

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Division

Conrad Industries Delisting
(LAC 33:V.4999 Appendix E) (HW111)

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 Hazardous Waste regulations, LAC 33:V.4999 Appendix E (HW111).

Conrad Industries Inc. (Conrad) is petitioning to exclude from the hazardous waste regulations (delist) approximately 4,000 tons of aggregate generated and used as fill in 1986. This is a one time delisting which applies to the particular aggregate used as fill in the "Rim Tide" barge slip located in Amelia, Louisiana. The delisting program is regulated by LAC 33:V.105 which includes a formal rulemaking process. The applicants who wish to remove a waste from the list of hazardous wastes must submit a petition and satisfy all requirements of LAC:33.V.105. The exclusion, if granted, applies only to the 4,000 tons of aggregate used as fill in the "Rim Tide" barge slip area located in Amelia, Louisiana. LDEQ has reviewed Conrad's petition and found it satisfies the delisting requirements of LAC 33:V.105.M. LDEQ used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment. Conrad purchased 4,000 tons of aggregate in 1986 for the use as fill from Marine Shale Processors, Inc. (MSP). The aggregate was generated as the ash or residue of MSP's incineration of various wastes, including hazardous wastes and contaminated media. Information on the sources of the waste is limited. Conrad was requested to analyze for all listed hazardous wastes. The basis and rationale for this Rule is to grant the petition based on the information submitted by Conrad, the results of the analytical data and the results of the Delisting Risk Assessment Software (DRAS). From this information, there was no obvious adverse effect on human health or the environment. Conrad has complied with the Delisting requirements as outlined in LAC :33.V.105. 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 December 27, 2012, 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 Deidra Johnson 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 HW111. Such comments

PROPOSED/NOVEMBER 20, 2012

HW111

must be received no later than January 3, 2013, at 4:30 p.m., and should be sent to Deidra Johnson, 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 deidra.johnson@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 HW111. 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 V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

§4999. Appendices—Appendix A, B, C, D, E, and F

Appendix A. – Appendix D.

Appendix E. Wastes Excluded under LAC 33:V.105.M

A. – B.3.b. ...

Table 1 - Wastes Excluded
BFI Waste Systems of Louisiana LLC, Colonial Landfill, Sorrento, LA

Table 1 - Wastes Excluded
DuPont Dow Elastomers LLC, LaPlace, LA

Table 1 – Wastes Excluded
Lyondell Chemical Company, Lake Charles, LA

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Lyondell Chemical Company, Lake Charles, LA

Table 1 - Wastes Excluded
Marathon Oil Co., Garyville, LA

Table 1 - Wastes Excluded
Motiva Enterprises LLC, Norco, LA

Table 1 - Wastes Excluded
Syngenta Crop Protection, Inc., St. Gabriel, LA

Table 2 – One-Time Wastes Excluded
Murphy Exploration and Production Company, Amelia, LA

<u>Table 2 – One-Time Wastes Excluded</u>
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Conrad Industries, Inc. (Conrad), Morgan City, LA

Hazardous waste incinerator ash was generated as a product of the combustion of hazardous wastes and nonhazardous wastes in a rotary kiln incinerator at Marine Shale Processors in Amelia, Louisiana (MSP). In 1986, this aggregate was used as fill material for the former slip area at Conrad Industries, Inc. (Conrad) located in Morgan City, Louisiana. For the purpose of this exclusion, aggregate used as fill material by Conrad includes all hazardous waste codes listed in LAC 33:V.4901. This is a one-time exclusion for a maximum volume of 4,000 cubic yards of aggregate subsequent to its excavation from the former slip area located in Morgan City, Louisiana for the purpose of transportation and disposal in a Subtitle D landfill after (DATE OF PROMULGATION).

Appendix F. Recordkeeping Instructions

A. – B.3, Table 2

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 20:1000 (September 1994), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:944 (September 1995), LR 22:830 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2397 (December 1999), LR

26:2509 (November 2000), LR 29:1084 (July 2003), repromulgated LR 29:1475 (August 2003), amended by the Office of Environmental Assessment, LR 30:2464 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:445 (March 2007), LR 33:825 (May 2007), LR 33:1016 (June 2007), LR 34:73 (January 2008), LR 34:1021 (June 2008), LR 34:1613 (August 2008), amended by the Office of the Secretary, Legal Division, LR 38:**.

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

LOG #: HW111

Person
Preparing
Statement: Emad Nofal Dept.: Environmental Quality

Phone: 225-219-3509 Office: Environmental Compliance

Return
Address: Post Office Box 4314 Rule Conrad Industries Inc.
Baton Rouge, LA 70821-4314 Title: Delisting (LAC 33:V.Chapter 49,
Appendix E)

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)

There will be no costs or savings to state or local governmental units for implementing this proposed rule change. Conrad Industries Inc. (Conrad) is requesting a one-time exclusion from the hazardous waste regulations (delist) of approximately 4,000 tons of aggregate purchased, and used to fill the "Rim Tide" barge slip area (slip area). The delisting will be limited to the aggregate that was used as fill at the slip area. The proposed rule change allows this one-time exclusion.

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

The proposed rule change will result in the state collecting approximately \$144,000 less in tax revenue in FY 14. Prior to the proposed rule change the state would have collected, on a one-time basis (based on the 2011 levels), the associated tax revenue from the hazardous waste disposal tax (\$40/ton) or a total of \$160,000 when the former slip area is remediated. In addition, the tax on equipment and services (\$18,000) would also be collected, for a total of approximately \$178,000.

Alternatively, the state will collect the associated tax revenue (based on the 2011 levels) in nonhazardous solid waste disposal tax revenue (\$4/ton) when the Rim Tide slip area is remediated (\$16,000). The same tax on equipment and services (\$18,000) would also be collected, for a total of approximately \$34,000.

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

Conrad Industries Inc. (Conrad) will realize a savings of about \$1.5 million when this delisting is approved. The savings is the difference in cost between remediating a hazardous waste site and

remediating a solid waste site. Conrad will benefit from the delisting of the aggregate because once the slip area is remediated, Conrad will be able to use the area for other purposes. The delisting of the aggregate will not relieve Conrad from any liability that might arise from the use or disposal of the wastes.

Louisiana contractors and its workers will also benefit from the delisting. If the delisting petition is granted, Conrad will be able to begin remediating the slip area. This will involve hiring a consulting company to design and submit a remediation plan to the department for approval and hiring a contracting firm to remediate the area. The remediation project will cost from \$60,000 to \$600,000. This money will go to workers and for use of equipment to remediate the area.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Delisting the aggregate will have a negligible effect on competition. The remediation project will provide new jobs for the local area. The remediation activities will involve short-term environmental, laboratory, and construction related employment.

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).

Conrad Industries Inc. (Conrad) is requesting an exclusion from the hazardous waste regulations (delist) approximately 4,000 tons of aggregate purchased and used to fill the "Rim Tide" barge slip area (the slip area). The delisting will be limited to the aggregate that was used as fill at the slip area.

The purpose for delisting the aggregate is to facilitate the remediation of the slip area. Currently, remediation of the slip area is an expensive and slow process; however, by delisting the aggregate, the cost of remediating the slip area becomes more affordable. This in turn allows Conrad to remediate the area faster.

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

LAC 33:V.105.M allows a hazardous waste generator to petition the department for a regulatory amendment that excludes a particular hazardous waste from the list in LAC 33.V.4901. However, in order for the department to grant the petition, the petitioner must demonstrate to the satisfaction of the department that the listed hazardous waste in question does not meet any of the criteria under which the waste was listed as a hazardous waste.

Based on extensive testing and analysis, the department has determined that the nature of the aggregate in question does not warrant retaining this material classification as hazardous waste.

- 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.

No, 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 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?

COSTS	FY 12-13	FY 13-14	FY14-15
PERSONAL SERVICES			
OPERATING EXPENSES			
PROFESSIONAL SERVICES			
OTHER CHARGES			
EQUIPMENT			
TOTAL	0	0	0
MAJOR REPAIR & CONSTR.	0	0	0
POSITIONS (#)	0	0	0

No costs or savings to state agencies will result from this proposed action.

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 are no costs or savings associated with implementation of this rule.

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

SOURCE	FY 12-13	FY 13-14	FY14-15
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
DEDICATED			
FEDERAL FUNDS			
OTHER (Specify)			
TOTAL	0	0	0

No funds are needed to implement this rule.

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 needed to implement this rule.

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.

There is no anticipated impact of the proposed action on local governmental units.

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

This is not applicable.

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?

Delisting the aggregate allows remediation of the slip area to be more cost efficient. This may result in a faster cleanup time for the slip area. Additionally, the state will collect hazardous waste fees for the remediation of the slip area. The state will forego the collection of approximately \$144,000, which is the difference between the revenues on cost of disposal of the material as solid waste instead of hazardous waste.

REVENUE INCREASE/DECREASE	FY 12-13	FY 13-14	FY14-15
STATE GENERAL FUND	_____	_____	_____
AGENCY SELF-GENERATED	_____	_____	_____
RESTRICTED FUNDS*	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____
LOCAL FUNDS	_____	_____	_____
TOTAL	(-)\$	\$ (144,000)	\$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.

The state will lose approximately \$144,000 by reclassifying this waste as nonhazardous solid waste. At \$40/ton for 4,000 tons, the state would collect approximately \$160,000 in hazardous waste disposal tax revenue. In addition, \$18,000 would be the tax (at a 9% tax rate) collected on equipment and services, for a total of \$178,000. However, when disposing of the same waste as a nonhazardous solid waste, the state will collect approximately \$16,000 in solid waste tax disposal revenue (at \$4/ton for 4,000 tons) and the same \$18,000 in taxes on equipment and services, for a total of \$34,000. The difference between disposing of this waste as hazardous versus solid waste is \$178,000 - \$34,000 or \$144,000.

R.S. 30:2205(A)(1) provides that funds generated by the hazardous waste tax under the provisions of Chapter 7-A of Subtitle II of Title 47 are to be paid into the Hazardous Waste Site Cleanup Fund until the fund balance reaches \$6 million, and at such time the treasurer is to pay remaining sums into the Environmental Trust Fund.

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.

Conrad will benefit from the delisting of the aggregate because once the slip area is remediated, Conrad will be able to use the area for other purposes. The delisting of the aggregate will not relieve Conrad from any liability that might arise from the use or disposal of these wastes.

Louisiana contractors and its workers will also benefit from the delisting. Remediating the slip area will create new employment and business in the local area. The remediation project will cost anywhere from \$60,000 to \$600,000. This money will go to workers and for use of equipment to remediate the area.

- 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.

Conrad will realize a savings of about \$1.5 million when this delisting is approved. The savings is the difference in cost between remediating a hazardous waste site, and remediating a solid waste site. Additionally, once the site is remediated, Conrad will then be able to use the area for other purposes

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.

The effects on competition will be negligible.