Comment Summary Response
Voluntary Environmental Self-Audit Regulations
LAC 33:I.Chapter 70
Log Number OS101

COMMENT 1: Are you serious?

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 2: The Alliance for Affordable Energy is a consumer protection and advocacy nonprofit organization dedicated to securing equitable, affordable, and environmentally responsible energy policy for all Louisianans. In that spirit, we write regarding the proposed regulation for Voluntary Environmental Self-Audit Regulations (OS101).

While we had significant concerns with Act 481 (2021) at the time of its passage, we recognize that the intent of the law – and these regulations – was to incentivize business and industry in Louisiana to proactively report and address violations before they could cause significant harm. By offering “safe harbor” from penalties, which the author of the Act and its supporters argued incentivizes hiding problems within industrial sites, the Department of Environmental Quality (the Department) could instead work with industry to resolve problems rather than punishing them for coming forward with concerns.

This is an admirable goal. But however well-intended this policy may be, we remain concerned that the policy could lead to a dramatic reduction in transparency. While the Department and other agencies have made important strides in recent years to repair trust, there is a long history of the State and private sector ignoring concerns of, and harms to, the residents and communities – many of which are lower income and majority Black or Indigenous – that live alongside industrial sites, including polluting power plants.

Every Louisianan should feel secure, wherever they live and no matter their background, in the knowledge that state agencies are doing everything in their power to ensure their safety and to preserve

public health. As the Department proceeds with implementation of R.S. 30:2044, we believe it is essential that whatever regulations and rules are established for the Self-Audit program should increase public confidence in the Department while also accounting for racial and economic inequities that may be exacerbated due to the structure of this program.

Unfortunately, the very nature of self-reporting and auditing of environmental and public health violations – particularly when state law requires that those disclosures be made confidential, even if only for a few years – creates more barriers to building trust, particularly for communities and residents in closest proximity to industrial sites and who have borne, and continue to bear, the greatest risks from exposures from those violations.

The provisions required by R.S. 30:2044 in determining whether or not a violation is eligible for the self-audit program are, in our view, seemingly reasonable but insufficiently specific.

FOR/AGAINST: No argument is necessary; the comment does not suggest amendment or change.

RESPONSE: No response is necessary.

COMMENT 3: While recognizing that §7007.C.1 would help to preserve discretion and flexibility for the Department to enforce violations above and beyond what is listed in law, we would encourage that the Department provide greater clarity with regard to what constitutes “serious actual harm to the environment” (§7007.A.1) and “may present an imminent or substantial endangerment to the environment or public health” (§7007.A.2).

Whether this is clarified within these regulations or in future promulgations of departmental rules pertaining to the self-audit program, an example of more specific language that would strengthen the regulation in accordance with aims of the law would be to establish particular floors or minimum standards. For instance, the Self-Audit program should ensure that any self-reported violations in Census tracts that are identified as overburdened and underserved using the federal Climate and Economic Justice Screening Tool provide some form of notification to residents within a set proximity of the site that a problem has been identified, was self-reported, and is being or has been resolved.

Such a notification could provide these Louisianans with information

on state or local emergency and health services, and allow residents to report any health or environmental problems that could be related to the self-reported violation. This requirement, in addition to potentially increasing trust between the Department and residents of these Census tracts, could also help the Department more accurately assess and verify whether or not a self-reported violation is truly not causing "serious harm to the environment" or "imminent or substantial endangerment to the environment or public health."

FOR/AGAINST: The department acknowledges the comment. Similar to EPA's policy, the terms serious actual harm and imminent or substantial endangerment are not defined. The occurrence of a violation, such as the release of a pollutant, does not automatically equate to serious actual harm to the environment or present an imminent and substantial endangerment to the environment or public health. Defining serious actual harm or imminent substantial endangerment could potentially limit the department's evaluation of violations. The department will take a case-by-case approach to evaluate violations to determine if serious actual harm occurred or if there was an imminent or substantial endangerment to the environment or public health.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 4: Another area of concern is that under proposed provision §7009.D.1, "full environmental audit report should not be submitted to the department unless specifically requested by the department in writing."

We strongly urge the Department to revise this entirely, and instead require that all full environmental audit reports be submitted to the department. Additionally, we recommend that the Department require that all environmental audit reports received as part of the Self-Audit program be made publicly available after the two-year period or after final action has been taken, pursuant to §7009.F.1 and §7009.F.2.

These changes, in addition to enhancing transparency and building trust, are a critical necessity for ensuring that the Self-Audit program can be independently evaluated. While the Department may see this proposed language as a reasonable provision to protect the reputations of business and industry, it will sow significant mistrust and foster concerns that the Self-Audit program could be used to conceal wrongdoing rather than incentivizing problem-solving.

We appreciate the Department's thoroughness in developing these regulations, and hope you will take our recommendations into serious consideration.

FOR/AGAINST: The department acknowledges the comment. Audit Report or Environmental Audit Report is defined in LAC 33:I.7005 as the documented analyses, conclusions, and recommendations resulting from an environmental audit. In LAC 33:I.7009, Program Scope, the department outlines the procedures for conducting a voluntary environmental self-audit. These procedures include, but are not limited to, the Notice of Audit (NOA), the Disclosure of Violation (DOV), and the Corrective Actions. As part of the corrective actions, a final written report must be submitted to the department with the following: 1) NOA form(s); 2) DOV form(s); and 3) certification of completion of all corrective action. The department has created standardized forms that all participants are required to use for the self-audit program. The DOVs require the following information related to violations: 1) the source/location of the violation; 2) a detailed description of the violation; 3) the citation and permit specific requirement/condition; 4) the violation discovery date; 5) the violation start date and end date; 6) a detailed description of the corrective action; 7) the corrective action anticipated completion date; 8) benefit of noncompliance evaluation; and 9) an assessment of the history of a violation, i.e., if a violation is a repeat violation. LAC 33:I.7009.D.1 allows the department to request the full audit report. The department's voluntary environmental self-audit regulations will only grant confidentiality in accordance with the two-year period mandated in La. R.S. 30:2030. The DOVs will be confidential until a final decision is made regarding eligibility for penalty mitigation or a period not to exceed two years after receipt of the initial DOV. The decision regarding penalty mitigation will be posted on the department's public website. All DOVs will subsequently be available to the public in EDMS located under the regulated entity's agency interest (AI) number. If existing rules or regulations require a violation be reported, e.g., a Title V Semiannual Monitoring Report, a Discharge Monitoring Report (DMR), etc., participation in the audit program will not suspend or provide relief from any reporting requirement.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 5: It is difficult to imagine that the reputations of the Department of Natural Resources or the Department of Environmental Quality could

sink any lower than they already are in the State, but these regulations risk causing just that!

In Louisiana, we know that the DNR and DEQ are controlled by polluters and that the health of our citizens means nothing. We are accustomed to indifference on their part. I left my home town of Lake Charles at the age of twenty when I was told I could no longer swim in the lake due to its pollution. I am now eighty, so for sixty years I have witnessed governmental collusion with industry to assure profits to those who do not need them at the expense of those who simply want to live.

A clean Louisiana is possible. You know it. I do not need to tell you, but like those who sold their souls to Satan for a few bucks you do not listen.

I invite you to listen this time.

FOR/AGAINST: The department acknowledges the comment. La. R.S 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 6: Section 7005 A. defines "Audit or Environmental Audit" as a systematic, voluntary evaluation, review, or assessment of compliance with environmental statutes, regulations, permits, and/or permit requirements."

Section 7009 E.1.a. allows 100% reduction in penalties if the violation was systematically discovered through an environmental audit.

Section 7009 E.2. allows a 75% reduction "if all of the conditions in LAC 33:I.7009.E.1. are met except stematic discovery."

According to Webster's Third College Edition Dictionary, the word, "systematic" suggests something that is made or arranged according to a plan, regular, orderly, methodical...

However, the rules don't address the frequency of self audits in order for them to be considered "systematic."

I suggest elaborating on the requirement that the audit be "systematic."

FOR/AGAINST: The department acknowledges the comment. In the context of the regulations, the audit itself is systematic, i.e., planned and conducted in accordance with a plan. Prior to initiating a voluntary environmental audit, a regulated entity must notify the department via the department's standardized Notice of Audit (NOA) form and receive acknowledgement from the department. In addition to the facility information and confidentiality assessment, the following information must be provided specifically related to the audit: 1) date the audit will commence; 2) name of the party performing the audit; 3) identification of the party responsible for environmental compliance; 4) scope of the audit that includes a detailed description of the facility, processes or operations being audited, and audit methodology; 5) the media/divisions affected the audit; and 6) a description of how the audit is above and beyond the reasonable inquiry statutory requirement if the audit will involve an effective Title V (Part 70) permit.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 7: Also, I'm opposed to allowing a 75% reduction in the penalty if the violation was not discovered during a systematic audit. If a violation is not discovered through a systematic audit, then it should not result in any penalty reduction. Otherwise, such a reduction defeats the purpose of the self audit program.

FOR/AGAINST: The department acknowledges the comment. The proposed regulations have nine conditions used to determine eligibility for penalty mitigation. The nine conditions are summarized as follows: 1) systematic discovery; 2) voluntary disclosure; 3) prompt disclosure; 4) independent discovery; 5) correction and remediation; 6) prevent recurrence; 7) no repeat violation; 8) violation is not excluded per regulations; and 9) cooperation. A violation discovered outside the scope of an approved audit will not automatically be ineligible for penalty mitigation. The remaining eight conditions, including discovery, disclosure, and correction, must still be met to be eligible for a 75 percent reduction in penalties. The penalty reduction increments, 75 percent or 100 percent, are consistent with EPA's audit policy.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 8: I am writing to comment on proposed regulation OS101, which will allow industrial companies to voluntarily report their permit violations to LDEQ and limit the fines/fees imposed for violations.

I urge LDEQ require ALL companies to submit full environmental audit reports, not just those officially requested by the agency. The proposed structure will keep the details of permit violations confidential and inhibit Louisiana residents' rights to clean water, clean air, and clean soil. Voluntary and reactive reporting would allow companies to pollute, violate their permits and avoid fees, all while leaving neighboring residents in the dark about it.

Every Louisiana resident should be able to be confident that state agencies are doing everything in their power to ensure their safety and to preserve public health and a livable future. This should be true no matter where they live or what their background is. Trust and effectiveness will be deeply eroded under the proposed structure of confidential self-reporting and auditing of environmental and public health violations. This issue is particularly pressing for communities and residents in closest proximity to industrial sites and who have borne, and continue to bear, the greatest risks from exposures from those violations.

I would like to make the following recommendations as you continue to develop language for OS101:

- The provisions that define whether or not a violation is eligible for the self-audit program are not specific enough. I encourage the LDEQ to provide greater clarity with regard to what constitutes “serious actual harm to the environment” (§7007.A.1), either within these regulations or in future promulgations of departmental rules pertaining to the self-audit program.

FOR/AGAINST: The department acknowledges the comment. Audit Report or Environmental Audit Report is defined in LAC 33:I.7005 as the documented analyses, conclusions, and recommendations resulting from an environmental audit. In LAC 33:I.7009, Program Scope, the department outlines the procedures for conducting a voluntary environmental self-audit. These procedures for conducting a voluntary environmental self-audit. These procedures include, but are not limited to, the Notice of Audit (NOA), the Disclosure of Violation (DOV), and the Corrective Actions. As part of the corrective actions, a final written report must be submitted to the department with the following: 1) NOA form(s); DOV form(s); and 3) certification

of completion of all corrective actions. The department has created standardized forms that all participants are required to use for the self-audit program. The DOVs require the following information related to violations: 1) the source/location of the violation; 2) a detailed description of the violation; 3) the citation and permit specific requirement/conditions; 4) the violation discovery date; 5) the violation start date and end date; 6) a detailed description of the corrective action; 7) the corrective action anticipated completion date; 8) benefit of noncompliance evaluation; and 9) an assessment of the history of a violation, i.e., if a violation is a repeat violation.. LAC 33:I.7009.D.1 allows the department to request the full audit report. The department's voluntary environmental self-audit regulations will only grant confidentiality in accordance with the two-year period mandated in La. R.S. 30:2030. The DOVs will be confidential until a final decision is made regarding eligibility for penalty mitigation or a period not to exceed two years after receipt of the initial DOV. The decision regarding penalty mitigation will be posted on the department's public website. All DOVs will subsequently be available to the public in EDMS located under the regulated entity's agency interest (AI) number. If existing rules or regulations require a violation be report, e.g., a Title V Semiannual Monitoring Report, a Discharge Monitoring Report (DMR), etc., participation in the audit program will not suspend or provide relief from any reporting requirement. Similar to EPA's policy, the term serious actual harm is not defined. The occurrence of a violation, such as the release of a pollutant, does not automatically equate to serious actual harm to the environment. Defining serious actual harm could potentially limit the department's evaluation of violations. The department will take a case-by-case approach to evaluate violations to determine if serious actual harm to the environment occurred.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 9: The Self-Audit program should proactively notify communities identified by the federal government as overburdened and underserved of any nearby self-reported violations to allow residents to report any health or environmental problems that could be related to the violation.

FOR/AGAINST: The department acknowledges the comment. The Electronic Document Management System (EDMS) contains all official records created or received by the department and can be accessed by the public. Self-audit related documents will also be available in EDMS. The Disclosure of Violations (DOVs) will also be available on the

public website.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 10: Proposed provision §7009.D.1, “full environmental audit report should not be submitted to the department unless specifically requested by the department in writing", should also be adjusted. I strongly urge the Department to revise this entirely, and instead require that all full environmental audit reports be submitted to the department.

Lastly, I request that the Department require that all environmental audit reports received as part of the Self-Audit program be made publicly available after the two-year period or after final action has been taken, as required by state law.

Please do your job and protect our future.

FOR/AGAINST: The department acknowledges the comment. Audit Report or Environmental Audit Report is defined in LAC 33:I.7005 as the documented analyses, conclusions, and recommendations resulting from an environmental audit. In LAC 33:I.7009, Program Scope, the department outlines the procedures for conducting a voluntary environmental self-audit. These procedures include, but are not limited to, the Notice of Audit (NOA), the Disclosure of Violation (DOV), and the Corrective Actions. As part of the corrective actions, a final written report must be submitted to the department with the following: 1) NOA form(s); 2) DOV form(s); and 3) certification of completion of all corrective action. The department has created standardized forms that all participants are required to use for the self-audit program. The DOVs require the following information related to violations: 1) the source/location of the violation; 2) a detailed description of the violation; 3) the citation and permit specific requirement/condition; 4) the violation discovery date; 5) the violation start date and end date; 6) a detailed description of the corrective action; 7) the corrective action anticipated completion date; 8) benefit of noncompliance evaluation; and 9) an assessment of the history of a violation, i.e., if a violation is a repeat violation. As stated in the comment, LAC 33:I.7009.D.1 allows the department to request the full audit report. The department’s voluntary environmental self-audit regulation will only grant confidentiality in accordance with the two-year period mandated in La. R.S. 30:2030. The DOVs will be confidential until a final decision is made regarding eligibility for penalty mitigation or a period not to exceed two years after receipt of

the initial DOV. The decision regarding penalty mitigation will be posted on the department's public website. All DOVs will subsequently be available to the public in EDMS located under the regulated entity's agency interest (AI) number. If existing rules or regulations require a violation be reported, e.g., a Title V Semiannual Monitoring Report, a Discharge Monitoring Report (DMR), etc., participation in the audit program will not suspend or provide relief from any reporting requirement.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 11: I believe there should be a clause in the aforementioned proposed regulations that essentially states, in some way, the following: Failure to pay associated fees will result in forfeiture of any percent reduction in penalties or penalty mitigation for violations disclosed through the course of an environmental self-audit.

The current proposed regulations states the following:

1. §7009.E.2: If all of the conditions in LAC 33:I.7009.E.1 are met except systematic discovery, there will be a 75 percent reduction.
2. §7013.C: Failure to pay the additional fee by the due date specified on the invoice will constitute a violation of these regulations and shall subject the person requesting the review to relevant enforcement action under the subtitle.

It would seem that, based on the aforementioned language (#1 and #2 above), even if a person conducted an environmental self-audit, but refused to pay the fees they would still have penalty mitigation. Shouldn't refusal to pay fees result in penalty mitigation forfeiture and enforcement action?

FOR/AGAINST: The department acknowledges the comment. A fee of $1,500 must accompany all Notice of Audit (NOA) forms. The NOA is required to be submitted and approved by the department prior to a regulated entity conducting an audit under the voluntary environmental self-audit program. No forms will be processed without payment. For additional fees that may accrue, there are existing procedures to address failure to pay and a process for recoupment.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 12: Thank you for the opportunity to comment on LDEQ's Voluntary Environmental Self-Audit Program. I am the Director of Policy &

Research at The Water Collaborative of Greater New Orleans and have been a resident of Louisiana for 16 years.
I would like to raise concerns regarding LDEQ's Voluntary Environmental Self-Audit Program.

1. Voluntary self-auditing allows audits to be biased, include errors, and result in misinformation, and indicates that regulated facilities are not required to report known violations.

2. Confidentiality of reported violations until a decision is made or "a period not to exceed two years from the receipt of the initial disclosure of violation" is grossly negligent.

FOR/AGAINST: The department acknowledges the comment. The department's voluntary environmental self-audit regulations will only grant confidentiality in accordance with the two-year period mandated in La. R.S. 30:2030. Disclosure of violation(s) or other documentation containing the results of a voluntary environmental audit shall be held confidential until a final decisions is made, or a period not to exceed two years from receipt of the initial disclosure of violation. All DOVs will subsequently be available to the public in EDMS located under the regulated entity's agency interest (AI) number.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 13: While LDEQ's assessment that self-auditing could lead to a reduction in prolonged violations, the ability for a regulated facility to voluntarily report violations for a 100% or 75% reduction in penalties misses the mark. A lack of frequent facility inspections by LDEQ, in some cases up to 3 years, allows violations to go unnoticed and without proper enforcement and mitigation for an extended period. If a regulated facility assumes it can clean up known violations without reporting them to LDEQ, the facility can avoid not only penalty fees but any required payments to LDEQ to evaluate the self-audit. As a result, violations that may harm or otherwise adversely impact the environment or public health will remain unnoticed.

Further, a 100% or 75% reduction in penalty fees for self-reported violations decreases funding available for LDEQ to ensure that long-term and residual effects from violations can be dealt with. Nor does a reduction in penalty fees help to cover extended costs to communities impacted by violations. For example, a violation that taints drinking water sources may result in residents having to buy bottled water and utilities having to increase costs for drinking water

treatment; none of which the facility in violation is held financially responsible.

In addition, LDEQ's ability to intentionally withhold information from the public on violations that may harm or otherwise adversely impact community members undermines the public's right to know and abuses the powers of the Emergency Planning and Community Right-to-Know Act (EPCRA). If violations are not publicly disclosed in a reasonable timeframe, LDEQ risks the public health of all Louisiana residents.

In summary, voluntary self-reporting of violations and LDEQ's ability to keep those violations private for up to two years does not protect the residents of Louisiana or our environment. LDEQ has a responsibility to safeguard Louisiana's residents from water pollution, air pollution, and land pollution caused by industrial negligence. LDEQ should, instead, oversee efforts to support staffing and other resources needed to monitor and complete annual inspections of all regulated facilities and publicly disclose data in a timely manner.

FOR/AGAINST: The department acknowledges the comment. The proposed regulations have nine conditions used to determine eligibility for penalty mitigation. The nine conditions are summarized as follows: 1) systematic discovery; 2) voluntary disclosure; 3) prompt disclosure; 4) independent discovery; 5) correction and remediation; 6) prevent recurrence; 7) no repeat violation; 8) violation is not excluded per regulations; and 9) cooperation. Failure to systemically discover a violation through an environmental audit will not make a violation ineligible for penalty reduction. The remaining eight conditions, including discovery, disclosure, and correction, must be met to be eligible for any form of mitigation. The penalty reduction increments, 75 percent or 100 percent, are consistent with EPA's audit policy. Participation in the self-audit program will not alleviate the department's obligation to conduct mandatory inspections, decrease inspection frequencies, or eliminate complaint investigations. Unauthorized discharges, i.e., incidents, have stringent federal and state notification and reporting requirements. LAC 33:I.Chapter 39 requires verbal notification and written reports as applicable. Those notifications and reports are publicly available in EDMS. In order to participate in the voluntary environmental self-audit program, a regulated entity must submit a Notice of Audit (NOA) form and receive written acknowledgement from the department. The notification and reporting requirements for unauthorized discharges automatically exclude unauthorized

discharges/incidents from being eligible for the audit program. The review process will ensure unauthorized discharges/incidents are not erroneously included in the disclosure of violations. Mandatory fees, such as those collected under the authority of La. R.S 30:2014.B to provide for monitoring, investigation, etc., will not be affected by the audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 14: My name is Barbara Washington and I have been a lifelong resident of St. James Parish for the past 72 years. I am on the front line of 24 petrochemical and industrial facilities and 17 of these facilities are emitting carcinogenic pollutants and particle matter that have a cumulative effect on our health. Air travels and anywhere in St. James Parish is a threat to our health and the environment.

I have witnessed so many of my relatives and friends die of cancer and suffering complication from respiratory problems and recovering from Breast Cancer. Studies have shown that toxic air pollution contributes to Louisiana's high cancer burden.

Our community was poisoned for 6 years without any reporting of sulfide acid mist and hydrogen sulfide and when found out was given a fine to keep polluting. In the meanwhile, over 10 residents died from cancer.

We demand as residents on the front line of Cancer Alley with no buffer zone to know what we are breathing and making us sick.

How can we trust Industry to self-audit when they refuse to tell us what they are emitting into the air daily.

LDEQ, Please take a humanitarian look at what is going on in St. James Parish and the State of Louisiana, that has been deemed, *CANCER ALLEY*.

Do not give Industry a clear path to keep killing us. Do not allow them to voluntarily report.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 15: I think there are some very serious issues with proposed regulation OS101. I do not think the State has at all made clear the case for allowing industry to self report violations or for allowing industry to keep the details of the violations from the public. This looks a lot like LDEQ shirking their duties to protect the people of Louisiana.

I support the recommendations made by the Alliance for Affordable Energy. The entire concept of voluntary self-audits is absurd and absolutely reeks of corporate influence.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 16: My name is Jade Woods, and I am a resident of West Baton Rouge Parish. I write to express my concerns about LDEQ's voluntary environmental self-audit program. It is unconscionable that permit violations not be shared with the surrounding affected communities. Potential violations put Louisiana's residents' health at risk especially given there is no apparatus to assess cumulative environmental or health impacts. Residents could potentially be exposed time and time again to health risks without their knowledge or consent.

I invite you to:
1. Notify nearby communities self-reported violations

FOR/AGAINST: The department acknowledges the comment. After a final decision is made regarding the voluntary self-audit or after a period of two years from receipt of the initial disclosure of violation, whichever occurs first, the violations will be available in EDMS. EDMS contains all official records created or received by the department and can be accessed by the public. Self-audit related documents will also be available in EDMS.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 17: 2. Provide greater clarity as to what is meant by "serious actual harm

to the environment

FOR/AGAINST: The department acknowledges the comment. Similar to EPA's policy, the term serious actual harm is not defined. The occurrence of a violation, such as the release of a pollutant, does not automatically equate to serious actual harm to the environment. Defining serious actual harm to the environment could potentially limit the department's evaluation of violations. The department will take a case-by-case approach to evaluate violations to determine if serious actual harm occurred or if there was an imminent or substantial endangerment to the environment or public health.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 18: 3. Require that full environmental audits as part of the Self-Audit Program be made available and easily accessible to the public.

FOR/AGAINST: The department acknowledges the comment. Audit Report or Environmental Audit Report is defined in LAC 33:I.7005 as the documented analyses, conclusions, and recommendations resulting from an environmental audit. In LAC 33:I.7009, Program Scope, the department outlines the procedures for conducting a voluntary environmental self-audit. These procedures include, but are not limited to, the Notice of Audit (NOA), the Disclosure of Violation (DOV), and Corrective Actions. As part of the corrective actions, a final written report must be submitted to the department with the following: 1) NOA form(s); 2) DOV form(s); and 3) certification of completion of all corrective action. The department has created standardized forms that all participants are required to use for the self-audit program. The DOVs require the following information related to violations: 1) the source/location of the violation; 2) a detailed description of the violation; 3) the citation and permit specific requirement/condition; 4) the violation discovery date; 5) the violation start date and end date; 6) a detailed description of the corrective action; 7) the corrective action anticipated completion date; 8) benefit of noncompliance evaluation; and 9) an assessment of the history of a violation, i.e., if a violation is a repeat violation. Per LAC 33:I.7009.D.1, the department can request the full audit report in writing. The department's voluntary environmental self-audit regulations will only grant confidentiality in accordance with the two-year period mandated in La. R.S. 30:2030. The DOVs will be confidential until a final decision is made regarding eligibility for penalty mitigation or a period not to exceed two years after receipt of

the initial DOV. The decision regarding penalty mitigation will be posted on the department's public website. All DOVs will subsequently be available to the public in EDMS located under the regulated entity's agency interest (AI) number. If existing rules or regulations require a violation be reported, e.g., a Title V Semiannual Monitoring Report, a Discharge Monitoring Report (DMR), etc., participation in the audit program will not suspend or provide relief from any reporting requirement.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 19: Chemical plants should not be allowed for self auditing. It is very critical that we know what we are breathing and what's in the water. This is unacceptable for any permit violation to remain confidential from affected residents. There is no program to evaluate cumulative environmental or health impacts, any potential violation poses a risk of serious harm to the environment and fence line residents.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program. The department's voluntary environmental self-audit regulations will only grant confidentiality in accordance with the two-year period mandated in La. R.S. 30:2030. The DOVs will be confidential until a final decision is made regarding eligibility for penalty mitigation or a period not to exceed two years after receipt of the initial DOV. The decisions regarding penalty mitigation will be posted on the department's public website. All DOVs will subsequently be available to the public in EDMS located under the regulated entity's agency interest (AI) number. The occurrence of a violation, such as the release of a pollutant, does not automatically equate to serious actual harm to the environment or present an imminent and substantial endangerment to the environment or public health. The department will take a case-by-case approach to evaluate violations to determine if serious actual harm occurred or if there was an imminent or substantial endangerment to the environment or public health.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 20: I have several serious concerns about the proposed regulation OS101.“Firstly, there is no concrete definition of what constitutes “environmental harm”. It would improve the proposed regulation

greatly if “environmental harm” was better defined, otherwise, companies that have had issues in the past could try to claim that they haven’t actually caused any “environmental harm”.

FOR/AGAINST: The department acknowledges the comment. The department will take a case-by-case approach to evaluate violations to determine if environmental harm occurred as a result of the reported violation.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 21: There is not enough attention or concern in the proposed regulation for health of Louisianans. As a citizen with asthma, it concerns me greatly that after meeting poorly defined criteria, companies might be able to theoretically pollute as much as they want, and there would be no way to find out about any pollutants, and what areas they might be concentrated in.

There seems to be overall no incentive for industry to be truthful in their reports. I don’t think it would place a huge burden on industry to have third party unbiased testing, or at least define the terms in the proposed regulation better, and make the reports publically available.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program. The audit program will require a regulated entity’s responsible official to certify the truthfulness, accuracy, and completeness of information submitted to the department in the form of a certification statement.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 22: The front line communities has been use[d] as killing fields for profit long enough. Making it easier for industrial environmental polluters to violate we the people[‘s] rights to clean air, water, soil and not have to report violations is a crime in itself.

Without mandatory fence line monitoring of industrial facilities, it is more gravely necessary, vitally important for DEQ to protect the vulnerable people, not the profiteering, polluting industrial facilities.

For decades black and brown people communities has been

subjected to institutional racism, by others seeking wealth, superficial power, no more, no more.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 23: Self-auditing is an inherently contradictory term. Even those with the best intentions often rationalize away certain mistakes, and those with bad intentions can use self-auditing to intentionally hide their misdeeds. It is LDEQ's responsibility to provide oversight, and is must take an active, rather than a passive, role in fulfilling that responsibility. Therefore, I am asking your department not to paper over Louisiana's long-running systematic problems with pollution and environmental degradation by passing the buck on its responsibilities. Please reject the inherently conflicted idea of self audits.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 24: Please make the rules around the self auditing program as stringent as possible.

1. The lack of clear definitions used in the ruling is concerning. What qualifies as serious harm or other violations?

FOR/AGAINST: The department acknowledges the comment. Similar to EPA's policy, the term serious harm is not defined. The occurrence of a violation, such as the release of a pollutant, does not automatically equate to serious actual harm to the environment or present an imminent and substantial endangerment to the environment or public health. Defining serious actual harm or imminent substantial endangerment could potentially limit the department's evaluation of violations. The department will take a case-by-case approach to evaluate violations to determine if serious actual harm occurred or if

there was an imminent or substantial endangerment to the environment or public health.

RESPONSE: The department will not make any changes to the regulatory text.

COMMENT 25: 2. How will LDEQ's budget be impacted?

FOR/AGAINST: The department acknowledges the comment. The Environmental Trust Account established under La. R.S. 30:2015 was created to insure all funds generated by the department are used to fulfill and carry out its powers, duties, and functions as provided by law. The fiscal note submitted in conjunction with House Bill 510 of the 2019 Regular Legislative Session reported the net impact of a voluntary audit program on revenue collections to the Environmental Trust Fund will be indeterminable. All sums in excess of that required to fully fund the Hazardous Waste Site Cleanup Fund recovered through judgements, settlements, or assess of civil or criminal penalties are allocated to the Environmental Trust Account. The department is not entirely funded by fines and fees. A component of the voluntary environmental self-audit program is penalty mitigation. La. R.S. 30:2044 and LAC 33:I.7013 establish a fee of $1,500 for the audit program and mechanism to recoup additional costs associated with the program. LAC 33:I.7009.E.4 reserves the department's right to collect any monetary benefits realized through noncompliance. Mandatory fees, such as those collected under the authority of La. R.S 30:2014.B to provide for monitoring, investigation, etc., will not be affected by the audit program. The department will continue to issue enforcement actions and pursue civil penalties in accordance with the Louisiana Environmental Quality Act (LEQA).

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 26: 3. What happens when the corrective action is not mutually understood by company and LDEQ?

FOR/AGAINST: The department acknowledges the comment. Proposed corrective actions require concurrence from the department. Completion of corrective actions is a condition of penalty mitigation. Per LAC 33:I.7009.C.1.d, failure to notify, implement, and/or complete all proposed corrective actions shall be considered a violation and subject to the appropriate enforcement action.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 27: Please accept this supplement to the comments I submitted May 3, 2023, on the Department's proposed system for environmental degraders to Self-Audit.

In reading material I had not reviewed prior to sending the original comment letter I have found more things that make me increasingly-concerned that the Self-Audit plan is not a legitimate way for LDEQ to protect the public.

I went to the Louisiana Register, Volume 49, No. 8, June 20, 2023, pages 1148-1152. In that publication of the proposed new rules I saw:

· Page 1150: Says that a polluter should not submit the full environmental audit report to the department. That raises a possibility that something withheld might have provided a greater depth of understanding a situation. The logic for leaving things out seems to favor degraders, not the public.

· Page 1152: A Fiscal and Economic Impact Statement for Administrative Rules: Voluntary Environmental Self-Audit - seems to declare that each year the cost to the Department for Staffing and Administration of the program will be $1,256,616. That is supposed to be offset by a $1,500 buy-in fee that would give participating polluters a chance to get 100% forgiveness of any potential penalties. As I calculate things, each year 837 different facilities would have to come forward confessing a violation in order to let the Department break even administering the plan. To me it seems highly unlikely that 837 different violators will self-confess each year. If there really is such widespread non-compliance then LDEQ needs to greatly increase its number of field agents and fiercely back them up when they try to get scofflaws to stay within permit limits.

· Page 1148: The Department is claiming that *no report regarding environmental/health benefits and social/economic costs is required* because of an exception listed in R.S. 30:202019(D)(2) and R.S. 49:963.(B)(3). The only relevant thing I found in those Revised Statutes was the unlikely possibility that the Louisiana Plan is identical to a Federal Plan. **IF** any Federal Plan contains problems such as I pointed out in my May 30,2023 comment letter then such a plan is unworkable in Louisiana and would be contrary to proper protection of public health and environmental quality.

{{Here are the sections of the Louisiana Revised Statutes that you would use to avoid considering environmental/health benefits and social/economic costs:

(2) Subparagraph (1)(b) of this Subsection shall not apply to any rule that meets any of the following criteria:
(a) Is required for compliance with a federal law or regulate
(b) Is identical to a federal law or regulation applicable in Louisiana.
(c) Will cost the state and affected persons less than one million dollars, in the aggregate, to implement.
(d) Is an emergency rule under R.S. 49:962. And
3) This provision shall not apply in those cases where the policy, standard, or regulation meets one or more of the following criteria:

(a) Is required for compliance with a federal law or regulation.
(b) Is identical to a federal law or regulation applicable in Louisiana.
(c) Will cost the state and affected persons less than one million dollars, in the aggregate, to implement.
(d) Is an emergency rule under R.S. 49:962.
(4) For purposes of this Subsection, the term "identical" shall mean that the proposed rule has the same content and meaning as the corresponding federal law or regulation.
(5) In complying with this Section, the department shall consider any scientific and economic studies or data timely provided by interested parties which are relevant to the issues addressed and the proposed policy, standard, or regulation being considered.}}

PLEASE do not continue being an enabler for public damages. Do NOT proceed with the Self-Audit Plan.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program. Per LAC 33:I.7009.D.1, the department can request the full audit report in writing. The Environmental Trust Account established under La. R.S. 30:2015 was created to insure all funds generated by the department are used to fulfill and carry out its powers, duties, and functions as provided by law. The fiscal note submitted in conjunction with House Bill 510 of the 2019 Regular Legislative Session reported the net impact of a voluntary audit program on revenue collections to the Environmental Trust Fund will be indeterminable. All sums in excess of that required to fully fund the Hazardous Waste Site Cleanup Fund recovered through judgements, settlements, or assess of civil or criminal penalties are allocated to the Environmental Trust Account. The department is not entirely funded by fines and fees. A component of the voluntary environmental self-audit program is penalty mitigation. La. R.S. 30:2044 and LAC 33:I.7013 establish a fee of $1,500 for the audit program and mechanism to recoup additional costs associated with the program. LAC 33:I.7009.E.4 reserves the department's right to collect any monetary benefits realized through noncompliance. Mandatory fees, such as those collected under the authority of

La. R.S 30:2014.B to provide for monitoring, investigation, etc., will not be affected by the audit program. The department will continue to issue enforcement actions and pursue civil penalties in accordance with the LEQA.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 28: **General Comments**

LEUEG supports LDEQ's proposed voluntary environmental self-audit program. The proposed rulemaking is the culmination of a long review by LDEQ and numerous industry and public interest stakeholders. As noted in the draft rule, the proposed voluntary environmental self-audit program is authorized by La. R.S. 30:2044. Prior to this statutory authorization, the Louisiana Legislature requested that LDEQ conduct a study of the scope and content of a potential self-audit program in Louisiana and review programs implemented by the U.S. Environmental Protection Agency ("EPA") and other states. In response to House Resolution No. 231 by the Louisiana Legislature, LDEQ held a series of public meetings in 2019 concerning the scope of a potential self-audit program in Louisiana. These meetings were well-attended by LDEQ staff, industry stakeholders and other public participants. The Louisiana Legislature subsequently passed Act 481 in the 2021 Legislative Session, which enacted the current statute in La. R.S. 30:2044, entitled "Voluntary environmental self-audits." LDEQ's proposed regulations in OS101 fulfill the intent of the legislative mandate set forth in La. R.S. 30:2044, including prescribed procedures, incentives, corrective actions, and exclusions from the program. LDEQ received adequate input concerning the program from the Louisiana Legislature and various stakeholder groups prior to publishing this proposed rulemaking. LEUEG believes a voluntary environmental self-audit program will benefit the state by enhancing environmental protection within Louisiana. EPA and numerous other states (approximately 30) currently have similar programs. For this reason, the promulgation of LAC 33:I.Chapter 70 should not be further delayed. Although LEUEG believes LDEQ should modify, explain and/or improve certain sections of the proposed rule (as discussed in the Specific Comments section below), LEUEG overall supports the Voluntary Environmental Self-Audit Regulations and believes LDEQ has complied with its statutory mandate.

FOR/AGAINST: No argument is necessary; the comment does not suggest amendment or change.

RESPONSE: No response is necessary.

COMMENT 29: **Specific Comments**

Comment 1: LDEQ should remove the phrase "judicial or administrative order, or consent agreement" from the definition of "violation" in LAC 33:I..7005.

In the proposed rule, LDEQ has defined certain terms in LAC 33:I.7005.A, including "Audit or Environmental Audit" and "Violation." "Audit or Environmental Audit" is defined to mean "a systematic voluntary evaluation, review, or assessment of compliance with environmental statutes, regulations, permits, and/or permit requirements." "Violation" is defined to mean "noncompliance with a requirement of a statute, regulation, permit, judicial or administrative order, or consent agreement." (Emphasis added). To avoid potential confusion in the rule, LEUEG requests that LDEQ remove the phrase "judicial or administrative order, or consent agreement" from the definition of violation, or alternatively add this phrase to the definition of "Audit or Environmental Audit." If LDEQ's intent is to exclude requirements set forth in Administrative Orders on Consent ("AOC") Agreements and federal and state Consent Orders from the scope of voluntary self-audits, then LDEQ should not reference these types of agreements in the definition of "Violation," a definition that is specific to LAC 33:I.Chapter 70. Alternatively, if LDEQ intended to allow such actions to be included in environmental self-audits, then it should be added to the definition for "Audit or Environmental Audit." LDEQ should similarly amend the penalty mitigation section in LAC 33:I.7009.E.1.b. LEUEG requests that LDEQ make this change for consistency within the program and to avoid confusion.

FOR/AGAINST: The department acknowledges the comment. Participation in the self-audit program does not supersede or suspend the applicability or authority of any judicial or administrative order or consent agreement. This language is consistent with EPA's audit policy as well as the audit regulations and/or policies of other states.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 30: ***Comment 2: LDEQ should remove the exclusion in LAC 33:I..7007.A.5 related to chemical accident prevention in the final rule.***

LDEQ's proposed rule includes a list of exclusions from the proposed voluntary environmental self-audit program. Specifically, LAC 33:I.7007.A states that certain enumerated violations "are not eligible for relief under this program." The exclusions in Section 7007.A.1-4 are mandated by statute. See, La. R.S. 30:2044.A.1-4. LDEQ has also properly excluded "deliberate or intentional" violations from the self-audit program. However, requirements that are "subject to the chemical accident prevention provisions of 40 CFR Part 68 and LAC 33:III.5901" are not prohibited by La. R.S. 30:2044 and should be included in this program. The Risk Management Program ("RMP") set forth in 40 CFR Part 68 and LDEQ's similar program in LAC 33:III.5901 should be included within the scope of Louisiana's selfaudit program as currently allowed in EPA's policy and by numerous other states. LDEQ has not provided a justification for this exclusion and LEUEG believes the inclusion of the RMP program furthers with the statutory and regulatory goals of the proposed rule. For this reason, LEUEG requests that LDEQ remove the exclusion in proposed LAC 33:I.7007.A.5 from the final rule.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 directs the secretary to promulgate rules and regulations for a voluntary environmental self-audit program in accordance with the Administrative Procedure Act to identify violations that are not eligible for relief under this program. La. R.S. 30:2044 does not provide an exhaustive list of violations that shall be excluded from the program. The department is not explicitly prohibited from including Chemical Accident Prevention Provisions (CAPP)/Risk Management Program (RMP) violations in the list of violations excluded for relief under the self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 31: ***Comment 3: LDEQ should amend LAC 33:I..7007.A.7 related to findings that are the "same or closely related" or provide additional explanation in guidance. LDEQ should also amend LAC 33:I.7007.C.2.***

LDEQ's proposed list of exclusions from the program includes LAC 33:I.7007.A.7 that excludes violations "that are the same or closely related at the same facility within the past three years." LEUEG requests that LDEQ provide additional explanation of the phrase "same or closely related" in its Response to Comments or a stand-alone guidance document associated with the proposed rule.

As written, the phrase is ambiguous and could lead to confusion concerning which audit findings that are eligible for penalty mitigation in LAC 33:I.7009.E. Proposed LAC 33:I.7007.C.2 states that LDEQ may take enforcement for violations that are "not properly or adequately disclosed and/or corrected in accordance with this Chapter." (Emphasis added). For clarity and simplicity, LDEQ should revise Section 7007.C.2 to state: "is not disclosed and/or corrected in accordance with this Chapter."

FOR/AGAINST: The department acknowledges the comment. The department's mission is to provide service to the people of Louisiana through comprehensive environmental protection in order to promote and protect health, safety and welfare. The purpose of a voluntary environmental self-audit program is to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, disclose, correct, and prevent violations. La. R.S. 30:2044 not only requires the department to establish a voluntary environmental self-audit program, but to identify violations that are not eligible for relief under the program. LAC 33:I.7007.A.7 states violations that are the same or closely related at the same facility within the past three years as being ineligible for relief under the audit program. The department will evaluate all violations to determine the existence of a pattern and the failure to implement appropriate corrective actions to prevent the recurrence of the same or closely related violations at a facility. The department will continue to evaluate future suggested revisions that would enhance the implementation of the program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 32: ***Comment 4: LDEQ should change the phrase "date of discovery" to "completion of the audit as required by LAC 33:I..7009.A.3 and 7009.B" in the corrective action section of the final rule. LDEQ should also change the phrase "date of discovery" to "after completion of the audit" in the penalty mitigation section of the final rule.***

LDEQ's proposed rule includes corrective action and penalty mitigation provisions. Specifically, LAC 33:I.7009.C.1 states: "Corrective actions must be completed within 90 calendar days from the date of discovery of the violation unless a specific period is required by statute, regulation, or permit requirement." (Emphasis added) LAC 33:I.7009.E.1.c further provides nine conditions that must be satisfied for a reduction in penalty, including "The violation

was disclosed in writing with 45 calendar days after discovery, unless an existing law or regulation required disclosure in fewer than 45 calendar days." (Emphasis added). To avoid confusion by the regulated community and LDEQ, the Department should mark deadlines for corrective actions and penalty mitigation from completion of the audit, not the date that a violation is "discovered" during an audit. The completion of the relevant audit will provide a specific and clear date that will trigger the 90 days allowed for corrective action and the 45 days allowed for written disclosure related to penalty mitigation. LEUEG also requests that LDEQ change the deadline in LAC 33:I.7009.E.1.c from 45 days to 60 days to provide the regulatory community sufficient time to submit a written report to the Department.

FOR/AGAINST: The department acknowledges the comment. LAC 33:I.7009.E.1.e requires a violation be corrected as expeditiously as possible but no later than 90 calendar days from the date of discovery unless an extension or compliance schedule is approved by the department. Timely completion of corrective actions is one of the major components of penalty mitigation. Receiving disclosures and proposed corrective actions prior to the completion of an audit provides sufficient notice of the violations and allows the department an opportunity to review and respond to the proposed corrective actions. EPA as well as other states have timeframes in place to complete corrective actions prior to completion of the audit.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 33: ***Comment 5: LDEQ should remove the phase "a third-party complaint has been filed" from LAC 33:I.7009.E.1.d.iii. in the final rule.***

LDEQ's proposed rule includes a provision that violations must be "independently discovered and identified" prior to discovery by the Department or through information received from third parties. LAC 33:I.7009.E.1.d requires that violations are "independently discovered and identified before the department would have identified the problem either through its investigation or through information from a third party." Section 7009.E.1.d includes a list of when "discovery and disclosure" is not considered independent, including when "a third-party complaint has been filed." Although "independent discovery" is typically one element in voluntary environmental self-audit programs, LEUEG does not believe it should extend to undefined "third party complaints." LDEQ fails to

state in the proposed rule how third-party complaints must be filed or even whether they must be filed with LDEQ. Unlike LDEQ or EPA inspections or even notices of citizen suits, the "filing" of a "third party complaint" is vague and may not be disclosed to the entity conducting the audit or LDEQ. Allowing any type of "third-party complaint" to disqualify an otherwise valid audit finding may also lead to unintended consequences and abuse by third-party complainants. For this reason, LEUEG requests that LDEQ remove LAC 33:I.7009.E.1.d.iii from the final rule.

FOR/AGAINST: The department acknowledges the comment. The use of third party is consistent with EPA's audit policy as well as the audit regulations and/or policies of other states. Third party complaints will not automatically exclude a violation from the audit program. The department will continue to conduct all complaint investigations and compliance evaluations as required. Third party complaints will be limited to those received by the department.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 34: ***Comment 6: LEUEG supports the new owner provisions in LAC 33:I.7011.***

LEUEG supports the new owner provisions set forth in proposed LAC 33:I.7011. This section will allow owners a reasonable period to assess environmental compliance at newly acquired assets and disclose such findings to LDEQ in a timely manner. New owner audits are currently allowed by EPA and numerous other states and provide for the timely correction and remediation of findings. For this reason, LEUEG believes the voluntary environmental self-audit program should be applicable to facilities transferred to new owners.

FOR/AGAINST: No argument is necessary; the comment does not suggest amendment or change.

RESPONSE: No response is necessary.

COMMENT 35: **LDEQ must create scientifically sound definitions to solve the statue's vague language**

First, §7007.A.1 states that violations that cause "serious actual harm to the environment" are not eligible for self-audit. However, the statutory language fails to define the term "serious actual harm to the environment," and additionally fails to state whether LDEQ or the

polluter determines what constitutes “serious actual harm to the environment.” Similarly, “imminent or substantial endangerment to the environment or public health” is undefined. LDEQ has not explained if it will issue policy or rules that will define these terms using scientific and public health standards, or if it will determine what constitutes “serious actual harm” or “imminent or substantial endangerment” on a case by case basis. As is written, a facility operator is disincentivized from reporting serious release incidents through normal pathways and has financial benefit in trying to utilize the audit program. For example, since §7009.A.3 allows for at least six months to complete an audit, a facility could report an explosion or other release incident as a “disclosure of violation.” How closely will LDEQ look at a facility’s claim that an incident did not present “serious actual harm to the environment?” And since the audit process is closed to the public, how can scientists, community members, and other interested parties analyze the claim for themselves? LDEQ would have to spend time and resources after the fact determining whether the release caused “serious actual harm.” In the meantime, the incident reported under the audit would not be released to the public. The operator is the only party who benefits from a release event, since they even get to pay a reduced penalty. Additionally, in creating its definitions of “serious actual harm to the environment” and “imminent or substantial endangerment to the environment or public health,” LDEQ should create a list of chemicals that, if released, automatically disqualify a facility from using the audit process. This list should consist of any chemical which is listed on the EPA’s “List of Lists,” which consolidates chemicals listed in the Emergency Planning and Community Right-To-Know Act (EPCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and Section 112(r) of the Clean Air Act (CAA). Under the Public Trust Doctrine, the public has the right to know if ethylene oxide, chloroprene, chlorine, or other chemicals with acute and severe potential health effects have been released in their community. The recent explosion at Dow Plaquemine underlines that Louisiana citizens cannot rely on communications from the industry for our public safety. Dow consistently stated that there were no detectable air hazards, but said nothing about the ethylene oxide that was detected in water outfalls or about the “ongoing” nature of the ethylene oxide releases that they submitted to LDEQ (see below).

Similarly, during Hurricane Ida, Cornerstone Chemical Company issued a press release on August 31 that stated that there was no “environmental release” during the storm, only for the EPA to conclude on September 9th that 7000 pounds of ammonia and

unknown quantities of sulfur dioxide had been released.2 A facility operator may, under the current statutory language, wish to report all its harmful releases under the audit program in the hopes that the vague language will be to its benefit. There is a good chance, then, that a truly serious harm to the environment will be swept under the rug through the statute's chilling effect on the public's right to know violations reported under the audit procedure. Additionally, §7007.E.1.d.iii does not define a "third party complaint." Many citizens report foul odors, physical symptoms, and late night release incidents to LDEQ, which due to staffing or remote location are oftentimes inspected hours or even days after the complaints. Would a citizen report made to LDEQ of a rotten egg smell one day before an small explosion in a sulfur dioxide emitting unit qualify as a "third party complaint" and thus bar the operator from utilizing the audit program? What if LDEQ has not yet been out to the site to investigate- has there still been a third party complaint? Would complaints made to agencies such as DNR or the Army Corps about activities that fall under their respective purviews qualify as third party complaints? If so, how does LDEQ intend to communicate between these agencies to track possible third party complaints? LDEQ should create a database that draws from past complaints to catalog facilities into "infrequent," "frequent," and "chronic" generators of complaints. Facilities that fall into the "chronic" category should be barred from the audit program entirely. Facilities that fall into the "frequent" category should have the burden of proof to show that there were no complaints made by proving a lack of complaints across all permit granting authorities.

FOR/AGAINST: The department acknowledges the comment. Participation in the self-audit program will not alleviate the department's obligation to conduct mandatory inspections, decrease inspection frequencies, or eliminate complaint investigations. Unauthorized discharges, i.e., incidents, have stringent federal and state notification and reporting requirements. LAC 33:I.Chapter 39 requires verbal notification and written reports as applicable. Those notifications and reports are publicly available in EDMS. In order to participate in the voluntary environmental self-audit program, a regulated entity must submit a Notice of Audit (NOA) form and receive written acknowledgement from the department. The notification and reporting requirements for unauthorized discharges automatically exclude unauthorized discharges/incidents from being eligible for the audit program. The review process will ensure unauthorized discharges/incidents are not erroneously included in the disclosure of violations. Similar to EPA's policy, the terms serious actual harm and imminent or substantial endangerment are not defined. The occurrence of a violation, such

as the release of a pollutant, does not automatically equate to serious actual harm to the environment or present an imminent and substantial endangerment to the environment or public health. Defining serious actual harm or imminent substantial endangerment could potentially limit the department's evaluation of violations. The department will take a case-by-case approach to evaluate violations to determine if serious actual harm occurred or if there was an imminent or substantial endangerment to the environment or public health. The use of third party is consistent with EPA's audit policy as well as the audit regulations and/or policies of other states. Third party complaints will not automatically exclude a violation from the audit program. The department will continue to conduct all complaint investigations and compliance evaluations as required. Third party complaints will be limited to those received by the department.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 36: **Existing shortfalls in federal and state environmental rules can be addressed with LDEQ's policy actions.**

As of August 2, 2023, EPA has not yet released its final rule on the Safer Communities by Chemical Accident Prevention (SCCAP), which is designed to remedy some of the existing shortcomings in federal and state environmental law as to hurricane related releases. LDEQ should closely analyze the final rule and determine where gaps continue to exist for the unique landscape of Louisiana. To save on state resources and to promote efficiency, LDEQ must wait until EPA releases the final rule, rather than modify its proposed audit procedures after the fact to comport with the requirements of the rule. In its Proposed Rule for SCCAP, EPA stated that EPA is concerned that air monitoring and control equipment is often removed from service before natural disasters to potentially prevent damage to equipment or, conceivably in some cases, evade monitoring requirements and therefore may not become operational again until much later, after the event or threat has passed. To prevent accidents, RMP owners or operators are required to develop a program that includes monitoring for accidental releases. EPA does not believe natural disasters should be treated as an exception to this requirement. A large-scale natural disaster may threaten multiple RMP facilities in a community simultaneously, leaving communities to endure the direct effects of a natural disaster without receiving warning of associated chemical releases. EPA wants to ensure RMP-regulated substances at covered processes are continually being monitored so that potential exposure to chemical substances

can be measured during and following a natural disaster." These proposed changes will certainly result in new regulation that requires RMP operators to ensure continuous air monitoring after an emergency event. However, as currently written, there is nothing that prevents the audit process being used to self-report emissions during hurricanes or other events. Facility operators will therefore have a lighter burden at the state level; while SCCAP will require them to develop and implement plans to keep their air monitoring running during emergency events, any emissions could go unreported to the state. The aftermath of Hurricane Ida showed how the current gaps in enforcement and reporting result in citizens having to deal with not only storm recovery, but being exposed to unknown chemicals during flaring and other release events. Shell Norco flared heavy black smoke for days, and a lack of power and lack of deployment of LDEQ mobile monitoring meant that the community had no idea what was in their air. SCCAP is addressing these issues, and LDEQ must delay implementation of its audit program in order to harmonize with the efforts being taken at EPA to address the serious problem of hurricane related releases.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program. La. R.S 30:2044 requires the audit program provide for the following: 1) procedures for conducting voluntary environmental self-audits; 2) submission of the results of voluntary environmental self-audits; 3) incentives in the form of reduction or elimination, or both, of civil penalties for violations disclosed to the department in a voluntary environmental self-audit; 4) corrective action for violations discovered as a results of a voluntary environmental self-audit; 5) submission to the department of the plans to correct violations discovered during a voluntary environmental audit; and 6) a fee for reviewing voluntary environmental self-audit reports and actions taken to correct the violations reported. Violations that are subject to the chemical accident prevention provisions of 40 CFR Part 68 and LAC 33:III.5901 are not eligible for relief under the program as stated in LAC 33:I.7007.A.5. The department incorporates 40 CFR Part 68 by reference in LAC 33:III.5901. Any changes or revisions to 40 CFR Part 68 will be incorporated through the normal processes.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 37: **I. Background**

a. Legislative Action

In 2019, the Louisiana Legislature directed the Department to study the establishment of a self-audit program for regulated industries and to submit a report to the House Committee on Natural Resources and Environment on the Department's findings. In support of this effort, in August, September, and October of 2019, the Department advertised and hosted four listening sessions attended by industry and community stakeholders. In connection with the listening sessions, LDEQ solicited comments. LCA submitted comments, a copy of which is attached and parts of which are incorporated herein as they apply equally. As a result, in 2021, the Legislature passed Louisiana Revised Statute 30:2044 entitled "Voluntary environmental self-audits." The Legislature also made corresponding amendments to La. R.S. 30:2030 on confidentiality. Section 2044 states that: "the [LDEQ] secretary shall promulgate, in accordance with the Administrative Procedure Act, regulations establishing a program for voluntary environmental self-audits." It goes on to require that the program include the following six elements:
(1) Procedures for conducting voluntary environmental self-audits.
(2) Submission of the results of voluntary environmental self-audits to the department.
(3) Incentives in the form of reduction or elimination, or both, of civil penalties for violations disclosed to the department in a voluntary environmental self-audit.
(4) Corrective action for violations discovered as a result of a voluntary environmental self-audit.
(5) Submission to the department of the plans to correct violations discovered during a voluntary environmental audit.
(6) A fee for reviewing voluntary environmental self-audit reports and actions taken to correct the violations reported.

Section 2044 also identifies the types of violations that are not eligible for relief under the program, the fee limit, and that prescription shall be suspended for all claims upon participation in the program.

b. Proposed Rulemaking

This proposed rulemaking is to amend Louisiana Administrative Code ("LAC") Title 33, Section I to include Chapter 70, entitled "Voluntary Environmental Self-Audit Regulations." The Department originally published proposed revisions in the April 2023 edition of

the Louisiana Register. That notice was later withdrawn and was replaced by this Notice of Intent in the June 2023 edition. The Department extended to the public comment period to August 18, 2023, on July 31, 2023. LCA supports the creation of a voluntary environmental self-audit program. Since the U.S. Environmental Protection Agency ("EPA") first published its own guidance on self-audit programs in 1995, self-audit programs have provided regulatory bodies with the ability to promote the voluntarily discovery, promptly disclosure, and expedited corrective actions by regulated facilities by offering incentives for compliance. More than 30 states, including all other EPA Region 6 states, have implemented self-audit programs. Indeed, EPA has touted the benefits of a self-audit policy. The self-audit program in the Proposed Rule has the "potential to increase environmental compliance at facilities and enhance the protection of human health and the environment." The benefits of self-audit programs include, but are not limited to:

o Prevention of recurrence of noncompliance;
o Promotion of voluntary compliance through implementation of self-evaluative activities;
o Improvement of public health and environmental protection through pollution prevention;
o Demonstration to citizens that the Department is actively involved with oversight of regulated entities;
o Offers companies a way to proactively communicate and work with the Department on their environmental compliance;
o Encourages companies to improve both awareness and compliance with regulatory requirements
o Enables companies to find potential issues without need for state enforcement; and
o Provides companies the opportunity to address potential minor deficiencies before they have a chance to develop into actual environmental concerns or risks.

These benefits should be realized under the Department's proposed self-audit program. However, there are certain definitions and other language within the proposed rule that need clarification in order to provide a workable program. Accordingly, LCA provides the comments below to the proposed rule.

FOR/AGAINST: No argument is necessary; the comment does not suggest amendment or change.

RESPONSE: No response is necessary.

COMMENT 38: **II. Definitions**

LCA supports the implementation of a voluntary self-audit program. LCA comments, however, that certain provisions in the proposed rule require clarification. As currently drafted, there are definitions and other requirements that make the program unworkable and would discourage companies from using the program.

a. "after discovery"

Proposed § 7009.E.1.c provides that in order to receive penalty mitigation, a violation must be "disclosed in writing within 45 calendar days after discovery, unless an existing law or regulation required disclosure in fewer than 45 calendar days." First, disclosure within 45-days of discovery would require a facility to continuously calculate deadlines for reporting throughout the audit. This unnecessarily complicates the process. Rather, the time delay for disclosing any identified violations should run from the date of the completion of the audit. Any concerns over the timeliness of the disclosure are mitigated by other reporting requirements, such as Title V permit semi-annual deviation reporting. Therefore, LCA proposes the following amendment:

The violation was disclosed in writing within 45 calendar days after ~~discovery~~ ***completion of the audit****, unless an existing law or regulation required disclosure in fewer than 45 calendar days.*

Second, if LDEQ is inclined to keep the language as is, the term "discovery" should be defined. Under the federal program, for example, discovery occurs when "any officer, director, employee or agent of the facility has an objectively reasonable basis for believing that a violation has, or may have, occurred." LCA comments that LDEQ should adopt this definition as it would provide clarity and predictability to the computation of deadlines.

FOR/AGAINST: The department acknowledges the comment. The major components of the voluntary environmental self-audit program include, but are not limited to, discovery, disclosure, and correction of violations. Each regulated entity is responsible for determining when a violation occurred based on the information available to make the determination. Reporting violations via other reporting requirements, such as a Title V Semiannual Monitoring Report, does not satisfy the disclosure requirement for the audit program. Receiving disclosures prior to the completion of an audit provides sufficient notice of the violations and allows the department an opportunity to review and respond to the proposed corrective

actions. The department will continue to evaluate future suggested revisions that would enhance the applicability of the program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 39: ***b. "upon discovery"***

Similarly, proposed § 7009.A.2.a provides that "[d]isclosure of violation(s) shall be made by the owner or operator upon discovery of a violation as a result of the voluntary environmental audit" (emphasis added).13 The use of the phrase "upon discovery" in Proposed § 7009(A)(2) is ambiguous and appears to conflict with the time allowed under the penalty mitigation factors in proposed § 7009(E). Under § 7009(E), facilities are eligible to receive a 100% mitigation of penalties if a violation discovered is reported within 45 calendar days after discovery. Notwithstanding LCA's concerns expressed in the previous section, LCA believes that disclosure "upon discovery" conflicts with the 45-day deadline provided in § 7009.E.1.c and § 7011.B.6.c. LCA requests that proposed § 7009.A.2.a be amended as follows to align with the delays for notice to the Department in § 7009.E:

a. Disclosure of violation(s) shall be made by the owner or operator upon ~~discovery of a violation~~ ***promptly*** *as a result of the voluntary environmental audit* ***and in accordance with the time delays set forth in this section****. The violation(s) shall be properly disclosed and reported to the department by certified mail, or other means approved by the department, in order to qualify for penalty mitigation.*

By requiring disclosure "promptly," this section meets the statutory reporting requirements and aligns with other sections of the proposed program.

FOR/AGAINST: The department acknowledges the comment. "Promptly" could be interpreted differently by each regulated entity that participates in a voluntary environmental self-audit. Using discovery of a violation provides a concrete point of reference.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 40: ***c. "date of discovery"***
Proposed § 7009.C.1 provides that corrective actions be completed within 90 days from the "date of discovery." As noted above,

"discovery" is problematic and conflicts with the time periods described above and is unnecessarily ambiguous. LCA requests that § 7009.C.1 be amended as follows:

1. Corrective actions must be completed within 90 calendar days from the ~~date of discovery of the violation~~ ***completion of the audit*** *unless a specific period is required by statute, regulation, or permit requirement.*

Using the completion of the audit as the trigger for the time delay for corrective action provides a clear and predictable timeframe while ensuring that the Department receives information on corrective action in a reasonable and timely manner.

FOR/AGAINST: The department acknowledges the comment. LAC 33:I.7009.E.1.e requires a violation be corrected as expeditiously as possible but no later than 90 calendar days from the date of discovery unless an extension or compliance schedule is approved by the department. Timely completion of corrective actions is one of the major components of penalty mitigation. EPA as well as other states have time frames in place to complete corrective actions prior to completion of the audit.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 41: ***d. "systematic discovery"***

The Proposed Rule requires that for a violation to be eligible for 100% penalty reduction, it must be discovered "systematically." However, the Proposed Rule does not define the term "systematic discovery," which could lead to ambiguity. The federal program defines systematic discovery as "the detection of a potential violation through an environmental audit or a compliance management system that reflects the entity's due diligence in preventing, detecting, and correcting violations." Other state programs provide similarly define "systematic discovery." LCA comments that LDEQ should adopt this definition.

FOR/AGAINST: The department acknowledges the comment. While "systematic discovery" is not defined, "audit or environmental audit" is defined in LAC 33:I.7005 as a systematic voluntary evaluation, review, or assessment of compliance with environmental statutes, regulations, permits, and/or permit requirements.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 42: ***e. "date of initiation"***

LCA comments that the proposed rule should be amended to define the "date of initiation" of an environmental audit. Under § 7009.A.3, an audit must be completed "within a reasonable time, not to exceed six months after the date the audit was initiated, unless the department grants an extension of time." However, the proposed rule does not define when this date of initiation occurs. LCA requests that § 7005 of the proposed rule be amended to provide the following definition:

Date of initiation – the date on which an environmental audit is deemed to have commenced. This date will be mutually agreed upon between a regulated entity and the Department through communications prior to an audit's commencement. This definition is vital because it allows the Department and regulated entity to reach agreement on a date for calculating the deadline to complete a self-audit.

FOR/AGAINST: The department acknowledges the comment. The department has developed internal procedures to address timely receipt, review, and response to the notice of audit. Prior to initiating a voluntary environmental audit, a regulated entity must notify the department via the department's standardized Notice of Audit (NOA) form and receive acknowledgement from the department. In addition to the facility information and confidentiality assessment, the following information must be provided specifically related to the audit: 1) date the audit will commence; 2) name of the party performing the audit; 3) identification of the party responsible for environmental compliance; 4) scope of the audit that includes a detailed description of the facility, processes or operations being audited, and audit methodology; 5) the media/divisions affected the audit; and 6) a description of how the audit is above and beyond the reasonable inquiry statutory requirement if the audit will involve an effective Title V (Part 70) permit. The department's acknowledgement letter will include the audit start date included in the NOA plus 180 days to document the audit period.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 43: **III. Exclusions**

a. Risk Management Program

Proposed § 7007.A.5 provides that violations "subject to the chemical accident prevention provisions of 40 CFR Part 68 and LAC 33:III.5901," or violations included in a risk management program, are not eligible for the self-audit program. It is not clear from the text of the proposed rule why these violations are excluded. Moreover, this exclusion goes beyond the text of the enacting statute: deviations under the RMP program are not excluded under in La. R.S. 30:2044. LCA requests that this exclusion be removed, and that risk management program be eligible for the self-audit program.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 directs the secretary to promulgate rules and regulations for a voluntary environmental self-audit program in accordance with the Administrative Procedure Act to identify violations that are not eligible for relief under this program. La. R.S. 30:2044 does not provide an exhaustive list of violations that shall be excluded from the program. The department is not explicitly prohibited from including Chemical Accident Prevention Provisions (CAPP)/Risk Management Program (RMP) violations in the list of violations excluded for relief under the self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 44: ***b. Same or closely related***

Proposed § 7007.A.7 excludes violations that are the "same or closely related at the same facility within the past three years" are not eligible for the self-audit program. The phrase "same or closely related" is not defined by the proposed rule. LCA suggests Other Region 6 states, deny immunity where there is a "pattern of disregard" of environmental laws due to "separate and distinct events within a three-year period." This standard provides greater clarity and consistency to interpretation of the program.

FOR/AGAINST: The department acknowledges the comment. The department's mission is to provide service to the people of Louisiana through comprehensive environmental protection in order to promote and protect health, safety and welfare. The purpose of a voluntary environmental self-audit program is to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, disclose, correct, and prevent violations. La. R.S. 30:2044 not only requires the department to establish a

voluntary environmental self-audit program, but to identify violations that are not eligible for relief under the program. LAC 33:I.7007.A.7 states violations that are the same or closely related at the same facility within the past three years as being ineligible for relief under the audit program. The department will evaluate all violations to determine the existence of a pattern and the failure to implement appropriate corrective actions to prevent the recurrence of the same or closely related violations at a facility. The department will continue to evaluate future suggested revisions that would enhance the implementation of the program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 45: ***c. Independent discovery***

Under proposed § 7009, violations must be "independently discovered" to be eligible for the self-audit program. The proposed rule further provides that violations are not considered independently discovered if a third-party complaint has been filed. Likewise, § 7009.E.1.d.iv precludes violations from the program if a whistleblower has reported the potential violations to LDEQ. These exclusions are problematic for both LDEQ and regulated facilities. First, the "complaint" is not defined by the proposed rule and is overly broad. Further, neither of the two exclusions are provided for in the enabling statute. Rather, R.S. 30:2044 only provides that violations are not independently discovered if they are first "discovered by the department." Thus, LCA requests that the proposed rule be amended to remove these two exclusions and instead include the exclusion delineated in R.S. 30:2044(B)(3).

FOR/AGAINST: The department acknowledges the comment. Third party complaints will not automatically exclude a violation from the audit program. The department will continue to conduct all complaint investigations and compliance evaluations as required. Third party complaints will be limited to those received by the department.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 46: **IV. Confidentiality**

Louisiana Revised Statute 30:2030(A)(2) and § 7009(F) of the proposed rule provide that "[…] information contained in a voluntary environmental self-audit authorized by R.S. 30:2044 shall be held

confidential by the department and shall be withheld from public disclosure until a final decision is made, or for a period not to exceed two years, whichever occurs first." Confidentiality of self-audit information is a cornerstone of other state programs and the EPA's program and serves as an important incentive for companies to enter self-audits. LCA supports the confidentiality provisions contained in the proposed rule. Louisiana is a "public records" state which means that all agency records are considered public unless specifically excluded. The Louisiana Environmental Quality Act contains the specific rules pertaining to environmental records at La. R.S. 30:2030. Section 2030 was amended by the Legislature with the inclusion of the self-audit program under Section 2044 to include limited confidentiality protection for self-audit information. By including this limited confidentiality provision, the Department ensures that any settlement negotiations with the regulated entity as a result of the audit findings can proceed without interference. Additionally, violations that are deemed to be of "serious environmental harm" will not be eligible for the program.

FOR/AGAINST: No argument is necessary; the comment does not suggest amendment or change.

RESPONSE: No response is necessary.

COMMENT 47: **V. New Owner Provisions**

Proposed § 7011.B provides that new owners must comply with the requirements of § 7009 with four exceptions listed as B.1–4. LCA suggests that §7011.B.4 be amended as follows for clarity:
4. The new owner making the disclosure of violations as described in this section must certify in the disclosure that all of the following conditions were true before the acquisition closing date.
a. The new owner was not responsible for the environmental compliance at the facility or the operation that is subject to the audit.
b. The new owner did not have the largest ownership share of the seller
c. The seller did not have the largest ownership share of the new owner.
d. The new owner and seller did not have a common corporate parent or a common majority interest owner.

Additionally, proposed § 7011.B.5 provides that a new owner is eligible for penalty mitigation if required conditions are met within nine months of the acquisition closing date. However, § 7011.B.2 provides that audits must be completed within six months of the

acquisition closing date. The allowed time for completion provided in the two provisions thus appear to be in conflict. LCA requests that LDEQ clarify how the nine-month timeframe provided in § 7011.B.5 would operate in the context of the six-month requirement provided in § 7011.B.2

FOR/AGAINST: The department acknowledges the comment. LAC 33:I.7011.B.2 is specifically related to the continuation of an audit by a new owner that was initiated by the previous owner.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 48: **VI. Immunity**

The LCA strongly supports the inclusion of an immunity provision within the proposed rule. Self-audit programs with an immunity component allow facility owners and operators who perform voluntary environmental audits to have a limited immunity from administrative and civil penalties relating to certain self-disclosed violations. LCA notes that immunity does not eliminate the responsibility to correct the violation, conduct necessary remediation, and/or pay penalties assessed by the Department.

FOR/AGAINST: No argument is necessary; the comment does not suggest amendment or change.

RESPONSE: No response is necessary.

COMMENT 49: **1. Proposed Section 7005 – Definitions**

a. LMOGA comments that the definition of Audit or Environmental Audit should be amended so that compliance with a judicial or administrative order or consent agreement is considered part of a self-audit. LMOGA similarly comments that “judicial or administrative order or consent agreement” should be removed from factors that would exclude a violation from the program. (See subsections 2.b and 3.h of these comments for more discussion.)

FOR/AGAINST: The department acknowledges the comment. Participation in the self-audit program does not supersede or suspend the applicability or authority of any judicial or administrative order or consent agreement. This language is consistent with EPA’s audit policy as well as the audit regulations and/or policies of other states.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 50: b. The term “discovery” is not defined under section 7005 despite the fact that deadlines for reporting (subsection 7009.E.1.c) and completion of corrective actions (subsection 7009 C.1)are based on when discovery occurs. LMOGA comments that “discovery” should be a defined term in section 7005. LMOGA suggests that “discovery” should be defined as “when a facility has a reasonable factual basis to believe that a violation has occurred.”

FOR/AGAINST: The department acknowledges the comment. The major component of the voluntary environmental self-audit program include, but are not limited to, discovery, disclosure, and correction of violations. Each regulated entity is responsible for determining when a violation occurred based on the information available to make the determination.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 51: **2. Proposed Section 7007 – Exclusions**

a. The Department should provide a definition of “serious actual harm” under subsection A.1. This language was used in the enabling statute, but without a definition. LMOGA comments that this exclusion is overly vague and could be interpreted too broadly. LMOGA requests that “serious actual harm” be removed from subsection A.1 or, alternatively, that the Department provide a definition.

FOR/AGAINST: The department acknowledges the comment. Similar to EPA’s policy, the term serious actual harm is not defined. The occurrence of a violation, such as the release of a pollutant, does not automatically equate to serious actual harm to the environment. Defining serious actual harm could potentially limit the department’s evaluation of violations. The department will take a case-by-case approach to evaluate violations to determine if serious actual harm occurred.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 52: b. Proposed subsection 7007.A.4 provides for voluntary disclosure of violations to qualify a violation for penalty mitigation. Subsection

7007.A.4 further provides that a violation must not be detected through procedures “required by statute, regulation, permit, judicial or administrative order, or a consent agreement.” LMOGA comments that “judicial or administrative order, or a consent agreement” should be removed from 7007.A.4. Including judicial or administrative orders and consent agreements is problematic because these orders, if in effect, may remain effective for facilities for extended periods of time, even multiple years. Under consent agreements and judicial decrees, violations unrelated to the violations that originally gave rise to the order or agreement may be discovered and could nonetheless be considered as being discovered pursuant to the order or agreement, making them ineligible for the penalty mitigation. This would serve to punish rather than reward facilities who are taking the proactive measure of a self-audit to address potential violations. Thus, LMOGA requests that the Department remove “judicial or administrative order, or a consent agreement” from subsection 7007A.4.

FOR/AGAINST: The department acknowledges the comment. Participation in the self-audit program does not supersede or suspend the applicability or authority of any judicial or administrative order or consent agreement. This language is consistent with EPA’s audit policy as well as the audit regulations and/or policies of other states.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 53: c. Findings under the chemical accident prevention provisions of 40 CFR Part 68 and LAC 33:III.5901 should not be excluded from the self-audit program as provided in subsection A.5. Excluding violations under risk management plan (“RMP”) rules without a definite reason is counter to the intent of the self-audit program. Further, RMP rules are not listed in the exclusions specifically provided in La. R.S. 30:2044. Subsection A.5 goes beyond the statutory text and therefore should not be included in the final program.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 directs the secretary to promulgate rules and regulations for a voluntary environmental self-audit program in accordance with the Administrative Procedure Act to identify violations that are not eligible for relief under this program. La. R.S. 30:2044 does not provide an exhaustive list of violations that shall be excluded from the program. The department is not explicitly prohibited from including Chemical Accident Prevention Provisions (CAPP)/Risk

Management Program (RMP) violations in the list of violations excluded for relief under the self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 54: d. The exclusion for “closely related” violations under subsection A.7 is unduly ambiguous (this is also contained in the requirements for new owners under proposed section 7011). LMOGA requests that this undefined term be removed from the final program. Even without use of the term “closely related,” subsection A.7 ensures that repeated violations at facilities are not eligible.

FOR/AGAINST: The department acknowledges the comment. The department's mission is to provide service to the people of Louisiana through comprehensive environmental protection in order to promote and protect health, safety and welfare. The purpose of a voluntary environmental self-audit program is to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, disclose, correct, and prevent violations. La. R.S. 30:2044 not only requires the department to establish a voluntary environmental self-audit program, but to identify violations that are not eligible for relief under the program. LAC 33:I.7007.A.7 states violations that are the same or closely related at the same facility within the past three years as being ineligible for relief under the audit program. The department will evaluate all violations to determine the existence of a pattern and the failure to implement appropriate corrective actions to prevent the recurrence of the same or closely related violations at a facility. The department will continue to evaluate future suggested revisions that would enhance the implementation of the program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 55: e. LMOGA acknowledges that the Department should retain the ability to take enforcement action with respect to excluded findings. However, the provision in subsection C.2 extending this enforcement to violations that are “not properly or adequately disclosed” is vague and unnecessary. LMOGA suggests amending subsection C.2 as follows:

is not ~~properly or adequately~~ disclosed and, as applicable, addressed in corrective action ~~and/or corrected~~, in accordance with this Chapter.

FOR/AGAINST: The department acknowledges the comment. LAC 33:I.7009.E. lists the conditions that must be met in order to be eligible for penalty mitigation. Corrective actions and cooperation are listed as penalty mitigation conditions in 7009.E.(1)(e) and (i). Failure to properly or adequately disclose and/or correct violations could affect penalty mitigation.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 56: **3. Proposed Section 7009 – Program Scope**

a. Proposed subsection 7009.A.1.c requires that a facility notify the Department of its intent to conduct a self-audit "by certified mail, or by other means approved by the [D]epartment […]." LMOGA requests that the Department establish an electronic acceptance means through either an electronic mail address or an online website portal that facilities may use to submit a notice of audit.

FOR/AGAINST: The department acknowledges and agrees with the comment. There is a department-wide initiative to transition to electronic reporting. The ability to accept self-audit documents via the department's electronic report system is a future goal.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 57: b. LMOGA requests that the Department acknowledge receipt of the notice of audit in writing within 15 days of receipt and to include this time period in proposed section 7009.A.1.d. This provides facilities and the Department with clarity on timing for the self-audit. Relatedly, the audit should be completed within six months of the date of acknowledgement by the Department rather than "initiation" as currently drafted in proposed section 7009.A.3.

FOR/AGAINST: The department acknowledges the comment. The department has developed internal procedures to address timely receipt, review, and response to the notice of audit. Prior to initiating a voluntary environmental audit, a regulated entity must notify the department via the department's standardized Notice of Audit (NOA) form, submit the form, and receive acknowledgement from the department. In addition to the facility information and confidentiality assessment, the following information must be provided specifically related to the audit: 1) date the audit will commence; 2) name of the party

performing the audit; 3) identification of the party responsible for environmental compliance; 4) scope of the audit that includes a detailed description of the facility, processes or operations being audited, and audit methodology; 5) the media/divisions affected the audit; and 6) a description of how the audit is above and beyond the reasonable inquiry statutory requirement if the audit will involve an effective Title V (Part 70) permit. The department's acknowledgement letter will include the audit start date included in the NOA plus 180 days to document the audit period.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 58: c. Proposed subsection 7009.B.1.a. provides for requests for extensions for completion of an audit and procedural requirements. Further, subsection 7009.B.1.a provides that a facility must make its request for an extension 30 days prior to the expiration of the audit period, but it does not provide a time period when a facility can expect a decision to approve or deny the request from the Department. LMOGA comments that 7009.B.1.a should be revised to provide that any request for an extension of time should be acknowledged by the Department in writing within 15 days of receipt and that if the Department fails to respond within 15 days, the lack of response constitutes approval of the extension request. Adding a required response time of 15 days both gives the Department adequate time to review the extension request and provides predictability the facility and the Department.

FOR/AGAINST: The department acknowledges the comment. The department has developed internal procedures to address timely receipt, review, and response to requests for extension.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 59: d. LMOGA further comments that proposed subsection 7009.B.1.a provides that justification for requests for extensions of the audit period must "be limited to factors beyond the control of the owner or operator." LMOGA comments that this limitation is unduly arbitrary, particularly as it would affect larger operators where the quantity of individual facilities included in an audit may require additional time for thorough review prior to completion of the audit. LMOGA requests that subsection 7009.B.1.a be amended as follows:

If an audit cannot be completed within six months after the date of

initiation, a request for extension of time shall be submitted in writing at least 30 calendar days prior to the expiration of the audit period with sufficient information to justify an extension. ~~Justification for an extension of time shall be limited to factors beyond the control of the owner or operator~~ Requests for extension shall be considered on a case by case basis. A request without sufficient information shall result in a denial.

FOR/AGAINST: The department acknowledges the comment. Part of conducting a self-audit is to have a systematic approach, which includes sufficient time to conduct and complete an audit. The department acknowledges there are circumstances that may prevent an owner/operator from completing an audit within six months. The current regulatory language states that justification for an extension will be limited to factors beyond the control of the owner or operator. The department aims to prevent abuse of extension requests.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 60: e. LMOGA comments that the time limit for disclosing violations under Subsection E.1.c should begin upon the completion of the audit, and the time limit for completing corrective actions under subsection C.1 should begin upon receiving written acknowledgement of concurrence of the corrective action from the Department as provided under subsection 7009.A.2.d. Under the respective subsections, the time limits commence from “discovery” of a violation. However, “discovery” is not defined as previously discussed in these comments (see subsection 1.b of these comments) and could be interpreted broadly. Even if it is defined, the time limit for disclosure should still run from completion of the audit rather than discovery because time limits for disclosures would otherwise begin running at various points throughout the audit, creating unnecessary confusion and complications. LMOGA comments that beginning the time limit to disclose violations on the date of completion of the audit and beginning the time limit to complete corrective actions on the date a facility receives written concurrence from the Department provides necessary clarity for both the facility and the Department.

FOR/AGAINST: The department acknowledges the comment. The major components of the voluntary environmental self-audit program include, but are not limited to, discovery, disclosure, and correction of violations. Each regulated entity is responsible for determining when a violation occurred based on the information available to make

the determination. The department will continue to evaluate future suggested revisions that would enhance the applicability of the program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 61: f. Proposed subsection C.1 provides that corrective actions must be completed within 90 days of discovery. LMOGA comments that 90 days is overly prescriptive and could be difficult for larger operators to meet due to the volume of facilities included in a review. LMOGA appreciates that subsection C.1.b provides for the possibility of an extension to this time limit. However, LMOGA suggests that subsection C.1, as well as subsection E.1.e., be amended to provide that corrective actions must be completed "within a reasonable amount of time." This amendment would provide greater assurance for facilities that will need additional time to complete corrective actions while retaining the Department's ability to review and approve the timeframes proposed by facilities.

FOR/AGAINST: The department acknowledges the comment. Timely completion of corrective actions is one of the major components of penalty mitigation. The department understands that certain corrective actions cannot be completed in 90 days and has addressed this situation in the current regulations. Corrective actions that require longer than 90 days to complete must be approved and acknowledged in writing by the Department. Revising the current language to "within a reasonable amount of time" could result in multiple interpretations of a reasonable amount of time.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 62: g. Under subsection C.1.d regarding corrective actions, LMOGA comments that the word "proposed" should be removed. The Department should not consider a failure to notify, implement, and/or complete all "proposed" corrective actions as a violation. In many instances, further investigation into the causes of a violation may reveal either that the originally proposed corrective actions were inappropriate to address the problem and that alternative corrective actions are required. Thus, LMOGA comments that the word "proposed" should be replaced with "necessary."

FOR/AGAINST: The department acknowledges the comment. The department will not make any changes to the regulatory text. LAC 33:I.7009.c-d,

requires the disclosure of violation(s) to include corrective actions as applicable and for those corrective actions to receive concurrence or rejection from the department. If further investigation reveals the originally proposed and approved corrective actions are inappropriate, the department should be notified in writing. The notification should also include a revised DOV. Implementation of any corrective actions not approved by the department will affect penalty mitigation.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 63: h. Proposed subsection 7009.E.1.b. provides that violations must be voluntarily disclosed in order to qualify for penalty mitigation and that a violation is ineligible if it is discovered through "a federal, state, or local requirement prescribed by statute, regulation, permit, judicial or administrative order, or a consent agreement." LMOGA comments that "judicial or administrative order, or a consent agreement" should be removed from 7009.E.1.b. Including judicial or administrative orders and consent agreements is problematic because these orders, if in effect, may remain effective for facilities for extended periods of time, sometimes multiple years. Under consent agreements and judicial decrees, violations unrelated to the original violations that gave rise to the order or agreement may be discovered, but could nonetheless be considered as being discovered "through" the order or agreement. This would serve to punish rather than reward facilities who are taking the proactive measure of a self-audit to address potential violations. Thus, LMOGA requests that the Department remove "judicial or administrative order, or a consent agreement" from subsection 7009.E.1.b.

FOR/AGAINST: The department acknowledges the comment. Participation in the self-audit program does not supersede or suspend the applicability or authority of any judicial or administrative order or consent agreement. This language is consistent with EPA's audit policy as well as the audit regulations and/or policies for other states.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 64: i. Regarding "third party" complaints and information in subsection E.1.d.iii, LMOGA comments that a third-party complaint should not be the basis for denying coverage for a violation otherwise properly disclosed through the self-audit program (this provision is also contained in the requirements for new owners under proposed

section 7011). This exclusion was not contemplated by the enabling statute. Further, the use of the term “complaint” is unduly vague.

FOR/AGAINST: The department acknowledges the comment. The use of third party is consistent with EPA’s audit policy as well as the audit regulations and/or policies of other states. Third party complaints will not automatically exclude a violation from the audit program. The department will continue to conduct all complaint investigations and compliance evaluations as required. Third party complaints will be limited to those received by the department.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 65: j. Subsection E.4 provides for the collection of a facility’s monetary benefits realized through noncompliance. Although LMOGA recognizes the Department’s ability to collect benefit of non-compliance penalties through its enforcement powers, subsection E.4 is unnecessary. This provision is worded too broadly and could be interpreted to include other costs, such as cost associated with responding to the audit, which is inappropriate given the proposed regulatory fee for participation under section 7013. LMOGA comments that this language should be removed to avoid confusion.

FOR/AGAINST: The department acknowledges the comment. As used in other regulations, specifically LAC 33:I.Chapter 7, monetary benefits realized through noncompliance and response costs are two very distinct and different terms.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 66: The confidentiality provision of subsection 7009.F provides for confidentiality protections for a limited time. Confidentiality is an important component of the self-audit program because it allows the Department and facility to negotiate a resolution based on the findings and provides the proper time for the facility to formulate and implement corrective action. LMOGA comments that the time period for confidentiality should not be limited to two years and suggests amending this section to allow the confidentiality provisions to remain in effect until a final decision is made, without the two-year limit.

FOR/AGAINST: The department acknowledges the comment. The department’s voluntary environmental self-audit regulations will only grant confidentiality in accordance with the two-year period mandated in

La. R.S. 30:2030. The department cannot amend or extend the confidentiality period.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 67: 4. Section 7011 – New Owner

a. Proposed section 7011 provides for self-audits that an acquiring new owner may continue when the audit was initiated by the previous owner; however, section 7011 does not explicitly provide new owners with the ability to initiate an audit on their own. However, similar Region VI self-audit programs do give an acquiring owner the ability to initiate an audit as part of the acquisition of the facility. This allows for a more equitable result because the new owner would not bear the responsibility for any violations caused by the previous owner. As currently proposed, section 7011 only allows new owners to continue an audit from a previous owner. While subsection 7011.B provides that a new owner "shall comply with all requirements listed in LAC 33:I.7009", which provide for the program scope and procedures for a self-audit, it does not explicitly state that a new owner may initiate an audit as part of their acquisition of the property. LMOGA suggests that section 7011.B be amended to provide as follows:

The new owner may initiate an audit as part of the acquisition of the property and shall comply with all requirements listed in LAC 33:I.7009 except as listed below."

FOR/AGAINST: The department acknowledges the comment. The current language in LAC 33:I.7011.B, grants a new owner the opportunity to initiate an audit but also provides caveats for continuing an audit initiated by the previous owner.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 68: b. Proposed subsection 7011.B.6.c provides that a new owner must make disclosure of a violation within 45 days after discovery. However, the subsection is not clear on whether "disclosure" occurs when/if an original owner discovered the violation or whether it begins upon the new owner's knowledge of the violation. LMOGA comments that this subsection is unduly vague and is problematic for new owners due to potential delays in the transfer of information regarding the audit. LMOGA suggest amending subsection

7011.B.6.c as follows:
The violation was disclosed to the department in writing within 45 calendar days after discovery by the new owner, unless an existing law or regulation required disclosure in fewer than 45 calendar days.

FOR/AGAINST: The department acknowledges the comment. The major components of the voluntary environmental self-audit program include, but are not limited to, discovery, disclosure, and correction of violations. Each regulated entity is responsible for determining when a violation occurred based on the information available to make the determination.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 69: 5. Section 7013 – Fees

a. Subsection A.3 concerning "additional" fees is unnecessarily vague. LMOGA suggest that instead of referencing "additional" fees that this section reference the fee detailed in subsection A.2, immediately above.

FOR/AGAINST: The department acknowledges the comment. LAC 33:I.7013.A.1-3 of the proposed regulations outlines how fees are determined. LAC 33:I.7013.A.1 authorizes an initial fee of $1,500 for all requests for reviewing environmental self-audits and corrective actions. LAC 33:I.7013.A.2 describes how the department will keep an account of time and how an additional fee will be charged once the initial minimum fee is exceeded. LAC 33:I.7013.A.3 describes the invoices associated with any additional fee.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 70: **SUMMARY**
Community Members are individuals and Louisiana-based organizations' members who face firsthand the consequences of industrial pollution and industrial facilities' violations of state and federal environmental laws and violations of their permits. These violations threaten Community Members' health, safety and quality of life on a regular basis. They are therefore uniquely poised and qualified to comment on the proposed Industry Self-Audit Program. In short, Community Members strongly oppose the LDEQ's proposed Industry Self-Audit Program. Serious negative consequences to the public and even to LDEQ can result from the

Program incentives, which do not allow the full disclosure and wide enforcement authority that Louisianans, particularly economically disadvantaged communities which disproportionately bear the ill effects of industrial enterprises, deserve and currently enjoy. In addition to running afoul of existing protections under Louisiana law, aspects of the Program like 100% elimination of penalties cripple the enforcement authority required of state agencies implementing federally delegated programs such as the Clean Air Act Title V permitting program and the LPDES permitting program delegated to LDEQ under the Clean Water Act. Critically, Louisiana's adoption and implementation of an Industry Self-Audit program that includes 100% elimination of penalties, and confidentiality, would also violate Article IX, section 1 of the Louisiana Constitution, both on its face and as interpreted by the Louisiana Supreme Court in Save Ourselves, Inc. v. Louisiana Environmental Control Commission, 452 So. 2d 1152 (La. 1984), because that Court has declared LDEQ to be the trustee for the public over the state's natural resources, and official self-audit programs remove LDEQ discretion and authority to protect these resources to the fullest extent possible. Additionally, as a procedural matter, LDEQ must conduct an environmental assessment on its proposed Program consistent with Louisiana Constitution article IX, section 1, and Save Ourselves and its progeny, and that assessment must be completed and disclosed to the public for comment. Community Members understand that the legislature has required LDEQ to adopt a self-audit program. La. R.S. § 30:2044. However, Community Members believe LDEQ's regulations creating the Program must restrict the Program's confidentiality and penalty mitigation provisions as much as possible within the bounds drawn by the legislature. As it stands, LDEQ's Program, as proposed, gives away too much and creates loopholes that fun afoul of the Constitution, the Louisiana Public Records Act, and the delegation of federal environmental laws. Its penalty mitigation provisions appears to amount to immunity for the vast majority of qualifying violations, and its confidentiality provisions create a loophole so large that there may essentially be no limits on confidentiality. These weaknesses must be corrected.

BACKGROUND

In House Resolution 231 of the 2019 Regular Session, the Louisiana House of Representatives ("the House") requested that the LDEQ Secretary study the establishment of an industry Self-Audit Program, and to submit a report to the House Committee on Natural Resources and the Environment ("Report") on whether such a program is needed and the elements any such program would have, as well as other information and concerns developed through the study

process. LDEQ submitted that Report on February 14, 2020. See Exhibit A. In the Report, LDEQ noted the importance of public openness and public participation in LDEQ's enforcement of environmental laws. Report at 20 (citing the need for any self-audit program to "uphold[ ] the public trust in Louisiana's environmental programs to maintain openness."); see also Report at 18 ("Concerned citizens have been a source of information with regard to regulated entities who may be impacting their communities."). LDEQ stated that secrecy undermines public trust and faith in LDEQ. Id. Thus LDEQ repeatedly stressed the need for any confidentiality provisions to be "for a limited amount of time." Id. Similarly, LDEQ advised against immunity for self-auditors and endorsed EPA's approach of gravity-based penalty mitigation. Report at 18. Community Members have consistently opposed the adoption of a self-audit program in Louisiana and maintain that position. LDEQ already regularly assesses only a small fraction of potential penalties against industry violators and even rewards violators by increasing their permit limits to match the violation levels so that future violations will be deemed legal. When there is no threat of meaningful enforcement, industry has no need of incentive to self-report violations. Further, keeping industry self-audit findings confidential for any period of time conflicts with the public's constitutional right to examine public records and the Louisiana Public Records Act. We are not aware of any showing of a need to restrict public access to industry self-audit findings of violation for any period of time, of the type required under La. R.S. § 30:2030(A)(1)(a). Therefore, again, such regulatory provisions must be drawn as narrowly as possible.

SPECIFIC COMMENTS

I. LDEQ MUST AMEND THE REGULATIONS TO MAXIMIZE THE PUBLIC'S ACCESS TO SELF-AUDIT INFORMATION.

The Program's provision of confidential status to self-audit documents for a two-year period is bad policy, inconsistent with the public's constitutional right to examine public documents, and contrary to the intent of the Louisiana Public Records Act (the "Act"). Pursuant to the Louisiana State Constitution, "[n]o person shall be denied the right to examine public documents, except in cases established by law." La. Const. art. XII sec 3. "[T]he public's right of access to public records is a fundamental right guaranteed by both the Louisiana Constitution and the Public Records Law[.]" Vandenweghe v. Par. of Jefferson, 11-52, p. 8 (La. App. 5 Cir. 5/24/11); 70 So.3d 51, 56 (citing Times Picayune Pub. Corp. v. Board

of Sup'rs of LSU, 02- 2551, p.6 (La. App. 1 Cir. 5/9/03); 845 So.2d 599, 605). The Louisiana Supreme Court has construed Article XII section 3 "liberally in favor of free and unrestricted access to the records[.]" In re Matter Under Investigation, 2007-1853 (La. 7/1/09); 15 So.3d 972, 989 (citing Capital City Press v. East Baton Rouge Par. Metro. Council, 96-1979 (La. 7/1/97); 696 So.2d 562, 564). Furthermore, "access can be denied only when a law specifically and unequivocally provides otherwise." Id. (citing Capital City, 696 So.2d at 564). Where there is doubt as to whether the public has the right to access records, "the doubt must be resolved in the public's right to see" in order to avoid an "arbitrary restriction on the public's constitutional rights." Id. (citing Capital City, 696 So.2d at 564); see also New Orleans Bulldog Soc'y v. La. SPCA, 2016-1809, p.7 (La. 5/3/17); 222 So.3d 679, 684. The Public Records Act codifies this constitutional right and creates an enforcement mechanism to ensure the public's right to access public records is protected, not restricted. See Treadway v. Jones, 583 So.2d 119, 121 (La. App. 4 Cir. 1990) (noting that the Public Records Act "must be liberally interpreted to enlarge rather than restrict the public's access to public records."); see also Landis v. Moreau, 2000-0484 (La. App. 4 Cir. 1/24/01); 779 So.2d 691, 694- 95. The intent of the legislature was "to guarantee, in the most expansive and unrestricted way possible, the right of the public to inspect and reproduce those records which deep to be public." Landis, 779 So. 2d at 694 (quoting Title Research Corp. v. Rausch, 450 So.2d 933, 937 (La. 2984)). We recognize that the legislature amended La. R.S. § 30:2030 in 2021 to require self-audit information to be confidential for up to a two-year period. La. R.S. § 30:2030(A)(2). However, because secrecy intrudes on a constitutional right (and is contrary to public policy and the Act), LDEQ's Program must ensure that such restrictions to public access are drawn as narrowly as possible.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program. La. R.S. 30:2044 requires the audit program to provide for the following: 1) procedures for conducting voluntary environmental self-audits; 2) submission of the results of voluntary environmental self-audits; 3) incentives in the form of reduction or elimination, or both, of civil penalties for violations disclosed to the department in a voluntary environmental self-audit; 4) corrective action for violations discovered as a result of a voluntary environmental self-audit; 5) submission to the department of the

plans to correct violations discovered during a voluntary environmental audit; and 6) a fee for reviewing voluntary environmental self-audit reports and actions taken to correct the violations reported. The audit program must also identify violations that are not eligible for relief under the program, establish a fee for reviewing environmental self-audits and corrective actions, and establish a period of prescription. As stated in the comment, La. R.S. 30:2030 was amended to allow an exception to the public records law. The department's voluntary environmental self-audit regulations will only grant confidentiality in accordance with the two-year period mandated in La. R.S. 30:2030. LAC 33:I.7009.F limits confidentiality to the disclosure of violation(s) (DOV) or other documentation containing the results of a voluntary environmental self-audit. The DOVs will be confidential until a final decision is made regarding eligibility for penalty mitigation or a period not to exceed two years after receipt of the initial DOV. All DOVs will subsequently be available to the public in EDMS located under the regulated entity's agency interest (AI) number.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 71: **A. LDEQ must remove the provision instructing facilities not to send their report to LDEQ unless specifically asked.**

LDEQ's proposed regulations include an inexplicable provision instructing that facilities that conduct a self-audit should not submit their full environmental audit report to LDEQ unless LDEQ requests it. Proposed Rule § 7009(D)(1) ("The full environmental audit report should not be submitted to the department unless specifically requested by the department in writing."). Absolutely no justification exists for this extremely problematic provision, which threatens to entirely eliminate the public's constitutional right to information about violations that directly affect their health, safety, and welfare and contradicts the restrictions on confidentiality that otherwise exist in the Program. As LDEQ well knows, if the report is not sent to LDEQ then the public has no way to access the information, as it will not be on LDEQ's website or available through a Public Records Request. This provision appears designed to shield information about industry violations from the public and to circumvent the language and intent of the Public Records Act as well as the public's constitutional right to examine records. What possible legitimate reason could LDEQ have for this provision? What reason could possibly outweigh the

strong interest against secrecy and in favor of public disclosure? Did industry request the inclusion of this provision?

In addition to illegally circumventing the public's ability to eventually see this information, this provision is in excess of LDEQ's statutory authority, as the legislature plainly requires submission of this report. In La. R.S. § 30:2044(A)(2), the law provides that the regulations LDEQ promulgates to implement the self-audit program "shall provide for the following: . . . (2) Submission of the results of voluntary environmental self-audits to the department."

Further, this provision makes no sense in light the intent of the Program itself. The Program purports to prompt compliance with the law, but how can LDEQ possibly know whether a violator has complied with the requirements of the Program if it does not see the full audit report? In what universe would LDEQ not want this report as soon as it is available? Why would LDEQ put the burden on itself and its busy regulators to affirmatively make the request for the report? The provision also directly contradicts other provisions in the Program. Immediately above this provision, the Program provides: "After completion of all corrective actions, a final written report shall be submitted to the Department." Proposed Rule at § 7009(C)(1)(c). Is LDEQ attempting to draw some distinction between the "final written report" referenced in paragraph (C)(1)(c) and the "full environmental audit report" referenced in paragraph (D)(1)? If so, it is entirely unclear what the difference is. If LDEQ intends to keep this provision in any iteration, it must re-notice this proposed rule so that it is clear what information LDEQ is purporting to shield from the public indefinitely and what information the public will eventually have access to. This provision has the potential to severely impact the public's constitutional rights. The definition section does not help elucidate this question, as it only defines "Audit Report or Environmental Audit Report." Proposed Rule at § 7005(A).

Finally, EPA deems it essential that any state with a self-audit law retain the ability to "Obtain immediate and complete injunctive relief." February 1997 EPA Statement of Principles, Effect of State Audit Immunity/Privilege Laws on Enforcement Authority for Federal Programs at 2, available at: https://www.epa.gov/rcra/memorandum-about-effect-state-audit-immunityprivilege-laws-enforcement-authority-federal and attached as Exhibit B. This provision that instructs facilities not to send LDEQ full audit reports until it asks for

them prevents LDEQ from being able to obtain immediate and complete injunctive relief.

FOR/AGAINST: The department acknowledges the comment. Audit Report or Environmental Audit Report is defined in LAC 33:I.7005 as the documented analyses, conclusions, and recommendations resulting from an environmental audit. In LAC 33:I.7009, Program Scope, the department outlines the procedures for conducting a voluntary environmental self-audit. These procedures include, but are not limited to, the Notice of Audit (NOA), the Disclosure of Violation (DOV), and Corrective Actions. As part of the Corrective Actions, a final written report must be submitted to the department with the following: 1) NOA form(s); 2) DOV form(s); and 3) certification of completion of all corrective action. The department has created standardized forms that all participants are required to use for the self-audit program. The DOVs require the following information related to violations: 1) the source/location of the violation; 2) a detailed description of the violation; 3) the citation and permit specific requirement/condition; 4) the violation discovery date; 5) the violation start date and end date; 6) a detailed description of the corrective action; 7) the corrective action anticipated completion date; 8) benefit of noncompliance evaluation; and 9) an assessment of the history of a violation, i.e., if a violation is a repeat violation. Per LAC 33;I.7009.D.1, the department can request the full audit report in writing. The department's voluntary environmental self-audit regulations will only gran confidentiality in accordance will the two-year period mandated in La. R.S. 30:2030. The DOVs will be confidential until a final decision is made regarding eligibility for penalty mitigation or a period not to exceed two years after receipt of the initial DOV. The decision regarding penalty mitigation will be posted on the department's public website. All DOVs will subsequently be available to the public in EDMS under the regulated entity's agency interest (AI) number. If existing rules or regulations require a violation be reported, e.g., a Title V Semiannual Monitoring Report, a Discharge Monitoring Report (DMR), etc., participation in the audit program will not suspend or provide relief from any reporting requirement.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 72: **B. LDEQ must correct other deficiencies in the confidentiality provisions to ensure those provisions tread as little as possible**

on the public's constitutional right to view records in the hands of the government and to be consistent with statutory law.

Other aspects of LDEQ's confidentiality provisions threaten to extend confidentiality further than is justified or contemplated by the legislature.

First, the legislature has made sure to create a category of confidential information that may not be kept confidential, but LDEQ has not included that critical carve-out in its proposed Program. At La. R.S. § 30:2030(A)(3), the statute provides that nondisclosure/confidentiality "shall not apply to . . . air emission data or discharges to surface and ground waters and the location and identification of any buried waste materials." (emphasis added). This is essential because self-audit information likely will often contain information on emissions and discharges, thus falling squarely under the legislature's mandate that this information not be held confidential. LDEQ's failure to include this category of information as not protected by confidentiality for any period of time renders this aspect of the regulations in excess of its statutory authority.

The language of the statute is clear on its face, and therefore LDEQ is bound to promulgate regulations consistent with that clear language. However, we also note that the provision in (A)(3) predates the 2021 inclusion of the self-audit confidentiality provision in paragraph (A)(2), and the legislature is presumed to be aware of all existing laws. Kocher v. Truth in Politics, Inc., 2020-01153, p. 2 (La. 12/22/2020), 307 So.3d 182, 184 (quoting Holly & Smith Architects, Inc. v. St. Helena Congregate Facility, Inc., 06-582, p. 10 (La. 11/29/06), 943 So.2d 1037, 1045)) ("[t]he legislature is presumed to have acted with deliberation and to have enacted a statute in light of the preceding statutes involving the same subject matter."). Thus it is clear the legislature was aware of its carve-out provision when it enacted the self-audit confidentiality laws, and therefore plainly intended that this category of information remain available to the public. Thus, **LDEQ must include language in its regulations specifying that nondisclosure/confidentiality "shall not apply to . . . air emission data or discharges to surface and ground waters and the location and identification of any buried waste materials." La. R.S. § 30:2030(A)(3).**

Second, **LDEQ must change the beginning of the two-year confidentiality period to run from when the facility first notifies LDEQ that it is conducting a self-audit rather than from LDEQ's**

“receipt of the initial disclosure of violation.” Proposed Rule at § 7009(F)(1). Again, LDEQ must minimize the restrictions to the public’s access to this information as much as possible, and the absence in the relevant legislation of any indication of when the two-year period begins to run leaves LDEQ free to start the two years at the earliest point. See La. R.S. § 30:2030(A)(2). As it stands, LDEQ’s language extends the two years far beyond two years from when the audit begins and potentially for an indefinite amount of time. The Program allows for six months plus an ***unrestricted extended period upon LDEQ approval*** to complete the audit, and for 45 days from discovery of the violation to disclose the violation. Proposed Rule at §§ 7009(A)(3), (B)(1)(a), & (E)(1)(c). This aspect of the Program is dangerously vague and contradictory. Though the Program runs the 45-day notice period for notification of violations from “discovery” for purposes of penalty mitigation, nothing in the Program specifically requires a self-auditor to disclose a discovered violation in the middle of the audit. See Proposed Rule at § 7009(E)(1)(c). Is LDEQ expecting a self-auditor to disclose every violation it discovers periodically while the audit is ongoing and before the report is due? While this would be advisable, the Program does not make this clear, meaning the violator could decide to wait until the audit is complete to disclose all violations it discovers. Again, since the Program does not place any limits on the extensions a self-auditor can get for completion of the audit, the time period for confidentiality could stretch out for much longer than two years.

Not only will running the confidentiality period from the beginning of the self-audit result in the shortest period of confidentiality, but it is fully workable and will disincentive delay by the facility and guard against excessive extension grants by LDEQ. 4 LDEQ’s Program already provides that a self-auditor can seek confidentiality under the provisions of La. R.S. § 30:2030(A)(1)(b) in addition to the automatic two-year confidentiality period. Any legitimate concerns by a violator of protected proprietary information being disclosed is covered by this language. Proposed Rule at § 7009(F)(1).

Alternatively, if LDEQ does not run the two-year period from the beginning of the audit, it must make clear in 7009(A)(2) the deadline for a self-auditor to disclose any discovered violations, whether that corresponds to the 45-day period in the mitigation provisions or is a shorter period of time.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044

became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program. Existing rules and regulations, specifically La. R.S. 30:2030, are not nullified with the creation of the voluntary self-audit program. As stated, information related to emissions and discharges cannot be confidential. Extensions will only be granted in accordance with LAC 33:I.7009.B to complete an audit. An extension does not affect the two-year period of confidentiality. The department references the confidentiality regulations in multiple audit forms to reiterate certain information cannot be confidential regardless of participation in the audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 73: **II. LDEQ MUST REVISE THE PENALTY MITIGATION PROVISIONS TO ENSURE THE PROGRAM DOES NOT IMMUNIZE VIOLATORS OR REMOVE ESSENTIAL LDEQ ENFORCEMENT AUTHORITY.**

LDEQ's Program as crafted could essentially impart immunity to facilities who engage in self-audits, in direct contradiction of LDEQ's own statements about the inadvisability of immunity, EPA's disapproval of such provisions, and any concept of sound public policy. LDEQ must revise the Program to eliminate immunity.

A. LDEQ's program would essentially grant immunity for any violation eligible for penalty mitigation.

For any violation eligible for penalty reduction, LDEQ's Program would essentially grant immunity to facilities who conduct a self-audit, contradicting its own prior position and sound public policy. LDEQ's Proposed Rule provides that a facility that meets all of the Program conditions is eligible for "a 100 percent reduction in penalties." Proposed Rule at § 7009(E)(1). This is the equivalent of immunity, as it references all penalties and does not specify that it only applies to gravity-based penalties. Though the Proposed Rule later provides that LDEQ "reserves the right to collect any monetary benefits realized through noncompliance," this vague provision does little to ameliorate the full immunity its earlier provision just provided. Proposed Rule at § 7009(E)(4). It sends the message that LDEQ will not attempt to collect any penalties for violations eligible for, and disclosed in, a self-audit. At a minimum, it causes confusion.

Facilities that violate the law and/or their permits should not be excused from paying any penalties. This level of incentive is not required, and, indeed, disincentives companies from avoiding violations in the first place. The enabling legislation does not require LDEQ to provide for 100% elimination of penalties, even of only the gravity-based portions. It merely states that LDEQ's program must include: "Incentives in the form of reduction or elimination, or both, of civil penalties." La. R.S. § 30:2044(A)(3). Thus LDEQ should not allow for a 100 percent reduction in penalties. Indeed, LDEQ has provided no justification for implementing what is basically immunity rather than using an incentive that would still provide an advantage to a selfauditor without giving violators a "get out of jail free" card. LDEQ should study other states' level of success with self-audit programs that do not give away the farm, and reinitiate this regulatory process once that study is complete and the information provided to the public.

At a minimum, LDEQ should make clear that only the gravity-based portion of the penalty is eligible for 100% reduction. EPA's policy makes this clear. It specifies that facilities meeting all the conditions are only eligible for a 100% reduction in "gravity-based penalties." Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations; Notice, 65 Fed. Reg. 19618, 19625 (Apr. 11, 2000). EPA does not suggest, as this Program does, that all penalties would be waived, including penalties based on the economic benefits of non-compliance. EPA explains the reason for limiting the mitigation to gravity-based penalties:

First, facing the risk that the Agency will recoup economic benefit provides an incentive for regulated entities to comply on time. Taxpayers whose payments are late expect to pay interest or a penalty; the same principle should apply to corporations and other regulated entities that have delayed their investment in compliance. Second, collecting economic benefit is fair because it protects law-abiding companies from being undercut by their noncomplying competitors, thereby preserving a level playing field.

Id. at 19620.

FOR/AGAINST: The department acknowledges the comment. As noted in the comment, this is consistent with EPA's audit policy. The department reserves the right to collect any monetary benefits realized through noncompliance in LAC 33:7009.E.4. The reduction percentages are consistent with EPA's audit policy. LAC 33:I.7009.C.1.d states the

failure to notify, implement, and/or complete all proposed corrective actions shall be considered a violation and subject to the appropriate enforcement action.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 74: **III. LDEQ MUST CLARIFY REQUIREMENTS AND INCLUDE DEADLINES IN ALL KEY ASPECTS OF THE PROGRAM.**

Several areas of the Program leave key deadlines and requirements open and limitless, threatening to swallow the overall intent of the Program and the legislature that the Program should incentivize quick corrective actions without rewarding companies for violating environmental laws. Again, given the incursions on key public rights like access to public documents and robust enforcement of environmental laws that the Program allows, clear lines must be drawn.

A. The Program must place a deadline on submission of the audit report.

The Program provides that "[a]fter completion of all corrective actions, a final written report shall be submitted to the Department." Proposed Rule at § 7009(C)(1)(c). Unfortunately, LDEQ sets no deadline on when the final written report must be submitted. "After completion of all corrective actions" could be at any point after completion—a week, a month, a year, etc. The final report will contain information critically important to the public, including the "disclosure of violation(s)" and "certification of completion of all corrective actions." Id. **The Program must include a deadline for this final report, either running from completion of all corrective actions (but see below) or from the beginning of the audit.** Otherwise the report may never be provided, or provided so late as to be essentially useless.

Additionally, the lack of a deadline for a final audit report could extend the confidentiality period past the two-year limitation imposed by the legislature. The legislature chose to end the confidentiality period either within two years (though without stating when the two years would begin to run; see above) or when "a final decision is made" by the LDEQ, **"whichever occurs first."** La. R.S. § 30:2030(A)(2) (emphasis added). Presumably, LDEQ will not make a "final decision" until it gets the "final written report," so LDEQ's failure to

include a deadline on submission of the final written report contravenes the legislature's intent to shorten this period as much as possible. Also, the impact on the confidentiality period that this absent deadline causes incentivizes facilities seeking to hide violation information to delay submission of the report as long as possible.

Finally, a deadline on submission of the final audit report is critical due to the issue raised above—the Program's inclusion of a directive that facilities not provide their "full environmental audit report" until asked. As noted, this provision must be removed, as it contravenes the legislature's directive that the LDEQ's regulations provide for "submission to the department of the plans to correct violations . . . ." La. R.S. § 30:2044(A)(2). Providing a deadline for submission of this report will further clarify that the report must indeed be provided, and by a date certain.

FOR/AGAINST: The department acknowledges the comment. LAC 33:I.7009.C.1.c requires a final written report be submitted to the department after completion of all corrective actions. LAC 33:I.7009.E outlines the conditions for penalty mitigation. Penalty mitigation conditions include, but are not limited to, correction of the violation and cooperation with the department. Failure to certify completion of corrective actions and/or cooperate with the department could jeopardize penalty mitigation eligibility. The department's voluntary environmental self-audit regulations will only grant confidentiality in accordance with the two-year period mandated in La. R.S. 30:2030. The confidentiality period will terminate once the department makes a final decision or receipt of the initial disclosure of violation has exceeded two years, whichever occurs first. The department will continue to evaluate future suggested revisions that would enhance the applicability of the program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 75: **B. The Program must provide a deadline and details for LDEQ's final decision.**

Importantly, nothing in the Program speaks to LDEQ's "final decision" that the legislature references in La. R.S. § 30:2030(A)(2). Given the critical importance of this "final decision" to setting the end of two-year confidentiality period, LDEQ must include a deadline for its final decision. Indeed, the Program says nothing about LDEQ's

final decision at all, so a provision must be included that states LDEQ will make a final decision on whether the violator has met the conditions for penalty mitigation and by when it will make that decision. Again, LDEQ should set its deadline for as short a period as possible to ensure it does not create a loophole for extending the confidentiality period to longer than two years.

FOR/AGAINST: The department acknowledges the comment. The department's voluntary environmental self-audit regulations will only grant confidentiality in accordance with the two-year period mandated in La. R.S. 30:2030. Neither the current revised statute nor the proposed regulations allow a loophole to extend the confidentiality period for longer than two years. After receipt of the initial DOV, the department has two years to make a final decision or the DOV and other documentation containing the results of the self-audit will become public.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 76: **C. The Program should not allow for unlimited extensions to complete the self-audit and to complete corrective actions.**

The Program includes three deadline periods. First, the Program contains a six-month deadline for completion of the environmental audit. Proposed Rule at § 7009(A)(3). Second, the Program sets a 45-day deadline "after discovery" for the violation to be disclosed in writing. Id. at 7009(E)(1)(c). Third, the Program contains a 90-day deadline from "date of discovery of the violation" to complete corrective actions. Id. at 7009(C)(1); see also 7009(E)(1)(e).

Deadlines are critical, but the Program allows for two of these deadlines to be extended indefinitely with no hard stop. The six month deadline for completion of the self-audit can be extended upon request to the LDEQ. Proposed Rule § 7009(B)(1)(a). There is no mention of a hard deadline or a limit on how many extension requests a facility can make. The 90-day deadline to complete corrective actions can also be extended indefinitely upon request to LDEQ. Id. at 7009(C)(1)(b).

LDEQ must include a hard deadline for both of these components of the Program. Such a hard deadline is critical for the end date of the audit for several reasons. First, the full environmental audit report would presumably not be provided to LDEQ until the audit is

complete, so long or repeated extensions of this period will also delay the final report which, again, the legislature mandates be provided to LDEQ and eventually to the public. See La. R.S. § 2044(A)(2); La. R.S. § 2030(A). Second, extending this period indefinitely allows a facility to attempt to keep the audit period open for as long as possible to capture as many violations as possible and protect themselves from paying penalties. Third, there is simply a need for establishing that the process will end by a definite point.

A hard deadline is equally essential for corrective actions to be completed. Similar to the end of the audit, no audit report will presumably be issued until all corrective actions have been completed. And given that corrective action is the primary goal of, and reason for, the Program, participating facilities need a hard deadline beyond which they cannot delay corrective action and still benefit from the Program.

Therefore, both of these provisions should include language that provides a hard deadline. For instance, **language could be added to § 7009(C)(1)(b) to the effect of: "The Department will not grant extensions for corrective action beyond 180 days from discovery of the violation."** Language could be added to § 7009(B)(1)(a) such as "**In no instances will the Department extend the time for audit completion beyond nine months after the date of initiation."**

FOR/AGAINST: The department acknowledges the comment. Allowance of unlimited extensions would negate the intent of the program, which establishes timeframes to conduct the audit, disclose, and correct discovered violations. Per LAC 33:I.7009.B.1.a, extensions will be limited to factors that are beyond the control of the owner or operator. Extensions will only be granted in accordance with LAC 33:I.7009.B.1.a to complete an audit. The department will continue to evaluate future suggested revisions that would enhance the applicability of the program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 77: **D. LDEQ must do more than require a certification of completion of corrective actions.**

The Program provides that the facility's final audit report must include "certification of completion of all corrective actions." Proposed Rule § 7009(C)(1)(c)(iii). Likely this will simply take the form of a one-

sentence statement that the work was done. Given the critical nature of this corrective action—it is the state's sole justification for this entire program—it is essential both that LDEQ verify that the corrective work was done and that the public be made aware of the nature of the corrective action. LDEQ should include a provision in or near 7009(C)(1)(c)(iii) that LDEQ will perform an inspection and/or a review of the facility's records to ensure that the corrective action was done and done correctly. Without such a follow-up, the LDEQ will have no way of knowing if the facility properly handled the correction.

LDEQ should also ensure somewhere in the Program that the public has access to the information about the corrective action. Whether that is in the final audit report or provided earlier when the facility notifies LDEQ of corrective actions as part of the disclosure of violations required by § 7009(A)(2)(c) will depend on exactly what corrective action information is required as part of the violation disclosure. The key is that the public be guaranteed of receiving information about how the facility corrected the violation, and that it be guaranteed to get this by a date certain in the shortest period of time.

FOR/AGAINST: The department acknowledges the comment. All audit forms will be publicly available in EDMS in accordance with the statutes and regulations. Corrective actions must be included in the DOV form. The DOV form is also a part of the final audit report. In addition to audit documents, any deviation of a Title V Permit must be included in the appropriate Title V Semiannual Monitoring and Annual Compliance Certification reports. All audit documents, specifically the NOA and DOV forms, include a certification statement that must be signed and certified by the responsible official as to the truthfulness, accuracy, and completeness of the information provided to the department. Any and all corrective action measures are subject to evaluation in any future inspection and/or investigations.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 78: **E. LDEQ should correct the reference to citizen suits.**

At § 7709(E)(1)(d)(ii), LDEQ correctly provides that a facility does not meet the independent discovery rule if it "discovers" the violation as a result of a citizen suit notice. However, this language requires some clarification. It references a notice "filed" under state or federal law

prior to the notice of the audit. Id. It should instead reference a notice "of a citizen suit to be filed" under state or federal law. Citizen suit notices give 60-days (or more) advance notice that suit will be filed, and facilities should not be able to escape penalties after a citizen notifies the facility of it. This is likely LDEQ's intent (as it is EPA's policy as well), but the wording as is leaves open an industry misinterpretation that it can include violations in a self-audit so long as suit has not yet been filed

FOR/AGAINST: The department acknowledges the comment. The department will continue to evaluate future suggested revisions that would enhance the applicability of the program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 79: **IV. THE PROPOSED INDUSTRY SELF-AUDIT PROGRAM VIOLATES ARTICLE IX, SECTION 1 OF THE LOUISIANA CONSTITUTION.**

Article IX, section 1 of the Louisiana Constitution of 1974 provides, in pertinent part: "The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people." In 1984, the Louisiana Supreme Court interpreted this provision as creating a public trust for the state's natural resources, and designated environmental agencies like LDEQ as "the primary public trustee of natural resources and the environment . . . ." Save Ourselves, Inc. v. La. Envtl. Control Comm'n, 452 So.2d 1152, 1157 (La. 1984). The Court vested in the agency the obligation to "fully minimize[ ] adverse environmental effects" and recognized that the agency required room for a "responsible exercise of discretion," while noting that procedures must be designed to see that "the discretion entrusted to the [agency] is in fact exercised in each individual case." Id. Critical to this constitutional guarantee is the Court's directive that the constitutional standard "requires an agency or official, before granting approval of proposed action affecting the environment, to determine that adverse environmental impacts have been minimized or avoided as much as possible consistently with the public welfare." Id. at 1157.

The proposed Industry Self-Audit Program, with immunity from civil penalties for eligible violations and confidentiality attaching to the audit information, would remove or limit the discretion vested in LDEQ by the Louisiana Constitution in protecting the state's natural resources for the public through its enforcement authority. Thus the agency must conduct a Save Ourselves analysis of its Program—which is "proposed action affecting the environment"—to determine that the Program is written in a way that minimizes or avoids adverse impacts as much as possible consistent with the public welfare. See id. At a minimum, this will require LDEQ to make the corrections outlines here, but LDEQ's constitutional duty requires it to go beyond the issues raised. An official Industry Self-Audit Program which automatically grants civil penalty immunity and confidentiality in every instance where a few listed conditions—such as subsequent remediation of any violation—are met mandates LDEQ perform its constitutional duty and fully analyze this Program.

CONCLUSION

Louisianians deserve full access to the truth and unrestricted ability to enforce the repercussions of violations of the law that civil penalties provide, both through their public trustee LDEQ and directly through citizen suit provisions. Louisiana should narrowly tailor its Industry Self-Audit Program to minimize impingement on these key public rights.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program. The department complied with the promulgation of rules and regulations requirements outlined in La. R.S. 30:2019. The notice of intent for the Voluntary Environmental Self-Audit Regulations published on June 20, 2023, includes the following impact evaluations in addition to the proposed regulations: 1) family impact statement, 2) poverty impact statement, 3) small business analysis, 4) provider impact statement, and 5) fiscal and economic impact statement. La. R.S 30:2019(D)(2) states that Subparagraph (1)(b), i.e., La. R.S. 30:2019(D)(1)(b) shall not apply to any rule that meets any of the criteria listed in La. R.S. 2019(D)(2)(a)-(2)(d). The proposed regulations meet the exception listed in La. R.S. 30:2019(D)(2)(c). The proposed regulations will cost the state and affected persons less than one million dollars, in aggregate, to implement. A report regarding the environmental/health benefits and social/economic costs is not required.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 80: **Preamble**

- "The voluntary environmental self-audit program has the potential to increase environmental compliance at facilities and enhance the protection of human health and the environment."

Comment

- There is absolutely no fact basis for this statement. To the contrary, Louisiana facilities have NEVER been significantly penalized by Louisiana environmental regulatory agencies (including LDEQ the "primary agency in Louisiana concerned with environmental protection..: LA.R.S. 30:2011) except during the 1988-92 Buddy Roemer/Paul Templet administration and we are still a polluter's haven today. Please refer to the attached 12-9-11 USEPA Office of Inspector General Audit, and the following Louisiana Legislative Auditor "Performance Audits": 5-28-14 "Regulation of Oil and Gas Wells and Management of Orphaned Wells:; 8-10-16 "Safe Drinking Water Program"; 2-5-20 "Louisiana's Management of Water Resources"; and 1-20-21 "Monitoring and Enforcement of Air Quality" regarding Louisiana' history of lack of meaningful or effective Environmental Enforcement. Accordingly, giving industry an enforcement and penalty immunity loophole on top of the decades of well documented agency capture will effective the exact opposite result than that claimed here.

This regulatory "get out of jail free card" will embolden industry to not follow environmental laws, emasculate private citizens' right to know the goings on in their own back yard, and encourage non-reporting and continued non-compliance – which is why Louisiana id routinely last in every environmental protection and economic prosperity rating vis a vis other states.

As Dr. Paul Templet, Ph.D., former LDEQ Secretary often said: Without meaningful environmental enforcement, no meaningful environmental agency protection will occur or should be expected.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program. The proposed regulations have nine conditions involved in eligibility for penalty mitigation. The nine conditions are summarized as follows: 1) systematic discovery; 2) voluntary disclosure; 3) prompt disclosure; 4) independent discovery;

5) correction and remediation; 6) prevent recurrence; 7) no repeat violation; 8) violation is not excluded per regulations; and 9) cooperation. Any violation discovered during the course of the audit must be disclosed to the department and corrected. La. R.S. 30:2044 requires the department to exclude violations that result in serious actual harm to the environment or that may present an imminent or substantial endangerment to the environmental or public health. These violations will be addressed by the department exercising its full enforcement authority as allowed under the LEQA.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 81: **Preamble**

- "No report regarding environmental/health benefits and social/economic costs is required."

Comment

- This is contrary to Article IX §1 of the 1974 Louisiana constitution rendering this proposed rulemaking unconstitutional as written. It is also in direct conflict with specific LDEQ statutes, including La. R.S. 30:2019 regarding any LDEQ rulemaking:

D. (1)(a) Notwithstanding any other provision of this Subtitle to the contrary, this Subsection shall be complied with prior to or concurrent with the proposal of any rule.

(b) The secretary or his designee shall make a written determination, based on sound scientific information, that the environmental and public health benefits to be derived from the proposed rule outweigh the social and economic costs reasonable expected to result from the proposed rule. This written determination shall be submitted to the legislative fiscal office for its review. The written determination shall be submitted at the same time to the Joint Legislative Committee on the Budget for its approval. **The written determination, at a minimum, shall include an assessment of the environmental and public health benefits to be derived from the proposed rule; the estimated economic cost to all persons directly affected by the proposed rule; and an explanation of the data, assumptions, and methods used in making the determination. These factors shall be identified to the maximum extent practical and, where feasible, quantified.** A statement that the environmental and public health benefits to be derived from the proposed rule outweigh the social and economic costs reasonably expected to result from the proposed rule, which

has been submitted for review to the legislative fiscal office, shall be included in any notice required under R.S. 49:961(A).

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program. The department complied with the promulgation of rules and regulations requirements outlined in La. R.S. 30:2019. The notice of intent for the Voluntary Environmental Self-Audit Regulations published on June 20, 2023, includes the following impact evaluations in addition to the proposed regulations: 1) family impact statement, 2) poverty impact statement, 3) small business analysis, 4) provider impact statement, and 5) fiscal and economic impact statement. La. R.S 30:2019(D)(2) states that Subparagraph (1)(b), i.e., La. R.S. 30:2019(D)(1)(b) shall not apply to any rule that meets any of the criteria listed in La. R.S. 2019(D)(2)(a)-(2)(d). The proposed regulations meet the exception listed in La. R.S. 30:2019(D)(2)(c). The proposed regulations will cost the state and affected persons less than one million dollars, in aggregate, to implement. A report regarding the environmental/health benefits and social/economic costs is not required.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 82: § 7007. Exclusions

A. “Violations that are not eligible for relief under this program shall include, but not be limited to violations: 1. That result in serious actual harm to the environment; 2. That may present an imminent or substantial endangerment to the environment or public health; 6. That are deliberate or intentional.”

Comment

- These exclusions are not defined and are vague as written and will be used by industry to avoid accountability and meaningful enforcement of otherwise clear violations. For example, is an exceedance of a RECAP screening standard for benzene in groundwater “serious actual harm to the environment”? “May it present an imminent and substantial endangerment to the environment or public health.”? Under RECAP rules any exceedance poses an unacceptable environmental and human health risk—but that may be argued as not “serious actual harm” or “immanent and substantial endangerment.” Enforcement regulations need bright line definitions, not wiggle words that

industry and its cadre of talented and well paid defense lawyers can use to avoid accountability.

FOR/AGAINST: The department acknowledges the comment. Similar to EPA's policy, the terms, serious actual harm and imminent or substantial endangerment, are not defined. The occurrence of a violation, such as the release of a pollutant, does not automatically equate to serious actual harm to the environment or present an imminent and substantial endangerment to the environment or public health. Defining serious actual harm or imminent substantial endangerment could potentially limit the department's evaluation of violations. The department will take a case-by-case approach to evaluate violations to determine if serious actual harm occurred or if there was an imminent or substantial endangerment to the environment or public health.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 83: § 7007. C. "The department reserves the right to take enforcement action with respect to a violation…"

Comment

- The LDEQ should reserve the right to take any enforcement action respect to ANY violation without limitation.

FOR/AGAINST: The department acknowledges the comment. LAC 33:I.7007.C is specifically related to violations reported under the voluntary environmental self-audit program. The department will continue to exercise its enforcement authority to the fullest extent allowable under the LEQA concurrently with the implementation of the self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 84: § 7009. Program Scope
1. Notice of Audit a. The owner or operator shall notify the department prior to initiating a voluntary environmental audit in order to qualify for penalty mitigation."

Comment

- Voluntary compliance is already a factor in determination of a LEQA penalty. Therefore, this rule is redundant, in excess of statutory authority, and/or vague.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 85: § 7011. New Owner A. Definitions "New Owner—any person not responsible for environmental compliance at the facility that is subject of the environmental audit, did not cause the violation being disclosed, and could not have prevented the occurrence."

Comment

- Environmental liability for regulatory exceedance must be strict and applicable to all past, present, and future owners regardless of their knowledge, ownership interest, or the date of that ownership interest. Otherwise, attempted enforcement will become a finger pointing circus. Sound environmental protection policy requires that the owner of a contaminated property must have the affirmative obligation to obtain knowledge of whether the facility that they own, operate, sell or purchase has not caused and/or is not causing an environmental problem as well as a corresponding obligation to disclose and report that knowledge or lack thereof to all appropriate interested or potentially effected persons, including regulators.

FOR/AGAINST: The department acknowledges the comment. The department has existing procedures for determining environmental liability. The notification of change form (NOC-1) to document changes in ownership and/or operational control, company and facility name changes, or permit transfers, requires the identification of the party who will be responsible for all violations existing prior to any transfers.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 86: § 7011. New Owner B.6.d.iv. Discovery and disclosure will not be considered independent if: iv. a whistleblower has reported the potential violation to the department.

Comment

- Whistleblower must be defined broadly to include any third party not the alleged violator who obtained knowledge of any potential violation and report the matter to the LDEQ.

FOR/AGAINST: The department acknowledges the comment. The proposed regulations do acknowledge whistleblowers and third parties as independent sources of alleged violations and as such the two should not be combined. The department will utilize existing whistleblower statutes to evaluate whistleblower claims.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 87: **Comment**

- The enabling legislation, Act 481 by Rep Coussan of 2021 (long time industry environmental defense lawyer) is unconstitutional and violative of Article IX §1 of the Louisiana Constitution as written and applied.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 88: LCA appreciates the opportunity to comment during this public forum on the department 's proposed rule on the voluntary environmental self audit program. LCA also plans to submit detailed written comments by the August 3rd deadline, but we'd like to take this opportunity to provide a few summary remarks. As background, LCA is a nonprofit Louisiana Corporation composed of 65-plus members with over 100 chemical manufacturing plant sites in Louisiana.

LCA was formed in 1959 to promote a positive business climate for chemical manufacturing that ensures long term economic

growth for its member companies. LCA members are committed to excellence in safety, health, security and environmental performance and to earning our license to operate.

LCA supports the creation of an environmental self - audit program in Louisiana. Self audit programs have been adopted in numerous states throughout the United States and have been proven to increase environmental compliance at facilities and enhance the protection of human health and the environment.

LCA agrees with both EPA and other regions six states that self audit programs have numerous benefits, including the prevention of progressive compliance, the promotion of voluntary compliance through self evaluation, the improvement of public health and environmental protection through pollution prevention.

And, in addition, audit programs also provide companies with the opportunity to proactively address future environmental risks by addressing the potential minor deficiencies that exists today, before they develop into more major ones.

LCA supports DEQ's proposed rule making pursuant to Revised Statute 30:2044 In general. There are a few specific definitions in the rule, and that we believe need clarity, and other provisions related to logistical concerns that LCA will address in written comments . LCA looks forward to continuing to work with the department on this important proposal through written comments, and thank you for the opportunity to speak today.

FOR/AGAINST: No argument is necessary; the comment does not suggest amendment or change.

RESPONSE: No response is necessary.

COMMENT 89: We, too, will have to also agree with Mr. Bosch about definitions. We do think that there needs to be definitions with the certain terms that are used, serious actual harm to the environment. And, other issues like that, that we need to have a definition for, if there's going to be - a lot of this information is going to not be available to the public, we need to have specific definitions about what is going to be available to the public.

FOR/AGAINST: The department acknowledges the comment. Similar to EPA's policy, the term serious actual harm is not defined. The occurrence of a violation, such as the release of a pollutant, does not

automatically equate to serious actual harm to the environment or present an imminent and substantial endangerment to the environment or public health. Defining serious actual harm or imminent substantial endangerment could potentially limit the department's evaluation of violations. The department will take a case-by-case approach to evaluate violations to determine if serious actual harm occurred or if there was an imminent or substantial endangerment to the environment or public health.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 90: In the legislation itself, it talks about corrective action measures being taken, but there is no – there's nothing put in there to say whether or not DEQ and the company, whether or not the company has to agree with DEQ's corrective action measures.

If the company and DEQ do not agree to what needs to be done, then what is DEQ going to be able to do about it? Are they going to have to say that they are not involved and not covered under an environmental audit? It just – it has no – it's silent as to the power of DEQ to enforce corrective action measures.

FOR/AGAINST: The department acknowledges the comment. Proposed corrective actions require concurrence from the department. Completion of corrective actions is a condition of penalty mitigation. Per LAC 33:I.7009.C.1.d, failure to notify, implement, and/or complete all proposed corrective actions shall be considered a violation and subject to the appropriate enforcement action.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 91: And, also – that's extremely important that DEQ has the ability to mandate the corrective action measures an what's going to be done. The legislation says that the final decision will be put on the website, and so I want to ask what final decision? The final decision of corrective action, the final decision that DEQ made about the environmental audit? And then, it also lets certain things be held still confidential. It is confusing as to what is going to be put onto the –on the website and what is going to be available for the public to see once it's done, and what final decision are we actually talking about?

FOR/AGAINST: The department acknowledges the comment. The final decision is in regards to penalty mitigation for the environmental audit and/or

subsequent enforcement action for violations ineligible for the audit program. The final decision information will be provided in a manner similar to the monthly actions issued and settlement agreement information currently provided on the department's public website. LAC 33:I.7009.C.1.c requires a final written report be submitted to the department containing the following information: 1) notice of audit; 2) disclosure of violation(s); and 3) certification of completion of all corrective actions. The final written report will be available to the public via EDMS under the regulated entity's AI number. The department's environmental self-audit regulations will only grant confidentiality in accordance with the two-year period mandated in La. R.S. 30:2030.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 92: And then, I guess, the final scenario would be what the loss in income would be if DEQ wouldn't be a part of the rule, but it's just for – our information is the income loss, loss to DEQ if they are not collecting fines and penalties, but the most important thing is the corrective action, and the definitions about what is covered and what is not covered under the environmental self audit and the ability of DEQ to mandate corrective action. Thank you.

FOR/AGAINST: The department acknowledges the comment. The Environmental Trust Account established under La. R.S. 30:2015 was created to insure all funds generated by the department are used to fulfill and carry out its powers, duties, and functions as provided by law. The fiscal note submitted in conjunction with House Bill 510 of the 2019 Regular Legislative Session reported the net impact of a voluntary audit program on revenue collections to the Environmental Trust Fund will be indeterminable. All sums in excess of that required to fully fund the Hazardous Waste Site Cleanup Fund recovered through judgements, settlements, or assess of civil or criminal penalties are allocated to the Environmental Trust Account. The department is not entirely funded by fines and fees. A component of the voluntary environmental self-audit program is penalty mitigation. La. R.S. 30:2044 and LAC 33:I.7013 establish a fee of $1,500 for the audit program and mechanism to recoup additional costs associated with the program. LAC 33:I.7009.E.4 reserves the department's right to collect any monetary benefits realized through noncompliance. Mandatory fees, such as those collected under the authority of La. R.S 30:2014.B to provide for monitoring, investigation, etc., will not be affected by the audit program. The department will continue to issue enforcement actions and pursue civil penalties in

accordance with the LEQA. Completion of corrective actions is a condition of penalty mitigation. Per LAC 33:I.7009.C.1.d, failure to notify, implement, and/or complete all proposed corrective action shall be considered a violation and subject to the appropriate enforcement action.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 93: Thanks for the opportunity to comment. We oppose the legislation that necessitated this hearing, and its several incarnations over the years because of one basic principle. We believe that people have the right to know it's in the air they breathe, and the water they drink.

The law was vaguely written in such a way that it provides for too many loophoes that come at the expense of Louisianan's overburdened already with pollution. The justification for voluntary self audits is backward from the standpoint of public health and environmental safety because rather than prioritizing the health of overburdened communities, this program centers petrochemical companies interests and profits above everything else.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 94: First, certain impositions in the law are ripe for abuse. For one, it does not stipulate what happens if LDEQ and the company disagree on corrective action. We'd suggest that voluntary self audit participants be obligated to agree with DEQ's suggested corrective action.

FOR/AGAINST: The department acknowledges the comment. Proposed corrective actions require concurrence from the department. Completion of corrective actions is a condition of penalty mitigation. Per LAC 33:I.7009.C.1.d, failure to notify, implement, and/or complete all proposed corrective actions shall be considered a violation and subject to the appropriate enforcement action. The department reserves the right to pursue enforcement action through established processes.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 95: Secondly, and perhaps most importantly, we need an ironclad definition of serious actual harm. We've seen serious actual harm done to communities living in the shadows of petrochemical facilities with little in the way of notice or corrective action for far too many decades.

FOR/AGAINST: The department acknowledges the comment. Similar to EPA's policy, the term serious actual harm is not defined. The occurrence of a violation, such as the release of a pollutant, does not automatically equate to serious actual harm to the environment or present an imminent and substantial endangerment to the environment or public health. Defining serious actual harm or imminent substantial endangerment could potentially limit the department's evaluation of violations. The department will take a case-by-case approach to evaluate violations to determine if serious actual harm occurred or if there was an imminent or substantial endangerment to the environment or public health.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 96: Thirdly, as LDEQ is funded entirely by fines and fees and collects from regulated companies, we need to know if we've anticipated the cost to eat DEQ of waiving fines through the self audit process. We've been told time and time again that LDEQ lacks sufficient resources to adequately provide for the environmental and public health an safety needs of affected communities already.

FOR/AGAINST: The department acknowledges the comment. The Environmental Trust Account established under La. R.S. 30:2015 was created to insure all funds generated by the department are used to fulfill and carry out its powers, duties, and functions as provided by law. The fiscal note submitted in conjunction with House Bill 510 of the 2019 Regular Legislative Session reported the net impact of a voluntary audit program on revenue collections to the Environmental Trust Fund will be indeterminable. All sums in excess of that required to fully fund the Hazardous Waste Site Cleanup Fund recovered through judgements, settlements, or assess of civil or criminal penalties are allocated to the Environmental Trust Account. The department is not entirely funded by fines and fees. A component of the voluntary environmental self-audit program is penalty mitigation. La. R.S. 30:2044 and LAC 33:I.7013 establish a fee of $1,500 for the

audit program and mechanism to recoup additional costs associated with the program. LAC 33:I.7009.E.4 reserves the department's right to collect any monetary benefits realized through noncompliance. Mandatory fees, such as those collected under the authority of La. R.S 30:2014.B to provide for monitoring, investigation, etc., will not be affected by the audit program. The department will continue to issue enforcement actions and pursue civil penalties in accordance with the LEQA.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 97: And, finally, the fact that companies can request confidentiality over their violations is a slap in the face to the many Louisianans who suffered the impact of pollution they weren't even aware they were exposed to. It's a shame that the good folks who work in DEQ do care about the environment and their neighbors good health are subject to irresponsible policy, like the voluntary self audit legislation.

When implementing the rules for voluntary self audits, we ask that you put people's right to know and your neighbors health and safety above the profit driven interests of wealthy and powerful petrochemical companies. Thank you very much.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program. The department's voluntary environmental self-audit regulations will only grand confidentiality in accordance with the two-year period mandated in La. R.S. 30:2030. Disclosure of violation(s) or other documentation containing the results of a voluntary environmental self-audit shall be held confidential until a final decision is made, or a period not to exceed two years from receipt of the initial disclosure of violation. All DOVs will subsequently be available to the public in EDMS located under the regulated entity's agency interest (AI) number.

RESPONSE: No response is necessary. The department will not make any changes to the regulatory text at this time.

COMMENT 98: I, first, want to acknowledge that while LDEQ did not write this legislation, it is now tasked with enforcing it. The statutory language is vague and does not establish the definition of phrases others have mentioned, such as, serious actual harm to the environment, imminent or substantial endangerment to the environment or public

health, and third party complaint.

Additionally, the existing hurricane loopholes combined with the voluntary audit program will further leave local government and citizens in the dark about what has been released during extreme weather events.

Turning to the statute first, Section 7007.8.1 states that violations that caused serious actual harm to the environment are not eligible for self audit. However, the statutory language fails to define this and fails to state whether LDEQ or the facility determines what constitutes serious actual harm.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program. Similar to EPA's policy, the terms serious actual harm and imminent or substantial endangerment are not defined. The occurrence of a violation, such as the release of a pollutant, does not automatically equate to serious actual harm to the environment. Defining serious actual harm could potentially limit the department's evaluation of violations. The department will take a case-by-case approach to evaluate violations to determine if serious actual harm occurred. Third party complaints will not automatically exclude a violation from the audit program. The department will continue to conduct all complaint investigations and compliance evaluations as required. Third party complaints will be limited to those received by the department.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 99: Similarly, imminent or substantial endangerment to the environment or public health is undefined. A facility's operator may, under this current statutory language, wish to report all of its harmful releases under the audit program in the hopes that the vague language and the reduced penalties will be to its benefit. There is a good chance then that a truly serious harm to the environment will be swept under the rug through the statute's chilling effect on the public's right to know violations reported under this audit procedure. This imposes on LDEQ's constitutional duty under the public trust doctrine to provide active and affirmative protection.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044

became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program. Similar to EPA's policy, the term imminent or substantial endangerment is not defined. The occurrence of a violation, such as the release of a pollutant, does not automatically equate to serious actual harm to the environment or present an imminent and substantial endangerment to the environment or public health. Defining serious actual harm or imminent substantial endangerment could potentially limit the department's evaluation of violations. The department will take a case-by-case approach to evaluate violations to determine if serious actual harm occurred or if there was an imminent or substantial endangerment to the environment or public health. The department's voluntary environmental self-audit regulations will only grant confidentiality in accordance with the two-year period mandated in La. R.S. 30:2030. Disclosure of violation(s) or other documentation containing the results of a voluntary environmental self-audit shall be held confidential until a final decision is made, or a period not to exceed two years from receipt of the initial disclosure of violation. All DOVs will subsequently be available to the public in EDMS located under the regulation entity's agency interest (AI) number.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 100: Further, the public trust doctrine requires LDEQ, before granting approval, will propose action to determine the adverse environmental impacts have been minimized or avoided as much as possible consistently with the public welfare, which the state language does not allow for.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program. The department complied with the promulgation of rules and regulations requirements outlined in La. R.S. 30:2019. The notice of intent for the Voluntary Environmental Self-Audit Regulations published on June 20, 2023, includes the following impact evaluations in addition to the proposed regulations: 1) family impact statement, 2) poverty impact statement, 3) small business analysis, 4) provider impact statement, and 5) fiscal and economic impact statement. La. R.S 30:2019(D)(2) states that Subparagraph (1)(b), i.e., La. R.S. 30:2019(D)(1)(b) shall not apply to any rule that meets any of the criteria listed in La. R.S. 2019(D)(2)(a)-(2)(d). The proposed regulations meet the exception listed in La. R.S.

30:2019(D)(2)(c). The proposed regulations will cost the state and affected persons less than one million dollars, in aggregate, to implement. A report regarding the environmental/health benefits and social/economic costs is not required.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 101: And, one final example of the language Section 7007.E.1.D.3 does not define a third party complaint. Many citizens living near petrochemical facilities report foul odors, physical symptoms and late night release incidents to LDEQ, which are often investigated hours or even days after the complaints. When a citizen's report is made to LDEQ of a rotten egg smell one day before a small explosion of sulfur dioxide emitting unit qualify as a third party complaint, and disbar the operator from utilizing the audit program? What if LDEQ has not been out to the site to investigate, has there still been a third party complaint at that time? Additionally, with complaints made to agencies such as DNR or the Army Corps about activities that fall under their respective purviews qualify as third party complaints? If so, how does LDEQ intend to communicate between these agencies to track a possible third party complaint?

FOR/AGAINST: The department acknowledges the comment. The use of third party is consistent with EPA's audit policy as well as the audit regulations and/or policies of other states. Third party complaints will not automatically exclude a violation from the audit program. The department will continue to conduct all complaint investigations and compliance evaluations as required. Third party complaints will be limited to those received by the department. Prior to initiating a voluntary environmental audit, a regulated entity must notify the department via the department's standardized Notice of Audit (NOA) form, submit the form, and receive acknowledgement from the department. In addition to the facility information and confidentiality assessment, the following information must be provided specifically related to the audit: 1) date the audit will commence; 2) name of the party performing the audit; 3) identification of the party responsible for environmental compliance; 4) scoped of the audit that includes a detailed description of the facility, processes or operations being audited, and audit methodology; 5) the media/divisions affected the audit; and 6) a description of how the audit is above and beyond the reasonable inquiry statutory requirement if the audit will involve an effective Title V (Part 70) permit. The notification and reporting requirements for unauthorized discharges automatically exclude unauthorized discharges/incidents from being eligible for the audit

program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 102: I, therefore, urge LDEQ to conduct – sorry, to construct a robust guide and policy, including evidence backed definitions of serious actual harm to the environment. LDEQ should be generous in barring serial polluters and unsafe facilities from using the audit procedures and create a narrow pathway that should be the exception, not the rule for pollution incidents. Thank you.

FOR/AGAINST: The department acknowledges the comment. Similar to EPA's policy, the term serious actual harm is not defined. The occurrence of a violation, such as the release of a pollutant, does not automatically equate to serious actual harm to the environment or present an imminent and substantial endangerment to the environment or public health. Defining serious actual harm or imminent substantial endangerment could potentially limit the department's evaluation of violations. The department will take a case-by-case approach to evaluate violations to determine if serious actual harm occurred or if there was an imminent or substantial endangerment to the environment or public health.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 103: And, I, pretty much, just want to echo what others have said. My main concern with this proposal is the lack of solid definitions for actual harm, and the worry that feet dragging on deciding what is actual harm will let harm go unaddressed. And, my worry that the department will just be shooting itself in the foot with this legislation because, as lower fines get permitted, then they will have less money then they'll have lost the ability to investigate, and then lower fines, and it will just be this dangerous cycle. Thank you.

FOR/AGAINST: The department acknowledges the comment. Similar to EPA's policy, the term imminent or substantial endangerment is not defined. The occurrence of a violation, such as the release of a pollutant, does not automatically equate to serious actual harm to the environment or present an imminent and substantial endangerment to the environment or public health. Defining serious actual harm or imminent substantial endangerment could potentially limit the department's evaluation of violations. The department will take a case-by-case approach to evaluate violations to determine if serious

actual harm occurred or if there was an imminent or substantial endangerment to the environment or public health. The Environmental Trust Account established under La. R.S. 30:2015 was created to insure all funds generated by the department are used to fulfill and carry out its powers, duties, and functions as provided by law. The fiscal note submitted in conjunction with House Bill 510 of the 2019 Regular Legislative Session reported the net impact of a voluntary audit program on revenue collections to the Environmental Trust Fund will be indeterminable. All sums in excess of that required to fully fund the Hazardous Waste Site Cleanup Fund recovered through judgements, settlements, or assess of civil or criminal penalties are allocated to the Environmental Trust Account. The department is not entirely funded by fines and fees. A component of the voluntary environmental self-audit program is penalty mitigation. La. R.S. 30:2044 and LAC 33:I.7013 establish a fee of $1,500 for the audit program and mechanism to recoup additional costs associated with the program. LAC 33:I.7009.E.4 reserves the department's right to collect any monetary benefits realized through noncompliance. Mandatory fees, such as those collected under the authority of La. R.S 30:2014.B to provide for monitoring, investigation, etc., will not be affected by the audit program. The department will continue to issue enforcement actions and pursue civil penalties in accordance with the LEQA.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 104: As an environmental advocate and community member for the last eight years, this is a really concerning proposal, because people have the right to know what they're breathing, what they're drinking, what's on their skin, what's in their soil. We've seen that too many times in the history of Louisiana, both extremely recent, throughout the decades that this is a pattern that not only Louisiana but other places that I have lived, in Georgia, North Carolina. It spans across the south, and I would love to see Louisiana be a leader in transparency and putting the people and health ahead of corporate profits. I believe that when people know what's in the air, then people trust their government, that they have an incentive to be part of this great state, and that through their health, they can continue to work, to contribute to this state. And so, you know, if this policy is implemented without the clarity, and as Caitlion has said as the role and not as the exception, then it stands to do great harm to our communities, to our health and to our state. Thank you.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044

became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 105: Upfront, we vigorously oppose this legislation, whether or not it's law, we got to live with it. My concern would be what incidents. And, I know there's language in here that scratch around this, but it's like last week with Dow, which happened a year ago. If they call it in the incident, we want to make sure that, because they call it in, does not qualify as a self audit or report.

FOR/AGAINST: The department acknowledges the comment. Unauthorized discharges, i.e., incidents, have stringent federal and state notification and reporting requirements. LAC 33:I.Chapter 39 requires verbal notification and written reports as applicable. Those notifications and reports are publicly available in EDMS. In order to participate in the voluntary environmental self-audit program, a regulated entity must submit a Notice of Audit (NOA) form and receive written acknowledgement from the department. The notification and reporting requirements for unauthorized discharges automatically exclude unauthorized discharges/incidents from being eligible for the audit program. The review process will ensure unauthorized discharges/incidents are not erroneously included in the disclosure of violations. The department will continue to conduct all complaint investigations and compliance evaluations as required.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 106: We also want to make sure that if they self audit and call in a self audit report, and any product goes past the campus or the fence line, that it does not qualify. Even though the LDEQ, as often the case, might qualify as not dangerous or a nuisance as opposed to actual damage to health or welfare, but if the company calls in, hey, we had a pipe break, we're investigating. And, if there's any report from citizens or from the first responders, that any product left the fence line, in terms of, air or water, that does not qualify for the self audit, and any Title 5 permitted plan. Now, there's a validation that either injure people on their campus or cause shutdown, that has to still be reported to the EPA and the National Response Center.

FOR/AGAINST: The department acknowledges the comment. In order to participate in the voluntary environmental self-audit program, a regulated entity must submit a Notice of Audit (NOA) form and receive written acknowledgement from the department. The notification and reporting requirements for unauthorized discharges automatically exclude unauthorized discharges/incidents from being eligible for the audit program. The regulations establish a list of violations that are not eligible for relief under the audit program in LAC 33:I.7007-Exclusions. Violations that result in serious actual harm to the environment or that may present an imminent or substantial endangerment to the environment or public health are included in the excluded violations list. The review process will ensure unauthorized discharges/incidents are not erroneously included in the disclosure of violations.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 107: Also, very concerned about how will DEQ get funding if you're not going out inspecting? This should not stop LDEQ from inspecting. I don't think that was the intent of this, but I really would like to see in the rules of how DEQ is going to continue to inspect plants and do unannounced inspections. This should not replace your lawful responsibility to ensure that plants are regularly being inspected. And, I do think there should be very strict rules that are used to restrict reporting to the public, that if something happened on the plant, and then when – at what time will that information put the public under another state law a right to know that an incident or something happened on that campus. Particularly, those Title 5 where there's potential to have impact on the community, or a situation created in your definitions and terms and agreements that initially the incident might be — appear to be something minor. But then, it blows up and how you get the first responders to be notified that something's happening on the campus, in terms of, something that might be go beyond the fence line or something might go into the water.

FOR/AGAINST: The department acknowledges the comment. The Environmental Trust Account established under La. R.S. 30:2015 was created to insure all funds generated by the department are used to fulfill and carry out its powers, duties, and functions as provided by law. The fiscal note submitted in conjunction with House Bill 510 of the 2019 Regular Legislative Session reported the net impact of a voluntary audit program on revenue collections to the Environmental Trust Fund will be indeterminable. All sums in excess of that required to fully fund the Hazardous Waste Site Cleanup Fund recovered

through judgements, settlements, or assess of civil or criminal penalties are allocated to the Environmental Trust Account. The department is not entirely funded by fines and fees. A component of the voluntary environmental self-audit program is penalty mitigation. La. R.S. 30:2044 and LAC 33:I.7013 establish a fee of $1,500 for the audit program and mechanism to recoup additional costs associated with the program. LAC 33:I.7009.E.4 reserves the department's right to collect any monetary benefits realized through noncompliance. Mandatory fees, such as those collected under the authority of La. R.S 30:2014.B to provide for monitoring, investigation, etc., will not be affected by the audit program. The department will continue to issue enforcement actions and pursue civil penalties in accordance with the LEQA. Participation in the self-audit program will not alleviate the department's obligation to conduct mandatory inspections, decrease inspection frequencies, or eliminate complaint investigations. Unauthorized discharges, i.e., incidents, have stringent federal and state notification and reporting requirements. For the department, LAC 33:I.Chapter 39 requires verbal notification and written reports as applicable. Those notifications and reports are publicly available in EDMS. The department will continue to conduct inspection and/or investigations, issue enforcement actions, and pursue civil penalties in accordance with the LEQA.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 108: We just saw the dilemma with that with Dow over the last couple of weeks where we had the language that no one beyond the fence line was affected and the focus was on the air. And now, we come to find out from your reporting from DEQ that stuff got into the water. So, we have to have an equal balance if there's an area, then DEQ still needs to go inspect and see if that was what caused a leak or what have you, then the water is safe, because you could end up with a runoff.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 directs the secretary to promulgate rules and regulations for a voluntary environmental self-audit program in accordance with the Administrative Procedure Act to identify violations that are not eligible for relief under this program. Exclusions outlined in LAC 33:I.7007.A., include but are not limited to, violations that result in serious actual harm or violations that may present an imminent or substantial endangerment to the environment or public health. Participation in the self-audit program will not alleviate the department's obligation to conduct mandatory inspections, decrease

inspection frequencies, or eliminate complaint investigations. The department retains the authority to conduct inspections and complaint investigations in accordance with statutory requirements. The department will continue to exercise its authority to the fullest extent allowable under the LEQA concurrently with the implementation of the self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 109: Again, I totally oppose this legislation when it came through but now that it's a rule, I hope we can work out definitions. And, we will be making comments. Jack Sweeney will prepare those to send to you. Thank you for listening. Thanks for everybody for participating. Thank you very much.

FOR/AGAINST: No argument is necessary; the comment does not suggest amendment or change.

RESPONSE: No response is necessary.

COMMENT 110: I have one final recommendation we'll...Put it in writing, ma'am, if I may. If we take a scenario, if I may explain it that way, that a company called in, hey, we're working in a situation here with a broken pipe and it's recorded under the road, I strongly recommend that DEQ check their call in logs because we try to train our citizens, if you smell something, hear something or see something to call it in. If citizens have been causing – calling in about a nuisance smell because sometime the smell don't come where it make you sick, but there's something related, once a company called in, that DEQ go back to their log and see in the last 24 to 48 hours had citizens been calling in a smell. Normally, the first indication, if it's not an explosion, is that people are smelling – may not – it may be not toxic where it's making them sick, but it may be a nuisance smell, a word that I've heard DEQ used before. And, if citizens have called in, within whatever that is, 24, 36, 48 hours before reporting a smell coming from that plant, that that plant does not be eligible for self audit. Please, please, please. Thank you.

FOR/AGAINST: The department acknowledges the comment. Participation in the self-audit program will not alleviate the department's obligation to conduct mandatory inspections, decrease inspection frequencies, or eliminate complaint investigations. Unauthorized discharges, i.e., incidents, have stringent federal and state notification and reporting requirements. LAC 33:I.Chapter 39 requires verbal notification and

written reports as applicable. Those notifications and reports are publicly available in EDMS. In order to participate in the voluntary environmental self-audit program, a regulated entity must submit a Notice of Audit (NOA) form and receive written acknowledgement from the department. Complaints will not automatically exclude a violation from the audit program. The department will continue to conduct all complaint investigations and compliance evaluations as required. The notification and reporting requirements automatically exclude unauthorized discharges/incidents that occurred prior to an approved audit commencing from being eligible for the audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 111: I guess I'll speak as bluntly as I possibly can. I think we all know this legislation is a joke. These industries aren't going to regulate themselves. And, now that the legislation is passed, it's up to the LDEQ to enforce it in a responsible manner. We need to make sure that there are clear definitions as to what harm is. The idea that companies can have their violations remain confidential is an extremely terrible idea. They'll do nothing but harm to the communities. They have no incentive to bring these forward.

FOR/AGAINST: The department acknowledges the comment. The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program. Similar to EPA’s policy, the terms serious actual harm and imminent or substantial endangerment are not defined. The occurrence of a violation, such as the release of a pollutant, does not automatically equate to serious actual harm to the environment or present an imminent and substantial endangerment to the environment or public health. Defining serious actual harm or imminent substantial endangerment could potentially limit the department’s evaluation of violations. The department will take a case-by-case approach to evaluate violations to determine if serious actual harm occurred or if there was an imminent or substantial endangerment to the environment or public health. The department’s voluntary environmental self-audit regulations will only grant confidentiality in accordance with the two-year period mandated in La. R.S. 30:2030. The DOVs will be confidential until a final decision is made regarding eligibility for penalty mitigation or a period not to exceed two years after receipt of the initial DOV. The decision regarding penalty mitigation will be posted on the department’s public website. All

DOVs will subsequently be available to the public in EDMS located under the regulated entity's agency interest (AI) number.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 112: The fact that the LDEQ is funded by these fines and is less likely to collect on these fines, if they choose to not enforce these things is, as Mathilde was mentioning, going to create a spiraling effects, and a downward spiraling –- spiraling effect at that.

FOR/AGAINST: The department acknowledges the comment. The Environmental Trust Account established under La. R.S. 30:2015 was created to insure all funds generated by the department are used to fulfill and carry out its powers, duties, and functions as provided by law. The fiscal note submitted in conjunction with House Bill 510 of the 2019 Regular Legislative Session reported the net impact of a voluntary audit program on revenue collections to the Environmental Trust Fund will be indeterminable. All sums in excess of that required to fully fund the Hazardous Waste Site Cleanup Fund recovered through judgements, settlements, or assess of civil or criminal penalties are allocated to the Environmental Trust Account. The department is not entirely funded by fines and fees. A component of the voluntary environmental self-audit program is penalty mitigation. La. R.S. 30:2044 and LAC 33:I.7013 establish a fee of $1,500 for the audit program and mechanism to recoup additional costs associated with the program. LAC 33:I.7009.E.4 reserves the department's right to collect any monetary benefits realized through noncompliance. Mandatory fees, such as those collected under the authority of La. R.S 30:2014.B to provide for monitoring, investigation, etc., will not be affected by the audit program. The department will continue to issue enforcement actions and pursue civil penalties in accordance with the LEQA.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 113: I urge the LDEQ to, now that we have this terrible legislation passed, remain a body that can actually choose to regulate these industries, rather than completely washing their hands and responsibility. Again, just sort of reiterating. I think everyone on this call understands that it's farcical to think that these companies are going to choose to be effective auditors of themselves. It's up to official regulatory bodies to take this seriously, and I urge that they do.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program. La. R.S 30:2044 requires the audit program provide for the following: 1) procedures for conducting voluntary environmental self-audits; 2) submission of the results of voluntary environmental self-audits; 3) incentives in the form of reduction or elimination, or both, of civil penalties for violations disclosed to the department in a voluntary environmental self-audit; 4) corrective action for violations discovered as a results of a voluntary environmental self-audit; 5) submission to the department of the plans to correct violations discovered during a voluntary environmental audit; and 6) a fee for reviewing voluntary environmental self-audit reports and actions taken to correct the violations reported.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 114: But, I just wanted to voice in the hearing today that, along with our partners like the Green Army, we oppose and are really concerned about these regulations and don't really have the face in industry to regulate itself. Thank you.

FOR/AGAINST: The department acknowledges the comment. La. R.S. 30:2044 became effective on August 1, 2021, mandating the secretary to promulgate regulations to establish a voluntary environmental self-audit program.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT #	SUGGESTED BY
1	Tall Swamp Dude, concerned citizen
2-4	Jackson Voss, Climate Policy Coordinator-Alliance for Affordable Energy or Logan Atkinson Burke, Executive Director-Alliance for Affordable Energy
5	Robert Desmarais Sullivan, concerned citizen
6-7	Nancy Grush, concerned citizen
8-10	Charlotte Clarke, concerned citizen
11	James Macmurdo, concerned citizen
12-13	Rebecca Malpass, Director of Policy & Research-The Water Collaborative of Greater New Orleans
14	Barbara Washington, Co-Director-Inclusive Louisiana
15	Lee Patterson, concerned citizen
16-18	Jade Woods, concerned citizen
19	M Felt, concerned citizen
20-21	Sharon O'Brien, concerned citizen
22	Gail Leboef, Co-Founder/Co-Director-Inclusive Louisiana
23	Peter Robins-Brown, Executive Director-Louisiana Progress
24-26	Angelle Bradford, Sierra Club
27	Michael Tritico, Biologist and President of RESTORE
28-34	Kyle Beall, Louisiana Electric Utilities Environmental Group
35-36	Caitlion Hunter, Law & Public Policy Associate-DeepSouth Center for Environmental Justice

37-48	Daniel Bosch, Louisiana Chemical Association
49-69	Daniel Bosch, Louisiana Mid-Continent Oil & Gas Association
70-79	Lisa Jordan, Director-Tulane Environmental Law Clinic (on behalf of the Louisiana Environmental Action Network (LEAN), RESTORE, the Mt. Triumph Baptist Church, Pastor Harry Joseph, and Stephanie Anthony and the Louisiana Democracy Project)
80-87	Bill Goodell, Goodell Law Center
88	Danny Bosch, Louisiana Chemical Association (LCA)-attorney for Kean Miller, LLP [oral comment]
89-92	Kathy Wascom, Louisiana Environmental Action Network (LEAN) [oral comment]
93-97	Jack Sweeney, Green Army [oral comment]
98-102	Caitlion Hunter, Attorney-Deep South Center for Environmental Justice [oral comment]
103	Mathilde Degegre, Sunrise Movement [oral comment]
104	Zach Kopkin [oral comment]
105-110	Russel Honore, Green Army [oral comment]
111-113	Benjamin Hoffman, Sunrise New Orleans [oral comment]
114	Virginia Richard, Gulf Program Manager-South Lynx [oral comment]

Comments reflected in this document are repeated verbatim from the written submittal.

Total Commenters: 31
Total Comments: 114