

## NOTICE OF INTENT

Department of Environmental Quality  
Office of the Secretary  
Legal Division

Stay of Permit Conditions Pending Administrative/Judicial Review  
(LAC 33:I.401, 403, 405, 407, III.537, V.705 and IX.309) (OS083)

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 Office of the Secretary regulations, LAC 33: I.401, 403, 405, 407, III.537, V.705 and IX.309. (OS083).

This Rule identifies permit conditions, or "classes" of permit conditions, that: will automatically be suspended upon request for review; may be suspended at the discretion of the secretary (which may be delegated to the Assistant Secretary for the Office of Environmental Services); and will not be suspended. It also provides guidance and standards for the exercise of discretion by the secretary. R.S. 30:2024(A) provides that a permit is "effective upon issuance unless a later date is specified therein." In some instances, the permit applicant requests review of conditions and limitations in the permit. It may be impractical or unduly expensive for the permit applicant to comply with the permit conditions pending the appeal. The basis and rationale for this rule are to provide environmentally safe and economically beneficial options for the department to manage "suspensions" of permit conditions pending the review process. 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 February 28, 2012, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Perry Theriot 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 OS083. Such comments must be received no later than March 6, 2012, at 4:30 p.m., and should be sent to Perry Theriot, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-4068 or by e-mail to perry.theriot@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 OS083. 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 I. Office of the Secretary****Subpart 1. Departmental Administrative Procedures****Chapter 4. Suspension of Contested Permit Conditions****§401. Purpose**

A. This Chapter applies to the effectiveness of permit conditions contested pursuant to R.S. 30:2024.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 38:\*\*.

**§403. Suspension of Contested Conditions**

A. Except as noted in Subsection B of this Section, during the course of an adjudicatory hearing or de novo judicial proceeding regarding a contested permit condition, all permit conditions contested by the applicant shall be suspended. All other provisions of the permit shall be effective unless the *administrative authority* as defined in LAC 33:I.107.A elects to suspend uncontested permit provisions that are not severable from those contested by the applicant.

B. Unless otherwise approved by the administrative authority, in writing, a contested permit condition shall not be suspended when:

1. the suspension may result in the withdrawal of delegation to the state of any authorized federal environmental program;

2. the suspension of the contested condition would violate general or numeric criteria found in LAC 33:IX.1113;

3. the contested condition is based on guidelines adopted by reference in LAC 33:IX.4901;

4. the contested condition prevents degradation in an outstanding natural resources water body; or

5. the suspension of the contested condition results in a violation of any memorandum of understanding between the department and the United States Fish and Wildlife Service.

C. Existing Permitted Facilities. To the extent that conditions in a newly-issued permit are suspended under this Section, the applicant must comply with the corresponding conditions of the existing permit that was replaced by the newly-issued permit, unless compliance with those conditions would be technologically incompatible with compliance with other conditions in the new permit which have not been suspended.

D. Newly Permitted Facilities. When a permit condition for a new facility, new source, new discharger, or a recommencing discharger is suspended, the applicant shall be prohibited from commencing any activities that may result in a release or discharge to the environment that are regulated by the suspended permit condition or related permit conditions that are not severable from the contested condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 38:\*\*.

#### **§405. Procedure for Suspension of Contested Conditions**

A. For a contested permit condition to be suspended, the applicant must submit a hearing request pursuant to R.S. 30:2024(A).

B. In the hearing request, the applicant must specifically identify the permit condition being contested and explain the basis for challenging the contested condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 38:\*\*

**§407. Effect of Suspension Following Action on Denial of a Hearing Request**

A. Upon notice of the denial of a hearing request submitted pursuant to R.S. 30:2024(A), suspended permit conditions shall become effective unless the applicant timely files a petition for de novo review pursuant to R.S. 30:2024(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 38:\*\*.

**Part III. Air**

**Chapter 5. Permit Procedures**

**§537. Louisiana General Conditions**

A. ...

<b>Table 1. Louisiana Air Emission Permit General Conditions</b>
I. – XVII. ...
XVIII. Provisions of the permit may be appealed to the secretary in writing pursuant to La. R.S. 30:2024(A) within 30 days from notice of the permit action. <del>Only those provisions specifically appealed will be suspended by a request for hearing, unless the secretary or the assistant secretary elects to suspend other provisions as well. Construction cannot proceed, except as specifically approved by the secretary or assistant secretary, until a final decision has been rendered on the appeal. A request for hearing must be sent to the Office of the Secretary.</del>
XIX. – XX. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:660 (April 2009), amended LR 37:1146 (April 2011), LR 38:\*\*.

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental Quality—Hazardous Waste**

**Chapter 7. Administrative Procedures for Treatment, Storage, and Disposal Facility  
Permits**

**Subchapter A. Permits**

**§705. Issuance and Effective Date of Permit**

A. – B.1. ...

2. review is requested under R.S. 30:2024, in which case effectiveness of permit conditions shall be governed by LAC 33:I.Chapter 4;

3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:614 (July 1990), LR 38:\*\*.

**Part IX. Water Quality**

**Subpart 1. Water Pollution Control**

**Chapter 3. Permits**

**Subchapter A. General Requirements**

**§309. Renewal and Termination**

A. – B.3. ...

C. If the applicant submits a timely and complete application pursuant to LAC 33:IX.309.A, and the department, through no fault of the applicant, fails to act on the application on or before the expiration date of the existing permit, the permittee shall continue to operate the facility under the terms and conditions of the expired permit which shall remain in effect until final action on the application is taken by the department. If the application is denied ~~or the terms of the new permit contested~~, the expired permit shall remain in effect until the appeal process has

been completed and a final decision rendered unless the secretary finds that an emergency exists which requires that immediate action be taken and in such case any appeal or request for review shall not suspend the implementation of the action ordered. Permits continued under this Section remain fully effective and enforceable. If the conditions of any new or renewed permit are contested by the permittee to R.S. 30:2024, the effectiveness of permit conditions shall be governed by LAC 33:I.Chapter 4.

D. – H. ...

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 11:1066 (November 1985), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2541 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2505 (October 2005), LR 33:2161 (October 2007), LR 38:\*\*.

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

LOG #: OS083

Person Preparing Statement:	<u>Elliott B. Vega</u>	Dept.:	<u>Environmental Quality</u>
Phone:	<u>(225) 219-3985</u> elliott.vega@la.gov	Office:	<u>Office of the Secretary</u>
Return Address:	<u>602 North Fifth Street</u> <u>Baton Rouge, LA 70802</u>	Rule Title:	<u>Stay of Permit Conditions Pending</u> <u>Administrative/Judicial Review</u> <u>(LAC 33:I.401, 403, 405 and 407)</u>
		Date Rule Takes Effect:	<u>Upon Promulgation</u>

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)

The proposed rule change clarifies the Department of Environmental Quality's position on suspension of contested permit conditions by condensing into one regulation a number of existing regulations of the same or similar nature. There will be no significant implementation cost or savings to state or local governmental units because of the proposed rule change.

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

The proposed rule change will have no effect on revenue collections of state or local government units.

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

The proposed rule change may result in an economic benefit to persons or non-governmental groups that receive permits through the Department of Environmental Quality through the avoidance of legal services or advice regarding the suspension of contested conditions

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)



There will be no effect on competition or employment in the public or private sector as a result of the proposed rule change.

\_\_\_\_\_  
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).

The rule condenses into one regulation a number of existing regulations of the same or similar nature. The rule clarifies the Department of Environmental Quality's position on suspension of contested permit conditions. The proposed rule also governs the effectiveness of contested permit conditions in those portions of the regulations where no rules on this issue currently exist. In addition, the proposed rule provides limitations and exceptions to the general language governing the effectiveness of challenged conditions, provides for suspension of related permit conditions, and sets forth actions required for a permittee to utilize suspension provisions provided by the proposed rule.

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

The proposed rule is required to ensure uniformity of permit conditions that are subject to a legal challenge by the permittee. Currently, several parts of the Environmental Regulatory Code administered by the Department of Environmental Quality (department) have sections addressing this issue. These sections while similar are not uniform. Other parts of the Environmental Regulatory Code administered by the department currently have no regulatory language addressing the effectiveness of contested permit conditions. By ensuring a uniform approach across all environmental media, the proposed rule will provide clarity and remove uncertainty from the department's permitting process.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No, this proposed rule will not result in any net increase in the expenditure of funds.

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

(a)  Yes. If yes, attach documentation.

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

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

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

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

No costs or savings to state agencies are anticipated as a result of this proposed rule.

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COSTS	FY 11-12	FY 12-13	FY 13-14
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. 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.

There are no costs or savings associated with the proposed rule. No increase or reduction in workload or additional paperwork is anticipated.

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

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SOURCE	FY 11-12	FY 12-13	FY 13-14
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?

No funds are required to implement the proposed action.

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.

No impact on local governmental units is anticipated.

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

There are no costs or savings to local governmental units; as such, no funding is needed.

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

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

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

There will be no effect on revenue collections of state or local governmental units from the proposed action.

REVENUE INCREASE/DECREASE	FY 11-12	FY 12-13	FY 13-14
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.

No increase or decrease in revenues will be realized.

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.

Persons receiving permits from the Department of Environmental Quality will be directly affected by the proposed rule. These persons will be provided with clear, single unambiguous regulation governing the status of challenged permit conditions. No additional cost or workload adjustments, including additional paperwork, will result from the proposed rule. However, some costs associated with procurement of legal services/advice regarding suspension of contested conditions may be avoided.

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.

No impacts on receipts or income will result.

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 effect on competition or employment in the public or private sectors.