

§10403. Applicability

A. These regulations apply to taxpayers who purchase *qualified new recycling manufacturing or process equipment* and/or *qualified service contracts*, as defined in LAC 33:VII.10405 and R.S. 47:6005, and who apply for tax credit pursuant to R.S. 47:6005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6005.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 18:841 (August 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2631 (December 2007).

§10405. Definitions

A. For the purpose of this Chapter the terms below shall have the meaning specified herein as follows.

Beneficial Use—the use of waste material for some profitable purpose (e.g., incorporating sludge into soil to amend the soil). Avoidance of processing or disposal cost alone does not constitute beneficial use.

Conventional Disposal—the disposal as waste in a cell at a landfill. It shall not include any application specifically approved by the department as a beneficial use (e.g., alternate daily cover).

Industrial Solid Waste—solid waste generated by a manufacturing, industrial, or mining process, or which is contaminated by solid waste generated by such a process. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products; byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; and transportation equipment. This term shall not include hazardous waste regulated under the Louisiana hazardous waste regulations or under federal law, or waste which is subject to regulation under the Office of Conservation's Statewide Order No. 29-B or by other agencies.

Post-Consumer Waste Material—any product generated by a business or consumer which has served its intended end use, and which has been separated from solid waste for the purposes of collection, marketing and disposition and which does not include secondary waste material, hazardous waste, or demolition waste.

Process—a method or technique, including recycling, recovering, compacting (but not including compacting that occurs solely within a transportation vehicle), composting, incinerating, shredding, baling, recovering resources, pyrolyzing, or any other method or technique designed to change the physical, chemical, or biological character or composition of a solid waste to render it safer for transport, reduced in volume, or amenable for recovery, storage, reshipment, or resale. The definition of *process* shall not include treatment of wastewaters to meet state or federal wastewater discharge permit limits. Neither shall the definition include activities of an industrial generator to simply separate wastes from the manufacturing process.

Qualified New Recycling Manufacturing or Process Equipment—new machinery or new apparatus used exclusively to process post-consumer waste material, recovered material, or both, and manufacturing machinery used exclusively to produce finished products, the composition of which is at least 50 percent post-consumer waste material, recovered material, or both. For purposes of this Chapter, *qualified new recycling manufacturing or process equipment* shall not include vehicles, structures, machinery, equipment, or devices used to store or incinerate waste material, or construction equipment or farm equipment used in the process.

Qualified Service Contract—any service contract utilized by a nonhazardous industrial waste generator or a nonhazardous industrial waste beneficial user to implement Department of Environmental Quality-approved beneficial use programs for nonhazardous industrial waste streams as defined under the department's solid waste rules and regulations so as to avoid conventional disposal of such waste in a landfill.

Recovered Material—*recovered materials* as defined in R.S. 30:2412 and which would otherwise be processed or disposed of as nonhazardous solid waste.

Recycling—any process by which nonhazardous solid waste, or material which would otherwise become solid waste, is collected, separated, or processed and reused or returned to use in the form of raw material or products.

Secondary Waste Material—waste material generated after the completion of a manufacturing process.

Solid Waste—any garbage, refuse, or sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. *Solid waste* shall not include solid or dissolved material in domestic sewage; solid or dissolved materials in irrigation-return flows; industrial discharges that are point sources subject to permits under R.S. 30:2075; source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (68 Stat. 923 et seq.), as amended; or hazardous waste subject to permits under R.S. 30:2171 et seq.

Vehicle—an automobile; motorcycle; truck; trailer; semitrailer; truck, tractor and semitrailer combination; or any other vehicle used to transport persons or property and propelled by power.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6005.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 18:841 (August 1992), repromulgated LR 18:960 (September 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2631 (December 2007).

§10407. Technical Specifications for Qualified New Recycling Manufacturing or Process Equipment and/or Service Contracts

A. In order to qualify for certification as qualified new recycling manufacturing or process equipment and/or a qualified service contract, the equipment and/or service contract must utilize new apparatus used exclusively to process post-consumer waste material and/or involve the processing of post-consumer waste material in a Department of Environmental Quality-approved beneficial use program for nonhazardous industrial solid waste and meet the following requirements:

1. be new machinery or new apparatus used exclusively to process post-consumer waste material, recovered material, or both; or
2. be new manufacturing machinery used exclusively to produce finished products, the composition of which is at least 50 percent post-consumer waste material, recovered material, or both; and/or
3. be a service contract associated with the construction and/or operation of new recycling manufacturing or process equipment implementing a Department of Environmental Quality-approved beneficial use program for industrial solid waste; and/or
4. be new parts required to allow recycling manufacturing to continue for equipment that is a part of a previously-approved certification under these regulations; and
5. be used exclusively in the state of Louisiana.

B. The following categories of equipment, and any associated service contracts, will be excluded from certification as qualified new recycling manufacturing or process equipment and/or qualified service contracts:

1. a *vehicle*, as defined in LAC 33:VII.10405, or any service contract associated with the vehicle;
2. structures, machinery, equipment, or devices, or any service contract associated with the structures, machinery, equipment, or devices, used to store or incinerate waste materials; and
3. used equipment, or any service contract associated with the used equipment.

C. The DEQ shall determine the costs to obtain and construct the qualified equipment, as well as the reasonable amount of the associated qualified service contract, that may be allowed for the credit. When the equipment is built from components and assembled at the installation site or a site separate from the installation site, and subsequently transported and installed at the installation site, the costs of the components, the costs to assemble the components, and the costs to install the components shall be

considered the allowed costs. In addition, any qualified service contract necessary to carry out the assembly, transportation, or installation of the qualified equipment shall be considered allowed costs.

D. The costs of materials, labor, and qualified service contracts associated with the project, used to construct a building or other structure necessary to support the equipment or to protect the equipment and operators from the elements while they operate the equipment shall be allowed costs, provided that the building or structure is used exclusively in connection with the recycling operations.

E. Under no circumstances shall any of the following be considered allowed costs:

1. financial charges;
2. the costs of acquiring land or rights in land, including any service contract associated with the costs of acquiring land or rights in land, and any costs incidental thereto, including recording fees; and
3. the costs to construct a building or structure, including any service contract associated with the construction of the building or structure, to store raw material or finished products.

F. The DEQ shall determine the costs to obtain and utilize a service contract by nonhazardous industrial waste generators or nonhazardous industrial waste beneficial users. Beneficial use programs for nonhazardous industrial waste streams shall be defined according to the DEQ's solid waste rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6005.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 18:841 (August 1992), amended LR 24:27 (January 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2632 (December 2007).

§10409. Application Requirements

A. Application Form for Equipment and Qualified Service Contracts

1. In order to qualify for the tax credit provided for in this Chapter, the taxpayer shall apply for certification from the Secretary of the Department of Environmental Quality that the new recycling manufacturing or process equipment purchased, and any associated service contract, is *qualified new recycling manufacturing and process equipment* or a *qualified service contract* as defined in LAC 33:VII.10405 and the equipment or service contract will be used or rendered exclusively in the state of Louisiana.

2. In addition to information provided on the application form, the DEQ may require and the applicant shall provide cost estimates, engineering drawings, specifications sheets, and any other documents necessary to establish with sufficient specificity the equipment and/or associated service contract qualifying for the tax credit.

3. In addition to information provided on the application form, the DEQ may require and the applicant shall provide such documentation as may be necessary to establish with sufficient specificity that the post-consumer waste material or recovered material proposed to be recycled is a nonhazardous solid waste under applicable state and federal law and regulations.

4. In addition, the DEQ may request documentation, in the form of bid amounts or other documentation, that a qualified service contract is for a reasonable amount and that the qualified service contract complies with all existing State of Louisiana Code of Ethics provisions, or otherwise complies with all applicable state and federal law and regulations.

B. The applicant must report final costs of recycling equipment purchases and qualified service contracts to the LDR and the DEQ. Audits will be performed by the LDR and the DEQ as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6005.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 18:841 (August 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2632 (December 2007).

§10411. Applicant Certification

A. Included with the application for certification shall be a statement acknowledging that the applicant shall use a good faith effort to utilize post-consumer waste material or recovered material, or has used the

equipment or services contracted for to implement a Department of Environmental Quality-approved beneficial use program for a nonhazardous industrial waste stream, which was generated within the state of Louisiana or was destined to be land-filled within the state.

B. The applicant shall certify to the accuracy of the information contained in the application regarding the equipment or service contract description, the date of purchase, and the cost of the equipment or service contract. The certification shall also state that the equipment and/or service contract is used exclusively in the state of Louisiana and has not previously qualified for a credit pursuant to this Chapter either for the owner or for a previous owner. The certification shall specify the following:

1. the date of purchase of the qualified new recycling manufacturing or process equipment, a description of the equipment, and the cost;
2. the date of the qualified service contract, if any, a description of such contract, and its cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6005.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 18:842 (August 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2633 (December 2007).

§10413. Department of Environmental Quality Certification

A. Prior to certification, the Secretary of the Department of Environmental Quality shall determine that any post-consumer waste material or recovered material proposed to be recycled is a nonhazardous solid waste or nonhazardous industrial solid waste under applicable state and federal law and regulations and/or is being used for a qualified beneficial use approved by the DEQ.

B. The Secretary of the Department of Environmental Quality shall examine the application and, if he determines that the equipment and/or service contract described therein is qualified new recycling manufacturing or process equipment and/or a qualified service contract used or rendered exclusively in the state of Louisiana, shall certify that the equipment and/or service contract is eligible for credit against state income and corporation franchise taxes pursuant to R.S. 47:6005.

C. Upon certification, the Secretary of the Department of Environmental Quality shall submit a copy of the signed, certified application to the taxpayer and to the Secretary of the Louisiana Department of Revenue. The secretary shall also submit a copy of the certification to the Commissioner of Administration, who shall approve the certification prior to a credit being granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6005.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 18:842 (August 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2633 (December 2007).

§10415. Amount of Credit

A. The maximum total credit related to a purchase of qualified new recycling manufacturing or process equipment and/or a qualified service contract that may be allowable for all taxable periods is 20 percent of the cost of the qualified recycling equipment or qualified service contract, less the amount of any other Louisiana tax credits for the purchase of the equipment or the cost of the service contract. The total tax credits allowed under this Chapter shall be limited to five million dollars per tax year. Example:

Cost of equipment	\$1,000,000
	X .20
	\$ 200,000
Less other Louisiana credit on purchase	\$ 100,000
Maximum credit for all taxable periods	\$ 100,000

B. One-fifth (20 percent) of the maximum total credit related to a purchase of qualified recycling equipment and/or a qualified service contract is earned each taxable period in which the equipment or service contract continues to be in use exclusively in the state of Louisiana to a maximum of five periods. Example:

Maximum credit for all taxable periods	\$ 100,000
	X .20

Credit earned for this taxable period	\$ 20,000
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C. The maximum credit that may be claimed for all purchases of qualified recycling equipment and/or qualified service contracts, including carryover of previously earned but unused credits, in any taxable period shall not exceed 50 percent of the tax that would be otherwise due. Example:

Tax otherwise due:	
Income tax	\$ 12,000
Franchise tax	\$ 18,000
Total	\$ 30,000
	X .50
Maximum credit to be claimed on return	\$ 15,000

D. Any unused credit for a taxable period in which a credit is earned may be carried forward to subsequent years until the credit is exhausted.

E. If the qualified recycling equipment is sold or exchanged before the entire credit is claimed, any unearned portion of the credit shall be canceled for all periods following the period of sale. If a qualified service contract is transferred by virtue of a sale of the qualified recycling equipment or otherwise before the entire credit is claimed, any unearned portion of the credit shall be canceled for all periods following the period of the transfer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6005.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 18:842 (August 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2633 (December 2007).