

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Division

Definitions of Major Source and Major Stationary Source Relative to Greenhouse Gases
(LAC 33:III.502.A and 509.B) (AQ358)

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.502.A and 509.B (AQ358).

This Rule will delete the major source threshold for greenhouse gases (GHGs) (ie., 100,000 tons per year of carbon dioxide equivalents, or CO₂e) from the definitions of "major source" in LAC 33:III.502.A and "major stationary source" in LAC 33:III.509.B. These definitions are used to determine applicability of the Part 70 (Title V) Operating Permits and Prevention of Significant Deterioration (PSD) programs under LAC 33:III.507 and 509, respectively. In *Utility Air Regulatory Group v. EPA*, decided June 23, 2014, the U.S. Supreme Court found that:

EPA exceeded its statutory authority when it interpreted the Clean Air Act to require PSD and Title V permitting for stationary sources based on their greenhouse gas emissions. Specifically, the Agency may not treat greenhouse gases as a pollutant for purposes of defining a "major emitting facility" (or a "modification" thereof) in the PSD context or a "major source" in the Title V context. To the extent its regulations purport to do so, they are invalid.

In sum, the Court held that a stationary source could not be considered a major source for Title V or PSD purposes based solely on its emissions of GHGs. The basis and rationale for this rule are to delete the major source threshold for GHGs from the definitions of major source in LAC 33:III.502.A and major stationary source in LAC 33:III.509.B consistent with the aforementioned Supreme Court decision. 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.

This Rule has no known impact on poverty as described in R.S. 49:973.

This Rule has no known impact on providers as described in HCR 170 of 2014.

A public hearing will be held on February 25, 2016, 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 AQ358. Such comments must be received no later than March 3, 2016, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. 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 AQ358. 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.

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General Counsel

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 5. Permit Procedures

§502. Definitions

A. Except where specifically provided in another Section herein, the following definitions apply to terms used in this Chapter. Except as provided in this Chapter, terms used in this Chapter retain the definition provided them in LAC 33:III.111 or the Louisiana Air Quality regulations. Wherever provisions related to the Acid Rain Program are concerned, the definitions provided in 40 CFR Part 72 shall apply.

* * *

Major Source—for the purposes of determining the applicability of 40 CFR Part 70 or of LAC 33:III.507, any stationary source or any group of stationary sources that are located on one or more contiguous or adjacent properties, that are under common control of the same person (or persons under common control), and that are described in Subparagraph a, b, c, or d of this definition:

a. - b.ii. ...

c. any major stationary source as defined in Part D (Nonattainment) of Title I of the Clean Air Act, including any source defined as a major stationary source under LAC 33:III.504.K;

d. ~~as of July 1, 2011, any stationary source that directly emits or has the potential to emit 100 tpy or more of GHGs on a mass basis (i.e., no global warming potentials applied) and 100,000 tpy or more of CO₂e.~~

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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 19:1420 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:1950 (September 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 36:2553 (November 2010), LR 37:1148 (April 2011), LR 37:1391 (May 2011), amended by the Office of the Secretary, Legal Division, LR 42:**.

§509. Prevention of Significant Deterioration

A. - A.5. ...

B. Definitions. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

* * *

Major Stationary Source—

a. - b. ...

~~c. — as of July 1, 2011, any stationary source listed in Table A of this definition which emits, or has the potential to emit, 100 tpy or more of GHGs on a mass basis (i.e., no global warming potentials applied) and 100,000 tons per year or more of CO₂e; or any stationary source not listed in Table A that emits, or has the potential to emit, 250 tpy or more of GHGs on a mass basis and 100,000 tons per year or more of CO₂e; or~~

~~dc.~~ any physical change that would occur at a source not otherwise qualifying as a major stationary source under Subparagraphs a, b, or ~~c~~ of this definition if the change would constitute a major source by itself;

~~ed.~~ a major source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone;

~~fe.~~ the fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Section whether it is a *major stationary source*, unless the source is listed in Table A of this definition or, as of August 7, 1980, is being regulated under section 111 or 112 of the Clean Air Act.

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C. - AA.15.b. ...

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 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006), LR 32:1843 (October 2006), LR 36:2556 (November 2010), LR 37:1148 (April 2011), repromulgated LR 37:1389 (May 2011), amended LR 37:1570 (June 2011), repromulgated LR 37:2146 (July 2011), amended by the Office of the Secretary, Legal Division, LR 38:3163 (December 2012), LR 39:1280 (May 2013), LR 42:**.