA lowered the primary ozone NAAQS from 0.08 ppm to 0.075 ppm. This standard became effective on May 27, 2008. However, on September 16, 2009, the agency announced it would reconsider the NAAQS and therefore delayed implementation of the new standard. On January 19, 2010, EPA proposed that the NAAQS should be set within the range of 0.060 to 0.070 ppm. Then, on September 2, 2011, President Obama "requested that Administrator Jackson withdraw the draft Ozone National Ambient Air Quality Standards." Since the ongoing review of the ozone NAAQS will not be completed for several years, the


EPA is now moving ahead with certain required actions to implement the 2008 standard. One such action is to designate areas as either attainment, nonattainment, or unclassifiable.

Based on air quality data from 2008 – 2010, LDEQ recommended to EPA that East Baton Rouge Parish be designated as nonattainment. By letter dated December 9, 2011, EPA informed LDEQ that, in addition to East Baton Rouge, the agency intends “to designate as nonattainment the parishes of Ascension, Iberville, Livingston, and West Baton Rouge” and “plans to promulgate final ozone designations in spring of 2012.”

This rule is necessary to ensure that the Baton Rouge area continues to make progress toward attainment of the 2008 ozone NAAQS and to mitigate increases of NO_x and VOC emissions consistent with the area’s approved ozone maintenance plan.

This Emergency Rule is effective on **APRIL 30, 2012**, and shall remain in effect for a maximum of 120 days. The department has begun rulemaking to promulgate this regulation change. For more information concerning AQ327E1, you may contact the Air Permits Division at (225) 219-3147.

Adopted this 26th day of April, 2012.



Peggy M. Hatch
Secretary

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§504. Nonattainment New Source Review (NNSR) Procedures and Offset Requirements in Specified Parishes

A. Applicability. Except as specified in Subsection M of this Section, ~~t~~The provisions of this Section apply to the construction of any new *major stationary source* or to any *major modification* at a major stationary source, as defined herein, provided such source or modification will be located within a nonattainment area so designated in accordance with Section 107 of the federal Clean Air Act, and will emit a regulated pollutant for which it is major and for which the area is designated nonattainment. If any provision of this Section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

A.1. - L. Table 1. ...

M. ~~Notwithstanding the major stationary source and major modification significant net increase threshold values and minimum offset ratios established by Subsection L, Table 1 of this Section,~~ ~~t~~The provisions of this Subsection shall apply to stationary sources located in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge as long as each parish's ~~nonattainment~~ designation with respect to the 8-hour national ambient air quality standard (NAAQS) for ozone is either attainment, marginal nonattainment, or moderate nonattainment.

~~1. For an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x, consideration of the net emissions increase will be triggered for any project that would:~~

~~a. increase emissions of VOC or NO_x by 25 tons per year or more, without regard to any project decreases;~~

~~b. increase emissions of the highly reactive VOC (HRVOC) listed below by 10 tons per year or more, without regard to any project decreases:~~

~~i. 1,3-butadiene;~~

~~ii. butenes (all isomers);~~

iii. ~~ethylene;~~

iv. ~~propylene.~~

2. ~~The following sources shall provide offsets for any net emissions increase:~~

a. ~~a new stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x;~~

b. ~~an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x with a significant net emissions increase of VOC, including HRVOC, or NO_x of 25 tons per year or more.~~

3. ~~The minimum offset ratio for an offset required by Paragraph M.2 of this Section shall be 1.2 to 1.~~

1. New Stationary Sources. The owner or operator of a new stationary source shall provide offsets for potential VOC and NO_x emissions in excess of 50 tons per year.

2. Existing Stationary Sources

a. The owner or operator of an existing stationary source with a potential to emit of 50 tons per year or more of VOC shall provide offsets for each net emissions increase of 25 tons per year or more of VOC.

b. The owner or operator of an existing stationary source with a potential to emit of 50 tons per year or more of NO_x shall provide offsets for each net emissions increase of 25 tons per year or more of NO_x.

c. Consideration of the net emissions increase shall be triggered for any project that would increase emissions of VOC or NO_x by 25 tons per year or more, without regard to any project decreases.

3. Offsets shall be required at a ratio of 1.10 to 1 unless a higher ratio is mandated by Subsection L, Table 1 of this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599

(September 2006), LR 33:2082 (October 2007), LR 34:1890 (September 2008), LR 37:1568 (June 2011), LR 38:**.

Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking

§603. Applicability

A. ...

B. Notwithstanding Subsection A of this Section, sources located in Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes may participate in the emissions banking program for purposes of securing offsets where required by LAC 33:III.504.M.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), amended LR 24:2239 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), LR 38:**.

§607. Determination of Creditable Emission Reductions

A. - C.3. ...

4. Quantify baseline emissions as follows:

a. for stationary sources located in ozone nonattainment areas:

i. - ii. ...

b. ~~Reserved for stationary sources located in ozone attainment areas,~~ baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section.

C.5. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:302 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1601 (September 2006), LR 33:2068 (October 2007), LR 38:**.