

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Division

Control Facilities to be Installed When Feasible (LAC33:III.905.B) (AQ338)

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 Air regulations, LAC33:III.905.B (AQ338).

This rule allows the department to provide an exemption to the requirements of LAC 33:III.905.A in limited circumstances. When the Environmental Protection Agency (EPA) promulgates a new rule, the Administrator generally provides several years for owners or operators of affected facilities to install the necessary control equipment or otherwise modify their processes or work practices to comply with the rule's requirements. For example, Section 112(i)(3)(A) of the Clean Air Act states that "the Administrator shall establish a compliance date or dates ... which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard ..." Owners or operators of affected facilities commence construction and sometimes operation of the requisite control equipment in this period between the effective date and compliance date of the rule.

Currently, LAC 33:III.905.A requires air pollution control facilities to "be used and diligently maintained in proper working order whenever any emissions are being made which can be controlled by the facilities," regardless of the circumstances. Thus, even if a court subsequently vacates and remands the rule for which the control equipment was required to comply, rendering it legally void (such as in the case of the Cross-State Air Pollution Rule), LAC 33:III.905.A mandates the use or continued use of any "air pollution control facilities" installed. There are often considerable costs associated with the operation and maintenance of control equipment (e.g., the ammonia required for selective catalytic reduction; the ammonia or urea required for selective non-catalytic reduction; efficiency losses due to parasitic load). These costs must be borne by the owner or operator of the affected facility or passed along to its customers.

Therefore, this rule will provide a narrow exemption to LAC 33:III.905.A. It will allow the department to grant an exemption to the owner or operator of an air pollution control facility installed solely to comply with a proposed federal or state regulation that fails to be promulgated or a final federal or state regulation that is vacated and remanded, provided the owner or operator can comply with all emissions limitations prescribed by the stationary source's air permit without use of the air pollution control facility in question. The basis and rationale for this rule are to provide an exemption to the requirements of LAC 33:III.905.A. 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. This Rule has no known impact on poverty as described in R.S. 49:973.

A public hearing will be held on February 27, 2013, 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 AQ338. Such comments must be received no later than March 6, 2013, 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. 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 AQ338. These proposed regulations are available on the Internet at 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 III. Air

Chapter 9. General Regulations on Control of Emissions and Emission Standards

§905. Control Facilities to be Installed When Feasible.

A. Except as provided in Subsection B, To aid in controlling the overall levels of air contaminants into the atmosphere, air pollution control facilities should be installed whenever practically, economically, and technologically feasible. When facilities have been installed on a property, they shall be used and diligently maintained in proper working order whenever any emissions are being made which can be controlled by the facilities, even though the ambient air quality standards in affected areas are not exceeded.

B. Exemptions.

1. The provisions of Subsection A of this Section shall not apply when the controls are installed to comply with a regulation that explicitly limits the required use of the controls to specific circumstances or times.

2 The administrative authority may grant a written exemption to the owner or operator of the air pollution control facility.

a. An exemption may be granted when the air pollution control facility has been installed, but not operated solely to comply with:

i. a proposed federal or state regulation that has not been adopted and promulgated; or

ii. a final federal or state regulation that has been vacated and remanded by a court of proper jurisdiction and is no longer effective.

b. An exemption shall not authorize:

i. the noncompliance with any limit, standard, or requirement otherwise provided in a permit or other regulation; or

ii. a physical change or change in the method of operation of the facility that increases emissions.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of the Secretary, Legal Division, LR 39:**.

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

LOG #: AQ338

Person
Preparing
Statement: Alex Prochaska Dept.: Environmental Quality
Phone: (225) 219-4070 Office: Environmental Services
alex.prochaska@la.gov
Return
Address: 602 North Fifth Street Rule Title: Control Facilities to be Installed
Baton Rouge, LA 70802 When Feasible (LAC 33:III.905)
Date Rule
Takes Effect: Upon Promulgation

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)

There are no estimated implementation costs or savings to state or local governmental units as a result of the proposed rule. Currently, the regulation requires air pollution control facilities to "be used and diligently maintained in proper working order whenever any emissions are being made which can be controlled by the facilities," regardless of the circumstances. The proposed regulation will allow the Department of Environmental Quality to grant certain exceptions to the owner or operator of an air pollution control facility.

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

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed rule.

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

There will be no costs to directly affected persons or non-governmental groups as a result of the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment in the public or private sector because of the proposed rule.

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 allows the department to provide an exception to the requirements of LAC 33:III.905.A in limited circumstances.

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

When the Environmental Protection Agency (EPA) promulgates a new rule, the Administrator generally provides several years for owners or operators of affected facilities to install the necessary control equipment or otherwise modify their processes or work practices to comply with the rule's requirements. For example, Section 112(i)(3)(A) of the Clean Air Act states that "the Administrator shall establish a compliance date or dates ... which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard ..." Owners or operators of affected facilities commence construction and sometimes operation of the requisite control equipment in this period between the effective date and compliance date of the rule.

Currently, LAC 33:III.905.A requires air pollution control facilities to "be used and diligently maintained in proper working order whenever any emissions are being made which can be controlled by the facilities," regardless of the circumstances. Thus, even if a court subsequently vacates and remands the rule for which the control equipment was required to comply, rendering it legally void (such as in the case of the Cross-State Air Pollution Rule), LAC 33:III.905.A mandates the use or continued use of any "air pollution control facilities" installed. There are often considerable costs associated with the operation and maintenance of control equipment (e.g., the ammonia required for selective catalytic reduction; the ammonia or urea required for selective non-catalytic reduction; efficiency losses due to parasitic load). These costs must be borne by the owner or operator of the affected facility or passed along to its customers.

Therefore, this rule will provide a narrow exception to LAC 33:III.905.A. It will allow the department to grant an exception to the owner or operator of an air pollution control facility installed solely to comply with a proposed federal or state regulation that fails to be promulgated or a final federal or state regulation that is vacated and remanded, provided the owner or operator can comply with all emissions limitations prescribed by the stationary source's air permit without use of the air pollution control facility in question.

- 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 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 state agencies as a result of this proposed rule.

COSTS	FY 12-13	FY 13-14	FY 14-15
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. 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 is no anticipated increase or decrease in costs 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.

SOURCE	FY 12-13	FY 13-14	FY 14-15
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?

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, 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.

There are no costs or savings to local governmental units; therefore, 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 rule.

REVENUE INCREASE/DECREASE	FY 12-13	FY 13-14	FY 14-15
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.

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.

The proposed rule impacts only the administrative authority (i.e., the Department of Environmental Quality (DEQ)). It does not establish additional requirements on owners or operators of stationary sources using and maintaining air pollution control facilities. There will be no effect on costs, including workload adjustments and additional paperwork, as a result of the proposed action.

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 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 effect on competition or employment in the public or private sectors resulting from the proposed rule.