

**DECLARATION OF EMERGENCY****Department of Environmental Quality  
Office of the Secretary**

Offset Requirements and Emission Reduction Credits Banking  
(LAC 33:III.504, 601, 603, 605, 607, 615 and 619) (AQ327E2)

In accordance with R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality to use emergency procedures to establish rules, and R.S. 30:2011 and 2054, which authorize the department to promulgate rules and regulations, the secretary of the department hereby declares that an emergency action is necessary to ensure that the permitting thresholds in place prior to the redesignation of the Baton Rouge area to attainment of the 1997 ozone National Ambient Air Quality Standard (NAAQS) remain in place after the area's nonattainment designation under the 2008 ozone NAAQS becomes effective.

The Baton Rouge area (i.e., the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge) was formerly designated as nonattainment with respect to the 1997 8-hour ozone NAAQS of 0.08 parts per million (ppm). As such, increases of NO<sub>x</sub> and VOC emissions were governed by nonattainment new source review (NNSR) procedures provided by LAC 33:III.504. Under NNSR, prior to the construction of a new major stationary source or a major modification of an existing major stationary source, an owner or operator must obtain offsets for significant increases in emissions of NO<sub>x</sub> and VOC in the form of emission reduction credits (ERC) banked in accordance with LAC 33:III.Chapter 6.

On November 30, 2011, the U.S. Environmental Protection Agency (EPA) redesignated the Baton Rouge area to attainment of the 1997 ozone NAAQS, effective December 30, 2011. At the same time, EPA approved LDEQ's ozone maintenance plan, which projected no net growth in point source NO<sub>x</sub> and VOC emissions in the five parish area through 2020. However, another ozone standard, with which the Baton Rouge area is not in compliance, was recently implemented.

On March 27, 2008, EPA lowered the primary ozone NAAQS from 0.08 ppm to 0.075 ppm. This standard became effective on May 27, 2008. However, on September 16, 2009, the agency announced it would reconsider the NAAQS and therefore delayed implementation of the new standard. On January 19, 2010, EPA proposed that the NAAQS should be set within the range of 0.060 to 0.070 ppm. Then, on September 2, 2011, President Obama "requested that Administrator Jackson withdraw the draft Ozone National Ambient Air Quality Standards." Since the ongoing review of the ozone NAAQS will not be completed for several years, the EPA is now moving ahead with certain required actions to implement the 2008 standard. One such action is to designate areas as either attainment, nonattainment, or unclassifiable.

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

final ozone designations in spring of 2012.” On May 21, 2012, EPA promulgated a rule entitled "Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards." This rule formally designated the five parishes as a "marginal" ozone nonattainment area, effective July 20, 2012.

Under the Clean Air Act, the major source threshold in marginal nonattainment areas is 100 tons per year (TPY) of NO<sub>x</sub> and/or VOC, and the major modification net emissions increase trigger value is 40 TPY of these same compounds. However, prior to the redesignation of the Baton Rouge area on December 30, 2011, these thresholds were set at 50 and 25 TPY, respectively.

Therefore, this rule is necessary to ensure that the Baton Rouge area continues to make progress toward attainment of the 2008 ozone NAAQS and to mitigate increases of NO<sub>x</sub> and VOC emissions consistent with the area’s approved ozone maintenance plan.

This rule is also necessary to remove references to the 2005 Attainment Plan and Transport Demonstration SIP and the associated inventory comparisons from Chapter 6. Currently, if the ozone design value for the Baton Rouge area is above the NAAQS for ozone, Chapter 6 requires LDEQ to compare the current total point-source emissions inventory, as defined in LAC 33:III.605.A, to baseline inventory associated with the 2005 Attainment Plan and Transport Demonstration SIP. The outcome of this comparison is used to determine baseline emissions for calculating the surplus emission reduction. However, the 2005 Attainment Plan and Transport Demonstration SIP has since been superseded by the 1997 8-Hour Moderate SIP Revision (Redesignation Package), which was approved by EPA on November 30, 2011 (76 FR 74000). As such, the relationship between the current total point-source emissions inventory and the baseline inventory is no longer meaningful.

This Emergency Rule is effective on **AUGUST 28, 2012**, and shall remain in effect for a maximum of 120 days. The department has begun rulemaking to promulgate this regulation change. For more information concerning AQ327E2, you may contact the Air Permits Division at (225) 219-3147.

Adopted this \_\_\_\_\_ day of August, 2012.

Peggy M. Hatch  
Secretary

## Title 33

## ENVIRONMENTAL QUALITY

## Part III. Air

## Chapter 5. Permit Procedures

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

A. - A.1. ...

2. ~~Except as specified in Subsection M of this Section,~~ The potential to emit of a stationary source shall be compared to the major stationary source threshold values listed in Subsection L, Table 1 of this Section to determine whether the source is major.

3. ~~Except as specified in Subsection M of this Section,~~ The emissions increase that would result from a proposed modification, without regard to project decreases, shall be compared to the trigger values listed in Subsection L, Table 1 of this Section to determine whether a calculation of the net emissions increase over the contemporaneous period must be performed.

a. - d. ...

4. ~~Except as specified in Subsection M of this Section,~~ The net emissions increase shall be compared to the significant net emissions increase values listed in Subsection L, Table 1 of this Section to determine whether a nonattainment new source review must be performed.

A.5. - D.4. ...

5. ~~Except as specified in Subsection M of this Section,~~ Emission offsets shall provide net air quality benefit, in accordance with offset ratios listed in Subsection L, Table 1 of this Section, in the area where the NAAQS for that pollutant is violated.

D.6. - F. ...

1. ~~Except as specified in Subsection M of this Section,~~ Offsets shall be required at the ratio specified in Subsection L, Table 1 of this Section. All emission reductions claimed as offset credit shall be from decreases of the same regulated pollutant or pollutant class (e.g., VOC) for which the offset is required, except that direct PM<sub>2.5</sub> emissions or emissions of PM<sub>2.5</sub> precursors may be offset by reductions in direct PM<sub>2.5</sub> emissions or emissions of any PM<sub>2.5</sub> precursor, if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved SIP for a particular nonattainment area.

F.2. - L. ...

\* \* \*

M. Offset Requirements in Specified Parishes. ~~Notwithstanding the major stationary source and major modification significant net increase threshold values and minimum offset ratios established by Subsection L, Table 1 of this Section, Except as provided in Paragraph M.4 of this Section,~~ the provisions of this Subsection shall apply to stationary sources located in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge ~~as long as each if the parish's nonattainment designation with respect to the 8-hour national ambient air quality standard (NAAQS) for ozone is attainment, "marginal" nonattainment, or "moderate nonattainment."~~

1. ~~For an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO<sub>x</sub>, consideration of the net emissions increase will be triggered for any project that would:~~

a. ~~increase emissions of VOC or NO<sub>x</sub> by 25 tons per year or more, without regard to any project decreases;~~

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

i. ~~1,3 butadiene;~~

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

iii. ~~ethylene;~~

iv. ~~propylene.~~

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

a. ~~a new stationary source with a potential to emit of 50 tons per year or more of VOC or NO<sub>x</sub>;~~

b. ~~an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO<sub>x</sub> with a significant net emissions increase of VOC, including HRVOC, or NO<sub>x</sub> of 25 tons per year or more.~~

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

1. New Stationary Sources. The owner or operator of a new stationary source shall provide offsets for potential VOC and NO<sub>x</sub> emissions in excess of 50 tons per year.

2. Existing Stationary Sources

a. Consideration of the net emissions increase shall be triggered for any physical change or change in the method of operation that would increase emissions of VOC or NO<sub>x</sub> by 25 tons per year or more, without regard to any project decreases.

b. The owner or operator of an existing stationary source with a potential to emit 50 tons per year or more of VOC shall provide VOC offsets for each physical change or change in the method of operation that would result in a net emissions increase of 25 tons per year or more of VOC.

c. The owner or operator of an existing stationary source with a potential to emit 50 tons per year or more of NO<sub>x</sub> shall provide NO<sub>x</sub> offsets for each physical change or change in the method of operation that would result in a net emissions increase of 25 tons per year or more of NO<sub>x</sub>.

3. Offsets shall be required at a ratio of 1.1 to 1.

4. The provisions of this Subsection shall not apply to any new *major stationary source* or *major modification* as defined in Subsection K of this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:1890 (September 2008), LR 37:1568 (June 2011), LR 38:0000 (April 2012), LR 38:\*\*.

**Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits (ERC) Banking**

**§601. Purpose**

A. This Chapter establishes the means of enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review (NSR) offsets. ~~The pollutants to which this Rule applies are nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC).~~

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994),

amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 38:\*\*.

### §603. Applicability

A. Major stationary sources are subject to the provisions of this Chapter for the purpose of utilizing emission reductions as offsets in accordance with LAC 33:III.504. Minor stationary sources located in ~~ozone~~-nonattainment areas may submit ERC applications for purposes of banking. Sources located in EPA-designated ~~ozone~~-attainment areas may not participate in the emissions banking program. Any stationary point source at an affected facility is eligible to participate.

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

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

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

### §605. Definitions

A. The terms used in this Chapter are defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

\* \* \*

*Bankable Emission Reductions*—reductions of ~~NO<sub>x</sub> or VOC~~a criteria pollutant that meet the provisions of this Chapter at the time of review and approval.

\* \* \*

*Base Case Inventory*—~~the aggregate point source emissions inventory for either NO<sub>x</sub> or VOC from the nine modeled parishes, as modeled for the 2005 Attainment Plan and Transport Demonstration SIP dated December 2001, which includes 1997 actual emissions from point sources, banked ERC and pending ERC applications where the emission reduction occurred between January 1, 1990 and December 31, 1997, and adjustments for growth. Separate inventories have been established for NO<sub>x</sub> and VOC. Repealed.~~

~~*Base Line Inventory*—the aggregate point source emissions inventory for either NO<sub>x</sub> or VOC from the nine modeled parishes associated with the 2005 Attainment Plan and Transport Demonstration SIP dated December 2001, which accounts for emission reductions modeled to demonstrate attainment of the 1-hour national ambient air quality standard (NAAQS) for ozone. Separate inventories have been established for NO<sub>x</sub> and VOC. Repealed.~~

\* \* \*

~~*Current Total Point-Source Emissions Inventory*—the aggregate point source emissions inventory for either NO<sub>x</sub> or VOC from the nine modeled parishes compiled from the emissions inventory records and updated annually in accordance with LAC 33:III.919 plus any banked ERC and pending ERC applications originally included in the base case inventory that have not expired. Repealed.~~

\* \* \*

~~*Modeled Parishes*—the parishes of Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, and West Feliciana. Repealed.~~

~~*Offset*—a legally enforceable reduction, approved by the department, in the rate of actual emissions from an existing stationary point source, which is used to compensate for a significant net increase in emissions of NO<sub>x</sub> or VOC from a new or modified stationary source in accordance with the requirements of LAC 33:III.504. To be valid, an offset must meet the definition of ERC.~~

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), LR 25:1622 (September 1999), LR 26:2448 (November 2000), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), LR 34:1890 (September 2008), LR 37:3221 (November 2011), LR 38:\*\*.

## **§607. Determination of Creditable Emission Reductions**

A. - B.2. ...

C. Procedures for Calculating the Surplus Emission Reduction. The following procedures shall be used in calculating the quantity of surplus air emission reductions. ~~When considering NO<sub>x</sub> reductions, only the NO<sub>x</sub> inventory and ERC and pending ERC applications for NO<sub>x</sub> will be considered. Conversely, when considering VOC reductions, only the VOC inventory and ERC and pending ERC applications for VOC will be considered.~~

1. ~~If the design value for the nonattainment area is above the national ambient air quality standard (NAAQS) for ozone, the department shall compare the current total point source emissions inventory for the modeled parishes to the base case inventory, except that, beginning with the 2005 emissions inventory, this comparison shall be made to the base line inventory.~~Reserved.

2. - 3. ...

4. Quantify ~~b~~Baseline e~~Emissions as follows:~~ Baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section.

a. ~~— for stationary sources located in ozone nonattainment areas:~~

i. ~~— if the design value for the nonattainment area is above the NAAQS for ozone and the current total point source inventory for the modeled parishes exceeds the base case inventory or base line inventory, as appropriate per Paragraph C.1 of this Section, baseline emissions shall be the lower of actual emissions, adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section, or emissions attributed to the stationary point source(s) in question in the base case or base line inventory, as appropriate; or~~

ii. ~~— if the design value for the nonattainment area is not above the NAAQS for ozone or the current total point source inventory for the modeled parishes does not exceed the base case inventory or base line inventory, as appropriate per Paragraph C.1 of this Section, baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section; and~~

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

C.5. - D. ...

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

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

## §615. Schedule for Submitting Applications

A. ...



B. If a parish is redesignated as ~~ozone~~-nonattainment by the EPA after January 1, 2012, applications for banking ERCs in such parish must be submitted by March 31 of the year following the effective date of the EPA designation.

C. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:878 (August 1994), amended LR 21:681 (July 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1623 (September 1999), LR 26:486 (March 2000), LR 28:304 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), LR 38:\*\*.

### **§619. Emission Reduction Credit Bank**

A. The department shall maintain a banking database that shall consist of a record of all information concerning applications, deposits, withdrawals, and transactions, as well as pertinent date(s) concerning such information. ~~The current total point source emissions inventory for both NO<sub>x</sub> and VOC shall also be included.~~ All data in the banking database shall be available to the public upon request.

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:879 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2449 (November 2000), LR 28:305 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 38:\*\*.