

## NOTICE OF INTENT

Department of Environmental Quality  
Office of the Secretary  
Legal Division

Minor Revisions to Water Quality Standards Antidegradation Language  
(LAC 33:IX.1109 and 1119) (WQ085)

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.1109 and 1119 (WQ085).

This Rule will make minor revisions to LAC 33:IX.1109 and 1119. Upon review, several instances of outdated, unclear or inappropriate language was found in Chapter 11 of the water quality regulations. This language is being clarified, updated or removed as necessary. Also, a misspelling is being corrected. This Rule is necessary to update language in the water quality regulations. The basis and rationale for this Rule are to enhance and protect the waters of the state. 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 August 29, 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 Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ085. Such comments must be received no later than September 5, 2012, at 4:30 p.m., and should be sent to Deidra Johnson, 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 [deidra.johnson@la.gov](mailto:deidra.johnson@la.gov). Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ085. 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 Baratavia 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 1. Water Pollution Control**

**Chapter 11. Surface Water Quality Standards**

**§1105. Definitions**

\* \* \*

*Degradation*—a lowering of water quality, as demonstrated by data analysis, water quality models, or other scientifically defensible method.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2401 (December 1999), LR 26:2545 (November 2000), LR 29:557 (April 2003), LR 30:1473 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:456 (March 2007), LR 33:827 (May 2007), LR 35:445 (March 2009), LR 38:\*\*.

**§1109. Policy**

Water quality standards policies concerned with the protection and enhancement of water quality in the state are discussed in this Section. Policy statements on antidegradation, water use, water body exception categories, compliance schedules and variances, short-term activity authorization, errors, severability, revisions to standards, and sample collection and analytical procedures are described.

A. Antidegradation Policy

1. State policy is that all waters of the state, including interstate, intrastate, and coastal waters, and any portions thereof, whose existing quality exceeds the specifications of the approved water quality standards or otherwise supports an unusual abundance and diversity of fish and wildlife resources, such as waters of national and state parks and refuges, will be maintained at their existing

high quality. After completion of appropriate analysis and public participation processes (as outlined in the Water Quality Management Plan and the Continuing Planning Process), ~~the~~ state may choose to allow lower water quality in waters that exceed the standards to accommodate justifiable economic and/or social development in the areas in which the waters are located, but not to the extent of violating the established water quality standards. ~~Appropriate use attainability analyses will be required before any lowering of water quality will be allowed.~~ No such changes, however, will be allowed if they impair ~~interfere with or become injurious to~~ the existing water uses. No lowering of water quality will be allowed in waters where standards for the designated water uses are not currently being attained.

2. The administrative authority will not approve any wastewater discharge or certify any activity for federal permit that would impair water quality or the existing uses of state waters. Waste discharges must comply with applicable state and federal laws for the attainment of water quality goals. Any new, existing, or expanded point source or nonpoint source discharging into state waters, including any land clearing which is the subject of a federal permit application, will be required to provide the necessary level of waste treatment to protect state waters as determined by the administrative authority. Further, the highest statutory and regulatory requirements shall be achieved for all existing point sources and best management practices (BMPs) for nonpoint sources. Additionally, no degradation shall be allowed in high-quality waters designated as that constitute outstanding natural resources waters, as defined in LAC 33:IX.1111.A, ~~such as waters in the Louisiana Natural and Scenic Rivers System~~ or waters of ecological significance identified as designated by the department. Those water bodies presently designated as outstanding natural resources waters are listed in LAC 33:IX.1123.

A.3. – J.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:966 (October 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2546 (November 2000), LR 29:557 (April 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 33:457 (March 2007), LR 33:828 (May 2007), LR 38:\*\*.

### **§1119. Implementation Plan for Antidegradation Policy**

#### A. Summary and Purpose

1. As stated in LAC 33:IX.1109.A of these regulations, the Antidegradation Policy provides a legal framework for the basic maintenance and protection of all designated water uses. It also outlines methods that the state uses to protect state waters from water quality degradation and some of the state and federal rules and regulations that authorize them.

2. ...

#### B. Implementation of Louisiana's Water Quality Management Process

1. Procedures and methods by which the Antidegradation Policy is implemented are described in ~~several documents produced under~~ the Water Quality Management Plan (WQMP) Process ("The Water Quality Standards (WQS)," "The Water Quality Integrated Report," and "The Continuing Planning Process"). which ~~These documents~~ is available from the department.

2. - 2.g. ...

C. Specific Implementation Procedures for the Antidegradation Policy. The antidegradation policy is implemented by ensuring that for all new discharges ~~activities~~ which may impact water quality and are permitted by the state, or for which there must be a permit on which the state comments, consideration is given to requirements of the policy. The basic principle of the policy is that water quality criteria specified in the standards shall not be exceeded and that designated uses

will not be adversely impacted.

1. ...

2. If a ~~new~~such activity will impact water quality by either a point or nonpoint source discharge of pollutants, the state shall ensure that the activity will not ~~impair~~interfere with or become injurious to the existing uses. If water quality will be degraded, the state shall ensure that the intergovernmental coordination and public participation provisions of the state's Continuing Planning Process are met.

3. ...

\* \* \*

4. If a new or increased wastewater discharge ~~or activity~~ is proposed for an outstanding natural resource water body, ~~as defined by this Chapter~~, the administrative authority shall not approve that activity if it will cause *degradation*, as defined in LAC 33:IX.1105, of these waters body. ~~For these purposes, *degradation* is defined as a statistically significant difference at the 90 percent confidence interval from existing physical, chemical, and biological conditions. An existing unpermitted discharge may be allowed if the discharge existed before the designation as an outstanding natural resource water body. Additionally, an eExisting unpermitted discharges of treated sanitary wastewater may also be allowed if no reasonable alternative discharge location is available or if the discharge existed before the designation as an outstanding natural resource water body.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2548 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:831 (May 2007), LR 38:\*\*.

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

LOG #: WQ085

Person		
Preparing	<u>Sandy Stephens</u>	Dept.: <u>Environmental Quality</u>
Statement:	<u>sandy.stephens@la.gov</u>	
	(email address)	
Phone:	<u>(225) 219-3218</u>	Office: <u>Environmental Services</u>
Return		Rule
Address:	<u>602 North Fifth Street</u>	Title: <u>Minor Revisions to Water Quality</u>
	<u>Baton Rouge, LA 70820</u>	<u>Standards Antidegradation Language</u>
		<u>(LAC 33:IX.1105, 1109, and 1119)</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 will have no impact on state or local government expenditures. The proposed rule change is minor revision to clarify language in existing surface water quality standards. The proposed rule changes allow the Department of Environmental Quality to implement the antidegradation policy of the LA Pollutant Discharge Elimination System water permit program; however, the proposed rule changes do not change the permit process or permit fees for the department.

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

There will be no impact on revenue collections of state or local governmental units as a result of the proposed rule change.

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

There is no estimated costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment 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).

This rule will make minor corrections and clarify language in LAC 33:IX.1109, and 1119. A definition is being added to Section 1105. Inconsistent language in Section 1109 is being deleted and additional language is being added to clarify when appropriate analysis will be conducted. In Section 1119, language is being deleted and additional language is being added to clarify the antidegradation implementation process. These changes are necessary to allow for the implementation of the antidegradation policy of the Louisiana Pollutant Discharge Elimination System water permits program.

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

After reviewing Chapter 11 of the Water Quality Standards (LAC 33:IX.Chapter 11) it was determined that updates were necessary in order to implement the antidegradation policies and be in compliance with the Clean Water Act and associated federal regulations.

- 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.

The proposed rule change will not result in any 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?

There is no anticipated increase or decrease in costs to implement the proposed action.

COSTS	FY12-13	FY13-14	FY14-15
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.

Not applicable.

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

SOURCE	FY12-13	FY13-14	FY14-15
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 agency has sufficient funds 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.

There is no anticipated impact on local governmental units, including adjustments in workload and paperwork requirements.

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

Not applicable.

## 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?

No increase or decrease in revenues is anticipated from the proposed action.

REVENUE INCREASE/DECREASE	FY12-13	FY13-14	FY14-15
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.

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.

There are no costs and/or economic benefits to directly affected persons or non-governmental groups.

- 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 is no impact on receipts and/or income resulting from this 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 is no impact on competition and employment in the public and private sectors resulting from this proposed rule.