

## NOTICE OF INTENT

Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division

### Removal of Pesticide Application Exemption from LPDES Permitting Requirements (LAC 33:IX.2315.A.8.) (WQ082)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.2315.A.8. (WQ082).

On November 27, 2006, EPA issued a final rule [hereinafter called the "2006 NPDES Pesticides Rule", 40 CFR 122.3(h)] in which an NPDES permit is not required for pesticide applications to or around water, provided that the application is consistent with relevant Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements. The Rule became effective on January 26, 2007.

On January 9, 2009, the Sixth Circuit vacated EPA's 2006 NPDES Pesticides Rule [40 CFR 122.3(h)]. *National Cotton Council of America v. EPA*, 553 F.3d 927 (6th Cir., 2009). The court issued a stay which will end on April 9, 2011, and anyone applying a pesticide without a permit will be in violation of the Clean Water Act and EPA's NPDES Regulations.

This rule-making action will suspend (delete) LAC 33:IX.2315.A.8. which is identical to the 2006 NPDES Pesticide Rule [40 CFR 122.3 (h)] which was vacated by the January 9, 2009, court decision. It will eliminate the exemption which states that a LPDES permit is not needed when applying a pesticide in accordance with the FIFRA label. The suspension of the state rule will require LDEQ to issue a general permit for the application of pesticides in Louisiana. This rule change shall become effective April 9, 2011. The basis and rationale for this Rule is to bring our regulations in line with the federal regulations and court decisions.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

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

A public hearing will be held on October 27, 2010, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Donald Trahan at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ082. Such comments must be received no later than November 3, 2010, at 4:30 p.m., and should be sent to Donald Trahan, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3398 or by e-mail to donald.trahan@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ082. These proposed regulations are available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

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

Herman Robinson, CPM  
Executive Counsel

### **Title 33**

## **ENVIRONMENTAL QUALITY**

### **Part IX. Water Quality**

#### **Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program**

#### **Chapter 23. Definitions and General LPDES Program Requirements**

##### **§2315. Exclusions**

A. – A.7. ...

~~8. the application of pesticides consistent with all relevant requirements in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (i.e., those relevant to protecting water quality), in the following two circumstances:~~

~~a. — the application of pesticides directly to waters of the state in order to control pests. Examples of such applications include applications to control mosquito larvae, aquatic weeds, or other pests that are present in waters of the state;~~

~~b. — the application of pesticides to control pests that are present over waters of the state, including near such waters, where a portion of the pesticides will unavoidably be deposited to waters of the state in order to target the pests effectively, for example, when insecticides are aerially applied to a forest canopy where waters of the state may be present below the canopy or when pesticides are applied over or near water for control of adult mosquitoes or other pests.~~

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), repromulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2069 (October 2007), LR 36:

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

LOG #: WQ082

Person  
Preparing  
Statement: Bruce Fielding/Melvin Mitchell  
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Phone: (225) 219-3006 Office: Environmental Services

Return  
Rule  
Address: 602 N. Fifth St. Title: Removal of Pesticide Application  
Baton Rouge, LA 70802 Exemption from LPDES Permitting  
Requirements – Suspend Title 33,  
Part IX, Subpart 2, 2315.8

Date Rule  
Takes Effect: April 9, 2011

SUMMARY  
(Use complete sentences)

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

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

**If the United States Environmental Protection Agency (EPA) allows the proposed pesticide general permit to be issued without the requirement for the Notice of Intent (NOI) there will be no implementation cost to the Louisiana Department of Environmental Quality (LDEQ). The resources associated with the administration and management of the pesticide general permit will increase LDEQ's workload with the preparation of the permit every five years, the public noticing of the permit every five years, and the required inspections during the five year cycle of the permit. The described activities can be accomplished using existing personnel resources.**

**If the EPA determines that LDEQ must include NOI requirements in the pesticide general permit, the costs to the agency will increase. The estimated cost to the department would be a minimum of \$125,000 annually for one additional technical employee and one additional analytical employee who would review, verify and otherwise process NOI documentation from as many as several hundred thousands to approximately two hundred and fifty applicants. The figure depends, of course, upon EPA decision to require NOI submittals in Louisiana. If the NOI submittal requirements are dictated by EPA, LDEQ will assess a prorated fee to cover the \$125,000 costs to the department. Future LDEQ fees could possibly**

range from a nominal level to approximately \$500 annually depending on the universe of applicants dictated by EPA.

No additional costs or savings can be identified for other state agencies or local governmental units if EPA allows the general permit to be issued as proposed. If the EPA determines that LDEQ must include NOI requirements in the pesticide general permit, the estimated costs to the other state and local agencies and units will increase.

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

There is no estimated effect on revenue collections for state or local governmental units if the EPA allows LDEQ to issue the pesticide general permit as it is proposed. If the EPA dictates NOI requirements and additional conditions in the pesticide general permit, future LDEQ fees could range from a nominal level to approximately \$500 annually depending on the universe of applicants dictated by EPA.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups from the proposed pesticide general permit. If the EPA dictates additional NOI requirements, future LDEQ fees could possibly range from a nominal level to approximately \$500 annually depending on the universe of applicants dictated by EPA.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment as a result of the proposed rule. The proposed rule results from a nationwide federal law.

\_\_\_\_\_  
Signature of Agency Head or Designee

\_\_\_\_\_  
Legislative Fiscal Officer or Designee

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

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

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

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

**This rulemaking action will suspend (delete) LAC 33:IX.2315.8 which is identical to EPA's 2006 NPDES Pesticide Rule [40 CFR 122.3 (h)], which was vacated by a January 9, 2009, court decision. It will eliminate the exemption which states that a Louisiana Pollutant Discharge Eliminations System (LPDES) permit is not needed when applying a pesticide in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) label.**

**The suspension of the state rule will require the Louisiana Department of Environmental Quality (LDEQ) to issue a general permit for the application of pesticides in the State of Louisiana. The rule change shall become effective on April 9, 2011.**

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

**On November 27, 2006, the EPA issued a final rule, 40 CFR 122.3(h), [hereinafter called the "2006 NPDES Pesticides Rule"] in which an NPDES permit is not required for pesticide applications to or around water, provided that the application is consistent with relevant FIFRA requirements. The rule became effective on January 26, 2007.**

**In 2007, Louisiana promulgated LAC 33:IX.2315.8 consistent with EPA's 2006 NPDES Pesticide Rule.**

**On January 9, 2009, The Federal Sixth Circuit Court of Appeals vacated EPA's 2006 NPDES Pesticides Rule. National Cotton Council of America v. EPA, 553 F.3d 927 (6<sup>th</sup> Cir., 2009).**

**In response to that decision, on April 9, 2009, the EPA requested a two-year stay of the mandate to provide the Agency time to develop general permits, to assist NPDES-authorized states to develop their NPDES permits, and to provide outreach and education to the regulated community. On June 8, 2009, the Sixth Circuit granted EPA the two-year stay of the mandate.**

**This rulemaking action will suspend (delete) LAC 33:IX.2315.8, which is identical to the 2006 NPDES Pesticide Rule. It will eliminate the exemption which says you do not need a LPDES permit when applying a pesticide in accordance with the FIFRA label.**

**The suspension of the state rule will require LDEQ to issue a general permit for the application of pesticides in Louisiana.**

- C. Compliance with Act 11 of the 1986 First Extraordinary Session  
(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

**As the permit is proposed now the suspension of the state rule will not result in any increase in expenditure of funds. There will be an increase in the workload of LDEQ with the preparation of the permit every five years, the public notice of the permit every five years, and the required inspections during the five year cycle of the permit.**

**If the EPA requires LDEQ to issue a pesticide general permit that requires the regulated community to submit a NOI, there will be a cost increase to LDEQ for paper work associated with the NOI and other requirements. To offset the cost, LDEQ will charge a fee to the entities submitting a NOI of around \$500 a year.**

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

(a)  Yes. If yes, attach documentation.

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

**The rule should be published at this time because if Louisiana does not take the necessary action to provide for the issuance of the pesticide general permit by April 9, 2011, anyone applying a pesticide into or near waters in Louisiana will be in violation of the Federal Clean Water Act. Also, the EPA would have to issue permits for the application of pesticides within the State of Louisiana.**

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

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

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

**The cost of a pesticide general permit as proposed will increase LDEQ's workload with the preparation of the permit every five years, the public noticing the permit every five years, and the required inspections during the five year cycle of the permit.**

COSTS	FY10-11	FY11-12	FY12-13
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSES	-0-	-0-	-0-
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR	-0-	-0-	-0-
POSITIONS (#)	-0-	-0-	-0-

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

**The cost related with the issuance of a pesticide general permit as it is proposed will increase the LDEQ's workload. The workload will increase with the preparation of the permit every five years, the public noticing of the permit every five years, and the required inspections during the five year cycle of the permit.**

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

SOURCE	FY10-11	FY11-12	FY12-13
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
OTHER (Specify)	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

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

**The department has sufficient funds to implement the proposed action.**

**However, this does depend on whether the EPA requires LDEQ to have additional conditions in the pesticide general permit. The Louisiana pesticide general permit was submitted to EPA for approval/comment on July 22, 2010. If EPA demands that LDEQ include additional recordkeeping and reporting requirements to our general permit, the cost to the department will increase. The additional conditions to the permit may cost those who submit a Notice of Intent around \$500 a year plus the costs associated with the additional recordkeeping and reporting requirements. The estimated cost to the**

department could be equal to \$125,000 per year for one additional technical employee and one additional analytical employee.

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

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

**There is no anticipated impact on local governmental units or other state government agencies because of the proposed rule change.**

**However, this is dependent on whether the EPA requires LDEQ to have additional conditions in the pesticide general permit. The Louisiana pesticide general permit was submitted to EPA for approval/comment on July 22, 2010. If the EPA demands that LDEQ include additional recordkeeping and reporting requirements in our general permit, the cost to local government units and other state government agencies will increase. LDEQ is unable to provide an estimated cost to the regulated community at this time without knowing the additional EPA requirements.**

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

**There will be no sources of funding for local government units or other state government agencies.**

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

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

REVENUE INCREASE/DECREASE	FY10-11	FY11-12	FY12-13
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
RESTRICTED FUNDS*	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
LOCAL FUNDS	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

\*Specify the particular fund being impacted.

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

**This question is not applicable.**

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

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

**No persons or non-governmental groups will be directly affected by this proposed action. The proposed rule will result in the issuance of a pesticide general permit by LDEQ and the permit, as proposed, will not require the regulated community to do anything above and beyond what is already required by existing state and federal laws and regulations. However, should EPA dictate that LDEQ include additional recordkeeping and reporting requirements to the permit, the cost to affected persons or nongovernmental groups and**

**agencies will be increased depending on the exact requirements mandated by EPA. We are unable to provide an estimated cost to the regulated community at this time without knowing the additional conditions EPA may require.**

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

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

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

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

**There will be no impact on competition or employment in the public or private sector resulting from the proposed rule. The proposed rule will result in the issuance of a pesticide general permit by LDEQ, and the proposed permit will not require the regulated community to do anything above and beyond what is already required by existing state and federal laws and regulations.**