

Table of Contents

**Title 33**  
**ENVIRONMENTAL QUALITY**

**Part VI. Inactive and Abandoned Hazardous Waste and Hazardous Substance Site Remediation**

Chapter 1. General Provisions and Definitions ..... 1

    §101. Purpose and Objectives ..... 1

    §103. Regulatory Overview..... 1

    §105. Compliance with Other Laws ..... 2

    §107. Authority..... 2

    §109. Enforcement ..... 2

    §111. Construction of Rules ..... 2

    §113. Severability ..... 2

    §115. Computation of Time ..... 2

    §117. Definitions ..... 3

Chapter 2. Site Discovery and Evaluation ..... 6

    §201. Site Discovery ..... 6

    §203. Integrated Data Management Database ..... 7

    §205. Preliminary Evaluation ..... 7

Chapter 3. Administrative Processes..... 8

    §301. Assignment of Inactive and Abandoned Hazardous Waste Sites Program ..... 8

    §303. Declaration That a Site Is Abandoned..... 8

    §305. Property Liens ..... 9

Chapter 4. PRP Search, Notification, and Demand for Remediation ..... 9

    §401. PRP Search ..... 9

    §403. Notification to Provide Information ..... 10

    §405. Demand for Remediation to PRPs..... 10

Chapter 5. Site Remediation ..... 11

    §501. Remedial Actions ..... 11

    §502. Role of PRPs in Remedial Actions..... 11

    §503. Minimum Remediation Standards and Risk Evaluation/Corrective Action Program Standards..... 11

    §505. Removal Action..... 12

    §507. Remedial Investigation..... 12

    §509. Corrective Action Study ..... 13

    §511. Selection of the Final Remedy ..... 15

    §513. Design and Implementation of the Final Remedy ..... 16

    §515. Revisions to the Final Remedy..... 16

    §517. Inspections by the Department ..... 17

    §519. Completion of the Final Remedy ..... 17

## Table of Contents

§521. Post-Remedial Management.....	17
§523. Oversight of Potentially Responsible Parties by the Department .....	18
Chapter 6. Cost Recovery .....	18
§601. Purpose and Scope.....	18
§603. Calculation and Invoicing of Remedial Costs .....	19
§605. Documentation of Remedial Costs.....	19
§607. Determination of Remedial Costs; Demand to PRPs.....	19
Chapter 7. Settlement and Negotiations.....	20
§701. Purpose .....	20
§703. Cooperative Agreements .....	20
§705. Negotiations.....	21
§707. Contribution Protection .....	21
§709. De Minimis Settlements .....	21
§711. Mixed Funding .....	22
§713. Availability of Facilitation/Mediation.....	22
Chapter 8. Public Information and Participation.....	23
§801. Public Information.....	23
§803. Public Participation .....	23
Chapter 9. Voluntary Remediation .....	24
§901. Authority and Purpose.....	24
§903. Definitions .....	24
§905. Eligibility.....	24
§907. Liability and Exemptions from Liability.....	25
§909. Voluntary Remedial Investigation and Remedial Action Requirements.....	25
§911. Application Process .....	26
§913. Completion of Voluntary Remedial Actions.....	28
§915. Additional Requirements for Partial Voluntary Remedial Actions.....	28
§917. Fees and Direct Cost Recovery .....	29
§919. Record Retention .....	30
Chapter 11. Brownfields Cleanup Revolving Loan Fund Program .....	30
§1101. Introduction .....	30
§1103. Authority.....	31
§1105. Definitions .....	31
§1107. Eligibility for Participation in the Program .....	31
§1109. Ineligible and Eligible Costs .....	32
§1111. Loan Requirements.....	32
§1113. Loan Application Process.....	33
§1115. Loan Agreements, Closing of Loans, and Disbursement of Loan Funds.....	33
§1117. Recordkeeping, Confidentiality of Records, and Inspection of Records and Participating Sites.....	34
§1119. Prioritization of Applicants and Sites to Receive Loan Funds.....	34

# Title 33

## ENVIRONMENTAL QUALITY

### Part VI. Inactive and Abandoned Hazardous Waste and Hazardous Substance Site Remediation

#### Chapter 1. General Provisions and Definitions

##### §101. Purpose and Objectives

A. These regulations establish uniform administrative procedures for the regulated community for the identification, investigation, and remediation of inactive and abandoned hazardous waste or hazardous substance sites in accordance with the mandates of R.S. 30:2226(H)(1), 2274(C), and 2280.

B. These regulations provide for effective and expeditious site remediation activities that protect human health and the environment.

C. These regulations establish administrative procedures for site remediation actions by potentially responsible parties (PRPs) and for recovering remedial costs incurred by the department.

D. These regulations provide the opportunity for public participation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2178 (November 1999).

##### §103. Regulatory Overview

A. Purpose. This Section provides an overview of identification, investigation, and remediation activities for sites where hazardous substances could have been disposed of and from which such hazardous substances could be discharged. This Section is a summary only; if there are any inconsistencies between this Section and the remainder of these regulations, the regulations shall govern.

##### B. Site Discovery and Evaluation

1. Site Discovery Reporting. These regulations establish a reporting program as required by the Louisiana Environmental Quality Act to help identify inactive or uncontrolled sites where hazardous substances could have been disposed of or discharged. Owners, lessees, and other persons who know or discover that hazardous substances have been discharged or disposed of at such a site must report this information to the Office of Environmental Assessment within the specified time. The department may also discover sites through its own investigations, referrals from other agencies, or other means.

2. Integrated Data Management Database. Sites reported are placed in the department's integrated data

management database. This database provides the department with an accurate inventory of all potential and confirmed sites in the state. All sites in the integrated data management database may not be remediated under the authority of the department; some sites may be referred to other federal and/or state programs, and some sites may not require remediation.

3. Preliminary Evaluation. A preliminary evaluation is conducted to determine if a discharge or disposal of hazardous substances has occurred at a site. The department may conduct limited sampling to determine if hazardous substances are present and/or migrating from a site. If no hazardous substances are present, the department may make a determination that no further action (NFA) is necessary. A NFA determination also may be made if the site falls under the jurisdiction of other state or federal agencies or if inadequate information is available to determine if the site exists. The information collected during a preliminary evaluation may be used to determine whether or not a remedial action is necessary at the site.

C. Remedial Action. The department has responsibility for determining the need for and appropriateness of remedial actions at hazardous substance sites and responsibility for implementing or authorizing such actions at any time after site discovery. The goal of the remedial action is to achieve minimum remediation standards.

1. A remedial investigation (RI) shall be performed by PRPs or the department. During this investigation, site conditions and contaminants will be characterized, the extent of risk to human health and the environment will be determined, preliminary remedial goals will be developed, and data for a corrective action study will be collected.

2. A corrective action study (CAS) shall be performed by PRPs or the department to develop appropriate remedial alternatives for achieving the preliminary goals identified in the RI report and to provide performance and cost data for use in evaluating these alternatives and selecting a remedy.

3. The department shall evaluate the RI and CAS and select a remedy that will protect human health and the environment.

4. When the appropriate remedy has been selected for the site, the remedy shall be implemented. The remedy may include post-remedial management.

D. Enforcement and Potentially Responsible Party Participation. It is the policy of the department that, where possible, the cost of actions taken in accordance with the Act and these regulations shall be borne by potentially

responsible parties. In furtherance of that policy, the department shall invite PRPs to participate in the investigation and remediation process. The department shall impose a limited moratorium on its own site work and enforcement action while it negotiates good faith offer(s) received from one or more PRPs. The department retains the right to fully exercise all other enforcement authorities granted it by law, including administrative and judicial orders.

**E. Public Information and Participation.** The department shall provide public access to site-related information and shall provide opportunities for public participation in site-related decisions in accordance with the Act.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2178 (November 1999), amended LR 26:2510 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2136 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2757 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2139 (November 2017).

#### **§105. Compliance with Other Laws**

**A.** Nothing herein shall be construed to diminish the department's authority to address the presence at any site of any hazardous substance, hazardous waste, hazardous waste constituent, or other pollutant or contaminant under other applicable laws or regulations. The remediation and enforcement processes and procedures under these regulations and under other laws may be combined. The department may initiate a remedial action under these regulations and may, upon further analysis, determine that another law is more appropriate or vice versa.

**B.** If a hazardous substance, hazardous waste, hazardous waste constituent, or other pollutant or contaminant remains at a site after actions have been completed under other applicable laws or regulations, the department may apply these regulations to protect human health or the environment.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2179 (November 1999).

#### **§107. Authority**

**A.** These rules and regulations are established by the Department of Environmental Quality in accordance with R.S. 30:2001 et seq. and, in particular, §2221 et seq. and §2271 et seq.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2226(H)(1), 2274(C), and 2280 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2179 (November 1999).

#### **§109. Enforcement**

**A.** Failure to comply with the provisions of these regulations or with the terms and conditions of any order issued hereunder constitutes a violation of the Act and these regulations. Such violations shall be subject to any enforcement action including penalties in accordance with R.S. 30:2025.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2011(D)(6), 2203(B), 2204(B), and 2274(B).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2179 (November 1999).

#### **§111. Construction of Rules**

**A.** Words in the singular also include the plural, and words in the masculine gender also include the feminine, and vice versa, as the case may require.

**B.** The terms *applicable*, *appropriate*, *relevant*, and similar terms implying discretion mean as determined by the department, with the burden of proof on other persons to demonstrate that the requirements are or are not necessary.

**C.** *Approved* or *authorized* actions mean department-conducted or ordered remedial actions or cleanups agreed to by the department in an agreed order or cooperative agreement governing remedial actions at the site.

**D.** *Include* means included, but not limited to.

**E.** *May* means the provision is optional and permissive and does not impose a requirement.

**F.** *Shall* means the provision is mandatory.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2179 (November 1999).

#### **§113. Severability**

**A.** The provisions of these regulations are severable, and if any provision or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or their applications, which can be given effect without the invalid provision or application.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2179 (November 1999).

#### **§115. Computation of Time**

**A.** The day of the event from which the designated period begins to run shall not be included in the computation of a period of time allowed or prescribed in these regulations.

**B.** The last day of the period is to be included in the computation of a period of time allowed or prescribed in these regulations, unless it is a legal holiday, in which event

the period runs until the end of the next day that is not a legal holiday.

C. A legal holiday is to be included in the computation of a period of time allowed or prescribed in these regulations, except when:

1. it is expressly excluded;
2. it would otherwise be the last day of the period; or
3. the period is less than seven calendar days.

D. A half-holiday shall be considered a legal holiday.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2179 (November 1999).

### §117. Definitions

A. For all purposes of these rules and regulations, the terms used in this Chapter shall have the meanings given below unless specified otherwise or unless the context or use clearly indicates otherwise.

**Abandoned Hazardous Waste Site**—a site that has been declared abandoned in accordance with R.S. 30:2225 and LAC 33:VI.Chapter 3.

**Act**—the Louisiana Environmental Quality Act, R.S. 30:2001 et seq.

**Administrative Authority**—the Secretary of the Department of Environmental Quality or his designee or the appropriate assistant secretary or his designee.

**Agent in Charge**—the person who represents a site at the time of sampling. This can be a representative of the following: the owner or operator, a PRP or group of PRPs, a bankruptcy trustee, the executor of an estate, an attorney representing any of these parties, or any other person with similar responsibilities.

**Applicable Requirements**—those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental laws, state environmental laws, or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a site.

**Background Concentration**—the natural ambient concentration of a hazardous substance, including both naturally occurring concentrations and concentrations from human-made sources other than the site being evaluated.

**CERCLA**—the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq.

**Closure Plan**—a plan that identifies the steps necessary to perform the final closure of a facility. For the purposes of these regulations, a *closure plan* may be a remedial action work plan or removal work plan as described in LAC 33:VI.Chapter 5.

**Confirmed Site**—a site where the disposal or discharge of a hazardous substance has been confirmed by the department.

**Contaminant**—any hazardous substance that does not occur naturally or occurs at greater than natural background levels.

**Cooperative Agreement**—a legally enforceable contract between the department and a potentially responsible party.

**Corrective Action Study or CAS**—a process performed interdependently with the remedial investigation (RI) process whereby data generated from the RI are used to develop alternative remedial actions. These alternative remedial actions are then evaluated in terms of criteria established by these regulations to select an appropriate remedial action.

**Department**—Department of Environmental Quality.

**Direct Hours**—time expended by employees of the department with regard to a specific site.

**Discharge**—the placing, releasing, spilling, percolating, draining, pumping, leaking, seeping, emitting, or other escaping of hazardous substances into the air, surface waters, subsurface or groundwater, soil, or sediments as the result of a prior act or omission, or the placing of hazardous substances into natural or manmade pits, drums, barrels, or similar containers under such conditions and circumstances that leaking, seeping, draining, or escaping of hazardous substances can be reasonably anticipated.

**Disposal**—the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous substances into or on any land or water such that hazardous substances could enter the environment, be emitted into the air, or be discharged into any water.

**Environmentally Sensitive Area**—an area needing an increased level of environmental protection, such as areas near schools and within wellhead protection areas; or an area having a terrestrial or aquatic resource, fragile natural setting, or other highly-valued environmental or cultural features such as wetlands, endangered or threatened species habitat or breeding areas, national or state parks, wildlife refuges or management areas, areas near scenic or wild rivers or streams, or national or state forests.

**EPA**—the United States Environmental Protection Agency.

**Facility**—any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or any site or area where a hazardous substance has been deposited or could reasonably have been deposited, stored, disposed of, placed, or otherwise come to be located, not including any consumer product in consumer use.

**Financially Responsible**—able, through the use of insurance, bonds, or other assets, to take action as necessary

or as ordered by the secretary in accordance with these regulations.

**Groundwater**—water in the saturated zone beneath the land surface.

**Hazardous Substance**—any gaseous, liquid, or solid material that, because of its quantity, concentration, or physical, chemical, or biological composition when released into the environment, poses a substantial present or potential hazard to human health, the environment, or property, regardless of whether it is intended for use, reuse, or is to be discarded. This term includes all hazardous waste, hazardous constituents, hazardous materials, and pollutants. The term *hazardous substance* does not include petroleum, including crude oil or any fraction thereof, that is not otherwise specifically listed or designated as a hazardous substance under this Section, and does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). The term does include petroleum products that contain hazardous waste, hazardous substances, or hazardous waste constituents, except where the nature of such hazardous waste, substances, or constituents and the concentrations in which they are found in the petroleum products indicate that the contaminant is an indigenous component of the petroleum product. Notwithstanding the foregoing, the term *hazardous substance* does not include compressed air, firecrackers, carbon paper, coal briquettes, dry ice, fish meal, flares, electric wheel chairs, motor vehicles, and tear gas devices. The following substances have been designated as hazardous by regulation:

- a. *hazardous waste* as defined by R.S. 30:2173 and the hazardous waste regulations, LAC 33:V.Subpart 1;
- b. pollutants listed in LAC 33:I.3931;
- c. toxic air pollutants listed in LAC 33:III.5112; and
- d. hazardous materials listed in LAC 33:V.Subpart 2.

**Hazardous Substance Site**—any place where hazardous substances have come to be located, including without limitation, any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or any other place or area where a hazardous substance has been deposited, stored, disposed of or placed, or otherwise come to be located. A *hazardous substance site* can extend beyond a facility's boundary.

**Hazardous Waste**—those wastes identified and designated as such by the department, consistent with applicable federal laws and regulations, and any waste or combination of wastes that, because of its quantity, concentration, physical, or chemical characteristics, can cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. The definition of *hazardous waste* does not

include radioactive products and byproducts regulated by the United States Nuclear Regulatory Commission or any successor thereto.

**Hazardous Waste Constituent**—any fraction or residue of a hazardous waste.

**Hazardous Waste Site**—any place where hazardous wastes have come to be located, including without limitation, any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or any other place or area where hazardous waste has been deposited, stored, disposed of or placed, or otherwise come to be located. A *hazardous waste site* may extend beyond a facility's boundary.

**Inactive or Uncontrolled Site**—a site or a portion of a site that is no longer in operation.

**Institutional Control**—a measure undertaken to limit or prohibit certain activities that could interfere with the integrity of a remedial action or result in exposure to hazardous substances at a site.

**Leachate**—liquid, including any suspended components in the liquid, that has percolated through or drained from a hazardous substance or soil contaminated with a hazardous substance.

**Minimum Remediation Standards**—the levels of hazardous substances in media that are considered by the department to be acceptable according to risk-based standards established by the Risk Evaluation/Corrective Action Program (RECAP) in accordance with LAC 33:I.Chapter 13.

**No Further Action or NFA**—a determination that further evaluation or remedial actions by the department are not warranted at a particular site.

**Nonparticipating Party**—a person who refuses to comply with any demand by the department in accordance with LAC 33:VI, R.S. 30:2275, or with any administrative order, a person who fails to respond to any such demand or order, or a person against whom a suit has been filed by the department.

**Operation and Maintenance or O and M**—activities conducted at a site after a remedial action is completed to ensure that the action is effective and operating properly.

**Operator**—a person that is in control of or responsible for the operation of a site, facility, or pollution source.

**Oversight**—all activities performed by the department to ensure that the activities of PRPs in conducting site investigations or remedial actions relative to a site are performed in compliance with Louisiana statutes, applicable state and federal regulations, work plans approved by the department, and accepted practices and procedures. Oversight activities by the department include, but are not limited to, site inspections; the review and approval of work plans, submittals, and reports; confirmatory sampling and analysis; the evaluation and interpretation of data, plans, and

reports as submitted by PRPs; and public participation activities.

**Oversight Costs**—costs incurred by the department associated with oversight.

**Owner**—a person that owns a site, facility, or pollution source.

**Participating Party**—a person who undertakes a remedial action, as approved by the department, after receiving a demand from the secretary.

**Person**—any individual, municipality, public or private corporation, partnership, firm, the United States government and any agent or subdivision thereof, or any other juridical person, which shall include, but not be limited to, trusts, joint stock companies, associations, the state of Louisiana, political subdivisions of the state of Louisiana, commissions, and interstate bodies.

**Pollutant**—those elements or compounds defined or identified as hazardous, toxic, noxious, or as hazardous, or radioactive wastes under the Act and regulations, or by the secretary or commission, consistent with applicable laws and regulations.

**Pollution Source**—the immediate site or location of a discharge or potential discharge, including such surrounding property necessary to secure or quarantine the area from access by the general public.

**Post-Remedial Management**—activities conducted at a site following the completion of a final remedy when remedial goals have not been met and, in the judgment of the department, cannot feasibly be met.

**Potential Site**—a site at which a discharge or disposal of a hazardous substance is suspected by the department.

**Potentially Responsible Party or PRP**—any person who is potentially liable for a remedial action or remedial costs under state or federal law, including but not limited to, site owners and operators, and the generators, transporters, and disposers of hazardous substances.

**Preliminary RECAP Standards**—the level of hazardous substances proposed to remain in the media after the successful completion of a final remedy in accordance with RECAP.

**RCRA**—Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.

**Relevant and Appropriate Requirements**—those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that, while not applicable to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a site, address problems or situations sufficiently similar to those encountered at the site that their use is well suited to the particular site.

**Remedial Action**—the removal, confinement, or storage of any hazardous substance, including constructing barriers,

securing the site, encapsulating in clay or other impermeable material, or otherwise containing or isolating the hazardous substance; cleaning up contamination; recycling or reusing of hazardous substances; diverting, destroying, or segregating reactive or other wastes; dredging or excavating a site; repairing or replacing leaking containers; collecting leachate and runoff; on-site treatment or incinerating of a substance; providing alternative water supplies; monitoring, testing, or analyzing; employing legal, engineering, chemical, biological, architectural, or other professional consultants or personnel; investigating, initiating, or prosecuting of administrative proceedings or lawsuits to final judgment; transporting and disposing of waste from a site; and any other action the department deems necessary to restore the site or remove the hazardous substance. The definition of *remedial action* shall include all types of action referred to as response actions in CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan [*Federal Register* 55(46): 8666, March 8, 1990], and includes any action referred to as a remedy in these regulations.

**Remedial Cost**—all reasonable costs associated with site discovery, investigation, and evaluation; administrative costs of the department relative to a site; costs associated with public participation; oversight costs and costs including, but not limited to, removing, confining, or storing any hazardous substance; constructing barriers, securing the site, and encapsulating in clay or other impermeable material; cleaning up of contamination; recycling or reusing of a hazardous substance; diverting, destroying, or segregating reactive or other wastes; dredging or excavating a site; repairing or replacing leaking containers; collecting leachate and runoff; on-site treatment or incinerating of a substance; providing alternative water supplies; monitoring, testing, or analyzing; employing legal, engineering, chemical, biological, architectural, or other professional consultants or personnel; investigating, initiating, or prosecuting lawsuits to final judgment; transporting and disposing of waste from the site; or any other action the secretary determines necessary to restore the site or remove the hazardous substance.

**Remedial Design or RD**—plans, including construction plans and specifications, necessary for implementation of the final remedy.

**Remedial Goals**—the concentration of a hazardous substance remaining in media at a site that is protective of human health and the environment, that has been approved and accepted by the department.

**Remedial Investigation or RI or Site Investigation**—an in-depth study designed to gather the data necessary to determine the nature and extent of contamination at a contaminated site and establish criteria for cleaning up the site.

**Remedial Investigation Work Plan**—a plan defining the process to be followed by one or more PRPs or the department to conduct an RI.

**Remedy or Final Remedy**—remedial actions that result in achieving remedial goals at a site. Remedies are distinguished from other types of actions considered remedial under the Act and these regulations, including without limitation, investigation, monitoring, and enforcement activities.

**Removal Action**—a remedial action performed by the department, or by one or more PRPs as directed by the department, wherein hazardous substances, contaminated soils, and/or other contaminated media are taken from the site to a permitted facility for treatment, storage, or disposal.

**Risk**—the probability that a hazardous substance, when released into the environment, will adversely affect exposed humans, other living organisms, or the environment.

**Secretary**—the Secretary of the Department of Environmental Quality.

**Site**—a hazardous substance site or a hazardous waste site.

**SPOC**—the Office of Environmental Compliance, Emergency and Radiological Services Division, Single Point of Contact (SPOC).

**Treatability Study**—the process of conducting bench scale and/or pilot scale studies to gather data to adequately evaluate the suitability of remedial technology on specific site wastes and conditions.

**Treatment**—any method, technique, or process designed to change the physical, chemical, or biological character or composition of any hazardous substance so as to neutralize such substance or render it nonhazardous, safer for transport, amenable for recovery or storage, or reduced in volume. The term includes any activity or processing designed to change the physical form or chemical composition of a hazardous substance to render it nonhazardous or significantly less hazardous.

**Wetlands**—those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. *Wetlands* generally include swamps, marshes, bogs, and similar areas.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2179 (November 1999), amended LR 26:2511 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2136 (October 2007).

## Chapter 2. Site Discovery and Evaluation

### §201. Site Discovery

**A. Site Discovery Reporting Requirements.** As part of a program to identify inactive or uncontrolled contaminated sites, the owner, operator, or other responsible person shall report to SPOC, within 24 hours, in the manner provided in

LAC 33:I.3923, any sites where hazardous substances have been, or could have been, disposed of or discharged. This Section sets forth the requirements for reporting such sites.

#### B. Mandatory Reporting

1. The following persons are required to notify the department of the discharge, emission, or disposal of any hazardous substance at an inactive or uncontrolled site:

- a. the owner, operator, or lessee of the site;
- b. any person who has directly contracted for the transportation of any hazardous substance to the site;
- c. any person who generated any hazardous substance that was discharged or disposed of at the site; or
- d. any person who discharged or disposed of any hazardous substance at a site.

2. The department must be notified regardless of whether the contaminants were discovered before or after the effective date of these regulations.

3. The department shall be notified in writing, using the procedures provided in LAC 33:I.3925.B and C, within 30 calendar days of the discovery of the discharge or disposal of any hazardous substance at an inactive or uncontrolled site. The date that the department was officially notified shall be determined as follows:

- a. if the report was sent by U.S. mail or other courier service (e.g., Federal Express, United Parcel Service), the notification date shall be the date of the postmark on the envelope containing the written report; or
- b. if the report was delivered by other means (e.g., hand-delivered, telefaxed), the notification date shall be the date of receipt of the report by the department.

4. Persons making written notification shall provide the following information, if known:

- a. the location of the inactive or uncontrolled site;
- b. the types of hazardous substances disposed of or discharged at the site;
- c. the amounts of such hazardous substances;
- d. other names the plant, facility, or site operated under in the past; and
- e. the history of operations at the site.

5. The following discharges or disposals are exempt from these notification requirements; however, such exemption does not imply a release from liability in future actions by the department:

- a. application of pesticides and other agricultural chemicals;
- b. use of hazardous substances for domestic purposes;
- c. a discharge or disposal in accordance with a permit or license issued by the department;



d. a discharge or disposal previously reported to the department in fulfillment of a reporting requirement in these regulations or in another law or regulation;

e. a discharge or disposal from the primary production, exploration, or distribution of petroleum or natural gas that would be regulated by the Louisiana Department of Natural Resources; or

f. a discharge or disposal of pesticides or agricultural chemicals that would be regulated by the Louisiana Department of Agriculture and Forestry.

**C. Voluntary Reporting.** In addition to the mandatory reporting by those persons listed under Subsection B of this Section, all members of the public are encouraged to report to the department any suspected discharge, disposal, or presence of any hazardous substance at any inactive or uncontrolled site. This voluntary reporting can be made by contacting SPOC in the manner provided in LAC 33:I.3923.

**D. Other Site Discovery Mechanisms.** The department may take any other actions it determines appropriate to identify inactive or uncontrolled sites where the department suspects hazardous substances have been discharged or disposed or are currently present.

1. Potentially contaminated sites may be discovered by the department using:

a. information from or investigations by other governmental agencies or offices including, without limitation, local governmental departments, the Louisiana Department of Health and Hospitals, the United States Environmental Protection Agency, and any offices or divisions within the department;

b. information available in any permit or license application, hazardous substance or hazardous material release report, or other submittals to any state, federal, or local agency or office; or

c. bankruptcy notices.

2. Without limiting the foregoing, the department may investigate any facilities or sites that belong to certain classes of government or industrial activities or any activities conducted in environmentally sensitive areas.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2182 (November 1999), amended LR 26:2511 (November 2000), LR 28:1762 (August 2002), LR 30:1675 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2484 (October 2005), LR 33:2137 (October 2007).

### **§203. Integrated Data Management Database**

**A.** Each site reported to or discovered by the department in accordance with this Chapter will be placed in the department's integrated data management database. This database includes lists of both potential and confirmed sites.

**B.** Sites can be removed by the department from the potential or confirmed lists within the integrated data management database by means of a no further action (NFA) determination. A NFA determination is usually made after evaluation or remedial actions are completed. This determination may be made if:

1. no evidence of contamination by hazardous substance(s) was observed at the site;

2. the site does not fall under the jurisdiction of the department due to statutory, regulatory, or legal requirements;

3. remedial actions were successfully completed at the site;

4. any and all hazardous substances on site do not pose or present an imminent and substantial endangerment to health or the environment;

5. the site does not exist based on current information; or

6. adequate information is not available to determine whether or not the site does exist.

**C.** A NFA designation for a site by the department is based on current information and does not preclude other applicable responses taken by another regulatory program or agency. A NFA designation may be reversed if site conditions change or if new information becomes available.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2183 (November 1999).

### **§205. Preliminary Evaluation**

**A.** The department may conduct a preliminary evaluation at any time after a site has been placed in the integrated data management database. The order in which sites are selected for evaluation shall be determined by the department, at its sole discretion, based upon available information and case assignment strategy.

**B.** The purpose of a preliminary evaluation is to provide sufficient information to make a determination for the disposition of the site by the department. To determine the disposition of a site the department may:

1. determine whether the site could best be handled under the authority of the United States Environmental Protection Agency or by state regulatory authority;

2. for sites under state authority, determine which state regulatory authority has jurisdiction over the site;

3. determine whether there is adequate evidence that hazardous substances have been discharged or disposed of at a site;

4. identify the hazardous substances (if present) and collect information regarding the extent and concentration of such substances;

5. identify site characteristics that could result in movement of the hazardous substances present at the site into or through the environment;

6. perform an initial evaluation of the potential risk to human health or the environment posed by the site; or

7. determine whether further investigation or action is necessary.

**C.** The owners, lessees, or agents in charge of sites undergoing evaluation shall:

1. provide the department, when applicable, with access to the site and to any buildings or structures on the site in accordance with R.S. 30:2012; and

2. allow the department to collect environmental samples at the site. If sampling is necessary, the department will make a reasonable attempt to notify the owner, lessee, or agent in charge in advance of the sampling date. If requested and if practical, the owner, lessee, or agent in charge will be allowed a split of any samples taken by the department. However, it is the responsibility of the owner, lessee, or agent in charge to obtain proper sample containers to receive the split samples and to provide for analysis at a laboratory. A copy of the chain of custody for the samples will be given to the owner, lessee, agent in charge, or their representative if present at the site at the time of sampling. A copy of the analytical results obtained by the department will be provided to the owner, lessee, or agent in charge.

**D.** If the department evaluates a site and assigns it confirmed site status, costs incurred by the department for that evaluation shall be recoverable as described in these regulations.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2183 (November 1999).

### Chapter 3. Administrative Processes

#### **§301. Assignment of Inactive and Abandoned Hazardous Waste Sites Program**

**A.** In accordance with R.S. 30:2222 the department is assigned the duties, responsibilities, and authority of administering the Inactive and Abandoned Hazardous Waste Sites Program.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2221 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2184 (November 1999).

#### **§303. Declaration That a Site Is Abandoned**

**A.** Authorization. The department is authorized by Chapter 10 of the Act to declare a site abandoned after appropriate procedures are followed, to impose liens on such property, and to take investigation and remediation actions at such property as the department determines necessary. The

department may declare a site to be abandoned upon a finding that the site:

1. has received for storage, treatment, or disposal or now contains or emits wastes that are identified, classified, or defined to be hazardous wastes in accordance with these regulations;

2. was not closed in accordance with the requirements of the Act, as defined in these regulations, and other regulations adopted thereunder;

3. constitutes or could constitute a danger or potential danger to human health and the environment; and

4. has no financially responsible owner or operator who can be located by the department or has one or more financially responsible owners or operators who have failed or refused to undertake actions ordered by the administrative authority in accordance with R.S. 30:2204(A) or (B).

#### **B. Site Owner(s) Notice and Response**

1. Prior to declaring a site to be an abandoned hazardous waste site, the administrative authority shall seek to notify each person who the department reasonably believes may own a current interest in the site that:

a. the site is to be declared abandoned;

b. the owner is liable for the costs of the investigation and remediation of the site;

c. the declaration of abandonment and/or use of the property for disposal of hazardous wastes may be recorded in the mortgage records of the parish where the property is located in accordance with R.S. 30:2039; and

d. a lien may be imposed on the property in accordance with R.S. 30:2225(F)(1).

2. In accordance with R.S. 30:2225(C), notice shall be published on three consecutive occasions in the official journal of the parish where the site to be declared abandoned is located.

3. Within 10 calendar days of the publication of the last official journal notice, any owner may request a hearing by writing to the Office of the Secretary regarding the declaration of abandonment. If a request for a hearing is received, the department shall hold a hearing in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

#### **C. Effect of a Declaration of Abandonment**

1. Upon declaration that a site is abandoned, the secretary shall notify the attorney general of such declaration and request that the attorney general take such specific legal actions as requested by the department, including:

a. acquiring emergency easements and rights of way;

b. conducting negotiations for property acquisition; and

c. exercising the right of eminent domain, as provided by R.S. 30:2036, to secure the site or compel cleanup or containment of hazardous substances consistent with these and other regulations and guidelines established by the administrative authority.

2. No declaration of abandonment or other action by the department in accordance with this Section shall be construed to result in any transfer of liability to the state.

3. The administrative authority may record the declaration of abandonment in the mortgage records of the parish where the property is located.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2221 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2184 (November 1999), amended LR 26:2511 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2484 (October 2005), LR 33:2137 (October 2007).

### **§305. Property Liens**

**A. Liens against Property Declared Abandoned by the Department**

1. In accordance with R.S. 30:2225(F)(1) the administrative authority, by recording the declaration of abandonment in the mortgage records of the parish where the property is located, may create a lien against the property declared to be abandoned for the lesser of:

- a. the extent of the expenditures by the state necessary to remedy the problem; or
- b. the extent of the property's appraised value after said expenditures.

2. The administrative authority may state in the declaration that the lien is limited to certain portions of the property declared to be abandoned.

3. The department may file a lien on property that has been declared abandoned prior to incurring any remedial action costs. The filing of a sworn statement of the amount expended perfects the lien retroactively to the date that the declaration of abandonment was recorded.

4. Liens on property that has been declared abandoned in accordance with this Chapter may be removed by the owner of the property as follows:

- a. the person requesting removal of a recorded lien on a site that has been declared abandoned may file a sworn statement with the department setting forth his or her ownership or other financial interest in the property;
- b. the owner may apply to the administrative authority or file an action in the district court seeking to require the clerk to erase the lien from the records. If the administrative authority or the court finds that the property owner has demonstrated, by a preponderance of the evidence, that the discharge was in no way caused by any action or negligence on the part of the owner, the

administrative authority or the court shall authorize the clerk to release the lien; or

c. the owner may apply to the administrative authority or file an action in the district court seeking to reduce the value of the lien to have the debt so recorded be reduced to the appraised value of the property. If the administrative authority or the court finds that such a reduction is appropriate, the administrative authority or the court shall authorize the clerk to reduce the value of the lien.

**B. Liens against Property Where the Department Has Taken Remedial Action under Chapter 12 of the Act**

1. In accordance with R.S. 30:2281, to assist in his recovery of remedial costs, the administrative authority may impose a lien on any immovable property within the state of Louisiana belonging to any PRP where the department has incurred remedial costs related to said property. The administrative authority may file this lien at any time after the department incurs remedial costs for which the owner of the immovable property is potentially liable. These costs may include all remedial costs.

2. Properly recorded liens filed by the department shall have priority in rank over all other privileges, liens, encumbrances, or other security interests affecting the property. Privileges, liens, encumbrances, or other security interests affecting the property that are filed or otherwise perfected before the filing of the notice of lien of the state authorized by these regulations shall remain as prior recorded security interests only to the extent of the fair market value of the property prior to all remedial actions by the state.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2185 (November 1999).

## **Chapter 4. PRP Search, Notification, and Demand for Remediation**

### **§401. PRP Search**

**A. Purpose**

1. The purpose of this Chapter is to provide a mechanism for the department to ensure that the costs of remedial actions are borne by the potentially responsible parties for each site where hazardous substances are present, while at the same time reserving for the department the right to respond as quickly as possible to sites where hazardous substances could be present and the right to institute legal actions against those parties potentially responsible for remedial costs.

2. The department shall seek to identify potentially responsible parties (PRPs) and shall notify them that they are required to provide information to the department. The determination of who will be required to provide information shall be made at the sole discretion of the department. The department's failure to notify any particular PRP to submit information shall not preclude enforcement

action by the department against that PRP or any other PRP, including actions for the recovery of remedial costs by the department, nor shall it preclude the department from taking any other action in accordance with the Act, these regulations, or any other law.

**B. Preliminary PRP List**

1. The department may develop an initial list of PRPs if:

a. there is an actual or potential discharge or disposal that could present an imminent and substantial endangerment to human health or the environment at a pollution source or facility; and

b. if the department finds that any of the parties:

i. generated a hazardous substance that was disposed of or discharged at the pollution source or facility;

ii. transported a hazardous substance that was disposed of or discharged at the pollution source or facility;

iii. disposed of or discharged a hazardous substance at the pollution source or facility;

iv. contracted with a person for transportation or disposal of a hazardous substance at the pollution source or facility; or

v. owns or owned or operates or operated the pollution source or facility subsequent to the disposal of a hazardous substance.

2. Additional PRPs may be added to the preliminary list at any time if the administrative authority determines that other parties fit within the categories of persons potentially responsible for the site.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2185 (November 1999).

**§403. Notification to Provide Information**

**A.** The Office of Environmental Assessment shall send a written notification to provide information to all PRPs identified during its preliminary PRP investigation. The administrative authority may, at its discretion, send supplemental or additional notifications to any PRP identified by the administrative authority at any time during the remedial action process.

**B.** The notification to provide information shall require each recipient to provide all available information regarding the specified site, including without limitation:

1. the types of hazardous substances and their chemical name or makeup, if known;

2. the quantities of hazardous substances disposed of or discharged;

3. the location(s) of disposal or discharge from any known pollution source or facility;

4. dates of disposal of hazardous substances and quantities disposed of on each date;

5. names of persons providing transportation of hazardous substances; and

6. names of owners or operators of the site at the time of disposal or discharge of hazardous substances.

**C.** PRPs must respond to the administrative authority within 45 calendar days of receipt of the notification to provide information. The administrative authority may grant reasonable extensions to the 45-day period upon written request submitted by a PRP prior to the expiration of the initial period.

**D.** Any PRP who willfully fails to provide the information required by the administrative authority in accordance with this Section shall be liable for a penalty of up to \$25,000 for each day of violation in accordance with R.S. 30:2274(B).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2186 (November 1999), LR 26:2511 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2137 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2757 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2139 (November 2017).

**§405. Demand for Remediation to PRPs**

**A.** Upon its determination that a discharge or disposal of a hazardous substance has occurred, or is about to occur, that could present an imminent and substantial endangerment to human health or the environment, the administrative authority shall issue a written demand for remediation to PRPs that have been identified by the administrative authority at the time the determination is made. This demand shall be made in accordance with R.S. 30:2275 and sent by certified mail.

**B.** Upon receipt of a demand for remediation, a PRP must respond to the administrative authority within 60 calendar days with a good faith proposal to undertake the remedial actions approved by the administrative authority in accordance with LAC 33:VI.705.B. The administrative authority may grant reasonable extensions to the 60-day period upon written request submitted by a PRP prior to the expiration of the initial period.

**C.** If any PRP fails to respond to a demand for remediation sent in accordance with this Section, the administrative authority may take all actions authorized under the Act.

**D.** If, after investigation, the administrative authority determines that it is not feasible to make demand on every known PRP for a particular site in accordance with R.S. 30:2275(D) and these regulations, then such demand may be limited to those parties determined most responsible by the administrative authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2186 (November 1999).

## Chapter 5. Site Remediation

### §501. Remedial Actions

A. A remedial action is an action that reduces a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance at a site or corrects a threat to human health or the environment that could become substantially worse or cost substantially more to address if the action is delayed.

B. The Office of Environmental Assessment shall consider the following factors in determining the need for or the appropriateness of a remedial action consistent with Subsection A of this Section:

1. actual or potential exposure from hazardous substances to nearby human populations, animals, or the food chain;
2. actual or potential contamination of drinking water supplies or sensitive ecosystems by hazardous substances;
3. the threat of release of hazardous substances in drums, barrels, tanks, or other bulk storage containers;
4. the threat of migration of hazardous substances from the site;
5. the threat of release or migration of hazardous substances or pollutants or contaminants caused by weather conditions;
6. the threat of fire or explosion;
7. the availability of other federal or state remedial mechanisms to respond to the release; or
8. the presence of other situations or factors that could pose threats to human health or the environment.

C. Remedial actions may occur at any time after site discovery. However, if the remedial action is performed prior to or in conjunction with a state preliminary evaluation, sufficient technical information regarding the site must be available to ensure that the remedial action is warranted and appropriate.

D. Remedial actions shall be implemented until the Risk Evaluation/Corrective Action Program (RECAP) standards developed in accordance with LAC 33:I.Chapter 13 have been attained. Remedial actions shall not be used to delay more feasible remedial actions.

E. The landowner must record a notation on the conveyance to the site property, or on some other instrument that is normally examined during a title search, that will in perpetuity notify any potential buyer of the property that the site has hazardous substances remaining at levels above department RECAP standards for residential use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2171 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2186 (November 1999), amended LR 26:2511 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2137 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2757 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2139 (November 2017).

### §502. Role of PRPs in Remedial Actions

A. The Office of Environmental Assessment may, at its sole discretion, direct PRPs to perform any site investigation, remedial investigation, corrective action study, and/or remedial action in accordance with the following:

1. the site investigation, remedial investigation, corrective action study, and/or remedial action shall be performed subject to a work plan approved by the department or performed subject to an enforceable cooperative agreement or judicial or administrative order;
2. the site investigation, remedial investigation, corrective action study, and/or remedial action shall be properly and promptly performed by the PRPs within statutory, regulatory, and administrative deadlines and in accordance with technical and procedural requirements set forth in these regulations and any other applicable laws, regulations, guidance documents, or policy statements;
3. the PRPs performing the site investigation, remedial investigation, corrective action study, and/or remedial action shall participate in any public participation activities determined by the department to be appropriate;
4. the PRPs must have and maintain a satisfactory record of compliance with environmental statutes and requirements; and
5. the PRPs must reimburse the department for all *remedial costs* as defined in these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2186 (November 1999), amended LR 26:2511 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2137 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2757 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2139 (November 2017).

### §503. Minimum Remediation Standards and Risk Evaluation/Corrective Action Program Standards

A. The goal of site remediation activities is to achieve the minimum remediation standards defined in the RECAP standards in accordance with LAC 33:I.Chapter 13. The standards shall be used in determining the remedial goals at the site.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2187 (November 1999).

#### **§505. Removal Action**

**A.** A removal action is a remedial action performed by the department, or by one or more PRPs as directed by the department, wherein hazardous substances, contaminated soils, and/or other contaminated media are taken from the site to a permitted facility for treatment, storage, or disposal.

1. Removal actions may:
  - a. achieve the RECAP standards for the site as a whole;
  - b. achieve the RECAP standards for a part of the site; or
  - c. provide a partial remedy (i.e., provide a remedy for some of the hazardous substances from all or part of the site, but not completely achieve the RECAP standards).
2. Removal actions shall be consistent with the final remedy (defined in LAC 33:VI.511) if the final remedy is known.
3. The success of the removal action shall be verified by the department, or PRPs as directed by the department, using confirmation sampling.
4. If the removal action results in achievement of the RECAP standards established by the department, the Office of Environmental Assessment may determine that no further action is required. The department may then issue a decision document stating that the removal action is the final remedy and no further action is required.
5. If the removal action does not result in the achievement of the RECAP standards, as established by the department for the site as a whole, additional remedial actions (LAC 33:VI.507-515) shall be taken by the department, or by PRPs as directed by the department.

**B.** A removal action work plan shall be prepared by the Office of Environmental Assessment, or by PRPs as directed by the department. Any plan prepared by PRPs shall be reviewed and approved by the department prior to the commencement of the removal action. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' plan. The minimum requirements for a removal action work plan include:

1. a description of existing site conditions and a summary of all available data relevant to the removal action at the site;
2. a description of the intended removal action activities;
3. a sampling and analysis plan; and
4. a site-specific health and safety plan.

**C.** Opportunities for public participation may be provided by the department, or PRPs as directed by the department, in accordance with LAC 33:VI.Chapter 8.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2187 (November 1999), amended LR 26:2512 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2137 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2757 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2140 (November 2017).

#### **§507. Remedial Investigation**

**A.** A remedial investigation (RI) includes:

1. the determination of the nature and extent of potential threats to human health and the environment through data collection and site characterization; and
2. the development of preliminary RECAP standards.

**B.** A RI shall be performed at all sites where a removal action is not performed or does not achieve the RECAP standards.

**C.** To complete a RI the Office of Environmental Assessment, or PRPs as directed by the department, shall provide the following:

1. Remedial Investigation Work Plan. A remedial investigation work plan shall be prepared by the department, or by PRPs as directed by the department. Any plan prepared by PRPs shall be reviewed and approved by the department. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' plan. The remedial investigation work plan will conform with the site investigation requirements of RECAP and, at a minimum, include the following:

- a. identification of all data needs following the review of existing preliminary evaluation reports and other existing data;
- b. identification of all potential exposure pathways/receptors and associated data needs;
- c. identification of any existing or potential natural resource damages and associated data needs and notification of the appropriate state and federal trustees;
- d. identification of all potentially applicable, relevant, and appropriate state and federal requirements and associated data needs;
- e. a site-specific health and safety plan including necessary training, procedures, and requirements;
- f. a site-specific sampling and analysis plan that includes the number, type, and location of all samples to be taken and the types of analyses to be conducted during required site characterization activities; and

g. a quality assurance/quality control plan that identifies the quality assurance objectives and the quality control procedures necessary to obtain data of sufficient quality for the RI.

2. Field Investigations. In order to characterize the nature and extent of any threats to human health and the environment posed by the site, the department, or PRPs as directed by the department, shall conduct field investigations. These field investigations shall provide data sufficient to support the development of preliminary RECAP standards and the evaluation of remedial alternatives. Investigations may be conducted in multiple phases in order to focus sampling efforts and increase the efficiency of the investigation. Field investigations shall address the following, as applicable to the site:

- a. physical characteristics of the site, including important surface features, soils, geology, hydrogeology, ecology, and meteorology;
- b. characteristics or classifications of the air, surface water, and groundwater at the site;
- c. characteristics of all contaminated media at the site;
- d. characteristics of each contaminant at the site, including concentration, species (when applicable), toxicity, susceptibility to bioaccumulation, persistence, and mobility;
- e. extent of the contamination at the site;
- f. actual and potential exposure pathways through environmental media;
- g. actual and potential receptors;
- h. natural resources and sensitive populations or habitats that could be injured; and
- i. other factors that impact the remedial alternatives investigated.

3. Establishment of Preliminary RECAP Standards. Preliminary RECAP standards shall be established in accordance with LAC 33:I.Chapter 13.

4. Remedial Investigation Report. Following the completion of the RI, a remedial investigation report shall be prepared by the Office of Environmental Assessment, or by PRPs as directed by the department. Any RI report prepared by PRPs shall be reviewed and approved by the department. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' report. At a minimum, this report shall include:

- a. a scope and description of the investigation;
- b. a site background summary;
- c. sampling and analysis results;
- d. identification of the sources of release;
- e. identification of the horizontal and vertical extent of contamination;
- f. proposed preliminary RECAP standards; and

g. conclusions and recommendations for further action.

D. The department shall provide, or shall direct PRPs to provide, opportunities for public participation and comment as required in LAC 33:VI.Chapter 8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2187 (November 1999), amended LR 26:2512 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2137 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2758 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2140 (November 2017).

### §509. Corrective Action Study

A. A corrective action study (CAS) includes:

1. the development of appropriate remedial alternatives for achieving the preliminary RECAP standards identified in the RI report; and
2. the provision of performance and cost data for use in evaluating these alternatives and selecting a remedy.

B. The CAS shall be used by the department or by PRPs to demonstrate that one or more remedial alternatives will meet the preliminary RECAP standards. Alternatively, PRPs may demonstrate in the CAS that compliance with the preliminary RECAP standards is technically infeasible and may propose alternative preliminary RECAP standards. The development and evaluation of alternatives in the CAS shall reflect the scope and complexity of the site problems being addressed.

C. Corrective Action Study Activities

1. Identification of RECAP Standards. Following approval of the RI report and the identification of the preliminary RECAP standards, the department, or PRPs as directed by the department, shall identify potential remedial alternatives for the site. Remedial alternatives identified and examined in the CAS should include a no further action (NFA) alternative and at least one treatment-based alternative.

2. Screening of Remedial Alternatives. Potential remedial alternatives shall be screened based upon the following criteria.

a. Effectiveness. The primary criterion for screening the alternatives is whether or not an alternative can effectively achieve the preliminary RECAP standards determined for the site as follows:

- i. alternatives that have been proven capable of achieving the preliminary RECAP standard for contaminants and environmental media of concern shall be retained for further evaluation;
- ii. alternatives that have been proven incapable of achieving the preliminary RECAP standards shall be

eliminated from further consideration unless it is successfully demonstrated to the department that no known remedial alternative can achieve the preliminary RECAP standard; and

iii. alternatives that are unproven and are innovative technologies or approaches may be retained for further evaluation when it is successfully demonstrated to the department through treatability studies that the preliminary RECAP standards will be achieved;

b. Implementability. This criterion focuses on the technical and administrative ability of the department, or PRPs as directed by the department, to implement an alternative as follows:

i. technical implementability is determined by the availability of full-scale equipment, demonstrated processes, and remediation services to the department or the PRPs; and

ii. administrative implementability is determined by the ability of the department or PRPs to obtain all required permits or waivers;

c. Infeasible Alternatives. Alternatives that may ultimately prove to be technically or administratively infeasible to implement shall be eliminated from further consideration;

d. Relative Cost. Alternatives that offer technical and administrative applicability and implementability similar to that of other alternatives but at grossly higher construction, operation, and maintenance costs shall be identified and eliminated if lower-cost alternatives are available that can meet the preliminary RECAP standards; and

e. Regulatory Requirements. Remedial actions must meet all state and federal applicable, relevant, and appropriate requirements (ARARs) for the location or for specific remedies, unless the requirements of LAC 33:VI.511.A.3 are met.

3. Performance of Treatability Studies. Treatability studies may be conducted to:

a. generate the critical performance and cost data needed to evaluate and select remedial alternatives;

b. provide quantitative data for use in determining whether an alternative can achieve the preliminary RECAP standards; or

c. determine whether additional more detailed treatability testing is required.

4. Evaluation of the Alternatives. Analysis of the remedial alternatives shall consist of a detailed assessment of the individual alternatives using the evaluation criteria described below, followed by a comparison of the relative performance of each alternative. Individual alternatives shall be evaluated using the following criteria:

a. ability of the alternative to achieve the preliminary RECAP standards and other applicable requirements;

b. long-term effectiveness and permanence of the alternative, considering the magnitude of residual risk after implementation of the remedy, adequacy and reliability of engineering or institutional controls, and degree to which treatment is irreversible;

c. reduction of toxicity, mobility, or volume through treatment, considering:

i. the treatment process used and materials treated;

ii. the amount of hazardous materials destroyed or treated;

iii. the degree of expected reductions in toxicity, mobility, and volume; and

iv. the type and quantity of residuals remaining after treatment;

d. short-term effectiveness, considering:

i. the protection of community and workers during implementation of the alternative;

ii. the environmental impacts during implementation of the alternative; and

iii. the time required until preliminary RECAP standards are achieved;

e. implementability, considering:

i. the ability to construct and operate the technology at the site;

ii. the reliability of the technology;

iii. the cost of undertaking additional remedial actions (if necessary);

iv. the ability to monitor effectiveness of the remedy;

v. the ability to obtain approvals from other agencies;

vi. coordination with other agencies;

vii. the availability of off-site treatment, storage, and disposal services, and capacity for disposal of residuals;

viii. the availability of necessary equipment and specialists, and services and materials; and

ix. the availability of prospective technologies;

f. cost effectiveness, considering capital costs and operating and maintenance costs; and

g. compliance with all state and federal ARARs.

5. Evaluation of the Impact of Remedial Alternatives on Natural Resources. If natural resources will be or could be injured by the release of hazardous substances, steps shall be taken by the department, or by PRPs as directed by the department, to ensure that state and federal trustees of the affected natural resources are notified. The department shall seek to coordinate necessary evaluations, investigations, and



plans with such state and federal trustees. The department shall give priority to remedies that include mitigation of actual or potential threats to natural resources or restoration of those natural resources that have been injured.

6. Preparation of a Corrective Action Study Report. Following the completion of the corrective action study activities in this Subsection, a CAS report describing the results of all required CAS activities shall be prepared by the Office of Environmental Assessment, or by PRPs as directed by the department. Any CAS report prepared by PRPs shall be reviewed and approved by the department prior to the approval of the CAS. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' report.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2188 (November 1999), amended LR 26:2512 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2138 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2758 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2140 (November 2017).

#### **§511. Selection of the Final Remedy**

**A.** The final remedy shall:

1. protect human health and the environment;
2. comply with the RECAP standards determined in accordance with these regulations; and
3. comply with federal and state ARARs. An alternative remedy that does not meet an ARAR under federal environmental or state environmental or facility siting laws may be selected under the following circumstances:
  - a. the alternative is an interim measure and will become part of a total remedial action that will attain the ARAR;
  - b. compliance with the requirement will result in greater risk to human health and the environment than other alternatives;
  - c. compliance with the requirement is technically impracticable from an engineering perspective;
  - d. the alternative will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, or limitation through use of another method or approach; or
  - e. for a remedial action funded by the department only, an alternative that attains the ARAR will not provide a balance between the need for protection of human health and the environment at the site and the availability of monies to other sites that could present a threat to human health and the environment.

**B.** To select the final remedy for remedial actions other than removal actions, the department shall:

1. assess the remedial alternatives described in the CAS report, considering:
  - a. the goals, objectives, and requirements of the Act and these regulations;
  - b. state and federal ARARs;
  - c. the current and expected uses of the site property;
  - d. the effectiveness of the remedy in significantly reducing the volume, toxicity, or mobility of the hazardous substances at the site;
  - e. the effectiveness of the remedy in permanently reducing the volume, toxicity, or mobility of the hazardous substances at the site (permanent remedies shall be preferred);
  - f. the reliability of the remedial alternatives, and the potential for future remedial costs if an alternative does not achieve the desired RECAP standard;
  - g. the ability to monitor remedial performance;
  - h. the cost effectiveness of a final remedy (cost effectiveness shall be considered only in choosing between alternatives that each adequately meet the requirements in this Section); and
  - i. other factors determined appropriate by the department;
2. finalize the RECAP standards;
3. prepare a decision document stating the final remedy that includes:
  - a. the final RECAP standards for the site and a brief discussion of how these were determined;
  - b. a brief description of each remedial alternative evaluated;
  - c. the results of the evaluation of the alternatives and identification of the alternative selected by the department;
  - d. a brief discussion of the strengths and weaknesses of the selected alternative relative to the site, contaminated media, and contaminants;
  - e. a discussion of the results of the risk assessment if the preferred alternative would result in hazardous substances, contaminants, or pollutants remaining at the site in concentrations above the RECAP standards; and
  - f. an explanation of any waivers of state or federal ARARs;
4. present the preferred alternative to the public in a draft decision document in accordance with the public participation procedures described in LAC 33:VI.Chapter 8; and

5. consider the comments and information submitted during a public comment period if held in accordance with LAC 33:VI.Chapter 8 and revise the draft decision document as necessary.

C. The administrative authority shall issue a final decision document based upon Paragraphs B.1-4 of this Section.

D. If a removal action was performed at the site and the RECAP standards established by the department were achieved, then the removal action may be considered a final remedy. The department may determine that no further action is required and issue a decision document stating that the removal action is the final remedy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2189 (November 1999).

### **§513. Design and Implementation of the Final Remedy**

A. Remedial Design. The department, or PRPs as directed by the department, shall develop a remedial design (RD) that will successfully implement the remedy defined by the decision document approved by the administrative authority for that site. Any remedial design prepared by PRPs shall be reviewed and approved by the department. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' design.

B. Remedial Project Plan. The remedial project plan shall include all tasks, specifications, and subplans necessary for the implementation of the remedial design, including construction and operation of the final remedy. The remedial project plan shall be prepared by the department, or by PRPs as directed by the department. Any plan prepared by PRPs shall be reviewed and approved by the department prior to implementation of the final remedy. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' plan. The minimum requirements for the remedial project plan include:

1. a work plan, including:
  - a. a general description of the work to be performed and a summary of the engineering design criteria;
  - b. maps showing the general location of the site and the existing conditions of the facility;
  - c. a copy of any required permits and approvals;
  - d. detailed plans and procedural material specifications necessary for construction of the remedy;
  - e. specific quality control tests to be performed to document the construction, including:
    - i. specifications for the testing or reference to specific testing methods;
    - ii. frequency of testing;
    - iii. acceptable results; and

iv. other documentation methods as required at the discretion of the department;

f. start-up procedures and criteria to demonstrate the remedy is prepared for routine operation; and

g. additional information to address ARARs;

2. a sampling and analysis plan;

3. a quality assurance/quality control plan;

4. a site-specific health and safety plan;

5. a project implementation schedule; and

6. other information required at the discretion of the department. The department may allow information to be incorporated by reference to avoid unnecessary duplication.

C. Design or Plan Modifications. Any and all changes in the remedial design or remedial project plan shall be approved by the department before implementation.

D. Implementation of the Remedy. All implementation activities shall be:

1. performed in compliance with the remedial design and the remedial project plan, as approved by the department; and

2. consistent with the intent of the Act and these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2190 (November 1999).

### **§515. Revisions to the Final Remedy**

A. Information may become available during the remedial design process or during the implementation of the final remedy that requires a modification to the final remedy for the site.

B. If such information is discovered by a PRP, the PRP shall:

1. notify the Office of Environmental Assessment that a modification is necessary;

2. submit the relevant information to the department with an explanation of the proposed change; and

3. where appropriate and at the department's discretion, meet with the department to discuss the submitted information and the proposed modification to the final remedy.

C. If the department determines that a modification is necessary (whether proposed by a PRP or by the department) and if the modification changes the final remedy in the final decision document, then the Office of Environmental Assessment shall:

1. issue a revised final remedy decision document;

2. direct corresponding revision of the remedial design and remedial project plan; and

3. comply with the public notification requirements set forth in LAC 33:VI.Chapter 8.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2191 (November 1999), amended LR 26:2512 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2138 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2758 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2140 (November 2017).

#### **§517. Inspections by the Department**

**A.** The department reserves the right to perform site and/or construction inspections at all sites where remedial work is being performed.

**B.** The department may require that any and all activities be halted at a site if the activity:

1. is not consistent with approved plans;
2. is not in compliance with accepted construction procedures;
3. is not in compliance with environmental regulations; or
4. endangers human health or the environment.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2012 et seq., 2171 et seq., 2221 et seq., and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2191 (November 1999).

#### **§519. Completion of the Final Remedy**

**A.** Following completion of the implementation of the remedial design, the success of the remedial action in achieving the remedial goals shall be assessed by the department.

**B.** Departmental assessment may result in:

1. No Further Action (NFA). Remedial actions that result in the successful achievement of the remedial goals established by the department shall be judged completed, and the site shall be assigned NFA status; or

2. Post-Remedial Management. Sites not eligible for NFA status shall be placed under post-remedial management as described in LAC 33:VI.521. These sites shall include:

a. sites where leaving hazardous substances at the site with post-remedial management was part of the approved remedy; or

b. sites where the approved remedy was unsuccessful, the remedial goals approved by the department were not met and, in the judgment of the department, cannot feasibly be met.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2191 (November 1999).

#### **§521. Post-Remedial Management**

##### **A. General**

1. Sites shall be placed under post-remedial management performed by the department, or by PRPs as directed by the department, where:

- a. hazardous substances remain on-site at levels above remedial goals; or
- b. post-remedial management is part of the approved remedy.

2. Management activities shall include the continued operation of long term remedies, the maintenance of the site and its facilities, and continued monitoring of site conditions.

**B. Operation and Maintenance.** An operation and maintenance (O and M) plan shall be prepared for all sites assigned post-remedial management because hazardous substances remain at the site at levels above remedial goals or where O and M is part of the approved remedy. O and M plans prepared by PRPs shall be submitted to the Office of Environmental Assessment for review and approval. The department will provide comments to the PRPs and require revisions as necessary before approving the PRPs' plan. O and M plans prepared by PRPs for a site where leaving hazardous substances at the site is part of the approved and completed remedy shall be submitted to the department for review and approval at least six months prior to completion of the remedy. Each O and M plan shall include, but not be limited to:

1. the name, telephone number, and address of the person responsible for the operation and maintenance of the site;
2. a description of all operation and maintenance tasks and specifications;
3. all design and construction plans;
4. any applicable equipment diagrams, specifications, and manufacturer's guidelines;
5. an operation and maintenance schedule;
6. a list of spare parts available at the site for repairs;
7. a site-specific health and safety plan; and
8. other information as requested by the department.

**C. Monitoring.** If required by the department, a monitoring plan shall be developed by the Office of Environmental Assessment, or by PRPs as directed by the department. A monitoring plan prepared by PRPs shall be submitted to the department for review and approval. The department shall provide comments to the PRPs and require revisions as necessary before approving the PRPs' plan. This plan shall include a description of provisions for monitoring of site conditions during the post-remedial management

period to prevent further endangerment to human health and the environment, including:

1. the location of monitoring points;
2. the environmental media to be monitored;
3. the hazardous substances to be monitored and the basis for their selection;
4. a monitoring schedule;
5. monitoring methodologies to be used (including sample collection procedures and laboratory methodology);
6. provisions for quality assurance and quality control;
7. data presentation and evaluation methods;
8. a contingency plan to address ineffective monitoring; and
9. provisions for reporting to the department on a semiannual basis including, at a minimum:
  - a. the findings from the previous six months;
  - b. an explanation of any anomalous or unexpected results;
  - c. an explanation of any results that are not in compliance with the RECAP standards; and
  - d. proposals for corrective action.

**D. Periodic Review by the Department.** The department shall review the status of sites assigned to post-remedial management a minimum of every five years to determine whether or not any hazardous substances remaining at the site are endangering human health and the environment. During this review, the department shall periodically assess, through site visits, review of O and M reporting, and review of monitoring reports, the adequacy of various aspects of the post-remedial management activities at the site. These aspects include, but are not limited to:

1. compliance with the O and M schedule;
2. determination of whether or not the implementation of the O and M plan is proceeding as designed to maintain the intended level of protection to human health and the environment;
3. compliance with monitoring data reporting requirements;
4. completion of any necessary repairs;
5. compliance with and effectiveness of institutional controls (if any were implemented as part of the remedy);
6. determination of whether or not any newly enacted laws or newly promulgated regulations are applicable to the site and require additional action; and
7. post-remedial management costs incurred.

**E. Discontinuation of Post-Remedial Management.** The department may discontinue post-remedial management activities based upon its periodic review, as described in

Subsection D of this Section. Discontinuation of post-remedial management will result in a determination of no further action by the department.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2191 (November 1999), amended LR 26:2512 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2138 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2758 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2140 (November 2017).

### **§523. Oversight of Potentially Responsible Parties by the Department**

**A.** All remedial actions and post-remedial management activities performed by PRPs shall be subject to oversight by the department or the department's authorized representative. Nothing in this Section shall affect the responsibility or liability of any PRP.

**B.** The department's objective in oversight of PRP-conducted remedial actions is to verify that the work complies with:

1. the governing legal document or settlement agreement (e.g., cooperative agreement or judicial or administrative order);
2. any statement of work, project plan (work plan, sampling and analysis plan, quality assurance/quality control plan, health and safety plan), or other plan developed and approved for the remedial action;
3. generally accepted scientific and engineering methods; and
4. all ARARs, as appropriate.

**C.** The level of oversight provided by the department shall be:

1. determined by the department;
2. site-specific; and
3. dependent on the nature and complexity of the remedial action.

**D.** All costs incurred by the department in providing oversight of remedial actions performed by PRPs shall be fully recoverable by the department in accordance with LAC 33:VI.Chapter 6.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2192 (November 1999).

## **Chapter 6. Cost Recovery**

### **§601. Purpose and Scope**

**A.** This Chapter shall govern the recovery of remedial costs incurred on or after the effective date of these

regulations. Nothing herein shall prevent the department from recovering remedial costs incurred prior to the effective date of these regulations.

**B.** As stated in R.S. 30:2271, all remedial costs incurred shall be borne by PRPs wherever possible.

**C.** The department may elect not to pursue cost recovery where, based on information gathered by the department, it reasonably has determined that:

1. no PRPs can be identified;
2. no identified PRP is financially viable;
3. the PRP identified is a parish, state or political subdivision of the state, or federal entity;
4. the department may be unable to meet its burden of proof on one or more elements of its case;
5. the time and expense of the department's effort to recover costs exceed the amount to be recovered;
6. a legal action, settlement, or agreement between the PRP(s) and the department or state precludes past, present, and/or future cost recovery; or
7. the department meets unforeseen legal, administrative, or programmatic constraints that preclude further attempts at recovering costs.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2192 (November 1999).

#### **§603. Calculation and Invoicing of Remedial Costs**

**A.** Remedial costs shall be calculated to reflect the actual cost of remedial actions to the department, including but not limited to, all costs of investigation, remediation, enforcement, oversight, and cost recovery. Such costs shall be calculated as the sum of:

1. direct personnel costs—the total of the number of direct hours expended by all department employees with regard to a specific site multiplied by the employee's hourly rate at the time the expense was incurred;
2. fringe benefits—the total of all personnel fringe benefits based on the categories and their respective rates for hours expended by each employee at the site;
3. department's direct costs—the total of direct costs to the department, including without limitation, personnel, operating services, equipment, supplies, travel, sampling, and contractual charges; and
4. payments made by the department to its contractors—the total of all payments made by the department to its contractors, grantees, or agents for planning, management, direction, or performance of remedial and oversight actions for a specific site.

**B.** The department will invoice PRPs according to the cost recovery provisions defined in a legal agreement and/or

R.S. 30:2271 et seq. and/or as determined necessary by the department.

**C.** The department may establish by rule an indirect rate and may recover indirect costs, such as office space, file storage space, utilities, insurance, equipment usage, administrative overhead, operating services, and other overhead costs.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2193 (November 1999).

#### **§605. Documentation of Remedial Costs**

**A.** The department shall document all remedial costs. This documentation shall be the basis for recovery of remedial costs.

**B.** The department shall compile and retain supporting documentation for costs for which it may seek reimbursement. This documentation may include, but is not limited to:

1. time and attendance records;
2. records of the cost of site-specific travel including, but not limited to, travel reimbursement forms, requisitions, invoices, or memoranda;
3. invoices from the purchase of supplies, services, or equipment for a specific site;
4. contractor invoices;
5. cooperative agreements or other legal action documents;
6. records of site-specific direct costs, such as laboratory sampling and analytical costs, equipment rentals, copying service, or other services; and
7. records reflecting the costs of bringing an enforcement action, including without limitation, staff time, equipment use, hearing records, expert assistance, and such other items as the department determines to be a cost of the action. Contractor quarterly reports or pre-award documents that may contain confidential information concerning contractor overhead and labor rates shall not be included.

**C.** Unless required for a longer period of time, documents shall be retained at the offices of the department for a period of at least three years from completion of the remedial action or the time that the department determines that no further action is required at a site.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2193 (November 1999).

#### **§607. Determination of Remedial Costs; Demand to PRPs**

**A.** Timing. The Office of Environmental Assessment may at any time prepare a written determination of the cost

of partial or complete remediation of a site. The department may revise its determination in writing at any time thereafter.

**B. Demand to PRPs.** The department may seek to recover its remedial costs using any of the means described in the Act and these regulations.

**C. Treble Liability**

1. PRPs who fail to comply with demand letters, administrative orders, or court orders concerning the site without sufficient cause are potentially liable for three times the total remedial costs.

2. In the event the court finds any PRP liable for three times the value of the remedial costs allocated by the court to that PRP, this finding shall not be used to mitigate the allocated share of other PRPs also found liable for the site.

**D. Review of Cost Documentation**

1. The department shall provide an opportunity for review of the cost documentation for a particular site to any person who has received a demand for payment of remedial costs from the department. The department may accept written factual information to support any dispute concerning the calculation of the demand. The department may take such further action as it determines necessary regarding review.

2. Neither the department's cost determination nor any administrative review in accordance with Paragraph D.1 of this Section shall be considered to be an adjudication in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2193 (November 1999), amended LR 26:2513 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2138 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2759 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2141 (November 2017).

## Chapter 7. Settlement and Negotiations

### §701. Purpose

**A.** The goal of the department in all settlement negotiations with PRPs is to obtain complete site remedial actions by the PRPs and/or to collect 100 percent of the department's costs for site remediation.

**B.** The liability of PRPs to the department is absolute and presumed in solido.

**C.** Where the department finds that PRP involvement will further the department's goals, the department may enter into negotiations with the PRPs, subject to the limitations and procedures set forth in this Chapter. With the concurrence of the attorney general where required by law,

the department may settle or resolve, as deemed advantageous to the state, any suits, disputes, or claims for any penalty under the Act or these regulations.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2193 (November 1999).

### §703. Cooperative Agreements

**A.** Cooperative agreements may be used to reflect agreements by PRPs to conduct any remedial action at a site or to reimburse the department for remedial costs. This does not preclude the use of enforcement action, if necessary.

**B.** The department may enter into cooperative agreements with any person for the purpose of conducting any remedial action measures in accordance with these regulations.

**C.** The department may enter into a cooperative agreement with one or more PRPs as a result of negotiations.

**D.** Each cooperative agreement shall address the following provisions:

1. a statement of jurisdiction;
2. a description of parties bound;
3. a description of work to be performed or of costs to be paid and a schedule for such work or payment;
4. oversight by the department;
5. access;
6. reporting requirements;
7. project deliverables, including a schedule for submission and revisions;
8. project coordinators;
9. a requirement for certification upon completion of work;
10. reimbursement of remedial costs, if applicable;
11. force majeure;
12. retention of records;
13. notices and submissions;
14. effective date; and
15. appendices.

**E.** Each cooperative agreement may contain, but not be limited to, the following provisions:

1. indemnification of the department and insurance;
2. stipulated penalties;
3. covenants not to sue;
4. quality assurance/quality control and sampling and data analysis;
5. assurance of financial ability to complete work;

6. emergency response procedures;
7. dispute resolution procedures;
8. information to be provided to the department; and
9. public participation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2194 (November 1999).

#### **§705. Negotiations**

**A.** Purpose. The department's goal in negotiating PRP participation in remedial actions and reimbursement of the costs incurred by the department is to obtain complete remediation by the PRPs and/or to collect 100 percent of the department's remedial costs.

#### **B.** Good Faith Proposal

1. Upon receipt of the demand letter in accordance with LAC 33:VI.405.B or at any other time, PRPs who wish to pay for the department to conduct a remedial action or who wish to conduct the action themselves shall respond in writing within 60 days or such other time that the department may specify and make a good faith offer concerning the implementation of the remedial action or payment of the department's costs. The department will negotiate with PRPs only if the initial proposal from the PRPs constitutes a substantial portion of the remedial action or a good faith proposal. The department has sole discretion to determine whether to start negotiations after receipt of a proposal from PRPs.

2. In making its decision, the department shall weigh factors it deems appropriate, including the potential resource demands for conducting the negotiations against the likelihood of getting 100 percent of the department's costs or a complete remedial action.

3. The department may elect to negotiate for less than 100 percent when it deems that the circumstances of the case warrant such action.

4. When there are five or more PRPs interested in negotiating, the department may request that the PRPs select a representative to negotiate with the department.

**C.** Negotiations after Issuance of Administrative Orders. PRPs who have received unilateral administrative orders may negotiate with the Office of Environmental Assessment for dismissal of the administrative order upon execution of a cooperative agreement unless an emergency situation has been declared or the department determines that a stay of remedial actions or of enforcement will be detrimental to the public health, welfare, or the environment. The department has sole discretion in determining whether to enter into negotiations after issuance of a unilateral administrative order. Except by written determination of the department, no request for or conduct of negotiations in accordance with this Section shall serve to stay or modify the terms of any such unilateral administrative order.

**D.** Notice to Fewer than All PRPs. Nothing in these regulations shall be construed to require the department to send a notification and a demand for information in accordance with R.S. 30:2274 or a demand for remedial action or costs in accordance with R.S. 30:2275 when the department determines that it is not feasible to make a demand on every PRP. PRPs who do not receive such notifications or demands remain subject to later notification letters, or demand letters in accordance with LAC 33:VI.403 and 405, unilateral administrative orders, or other enforcement actions. PRPs who did not receive a notification or a demand but who are interested in responding with a good faith offer may participate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2194 (November 1999), amended LR 26:2513 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2138 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2759 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2141 (November 2017).

#### **§707. Contribution Protection**

**A.** Any responsible party that has resolved its liability to the department in an administrative or judicially approved settlement shall be considered to be a *participating party* within the meaning of R.S. 30:2276.G and as defined in these regulations and shall not be liable for claims by any other parties regarding matters addressed in the settlement.

**B.** Settlement between the department and any party does not discharge any other PRPs unless the terms of the settlement documents so provide, but such settlement shall reduce the potential in solido liability of the others by the amount of the settlement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2194 (November 1999).

#### **§709. De Minimis Settlements**

**A.** If practicable and in the public interest, as determined by the administrative authority, the department may settle with any PRP whose waste contribution to a site is minimal in terms of amount and toxicity in comparison to other hazardous substances or hazardous wastes or hazardous waste constituents at the site.

**B.** The department may consider a de minimis settlement offer when it has sufficient information about all identified PRPs, including financial information, to determine each PRP's waste contribution to the site and information about the costs of remedial action at the site.

**C.** The goal of negotiations with de minimis parties is to achieve quick and standardized agreements through the expenditure of minimal enforcement resources and transaction costs. Where feasible the department may require

de minimis parties to negotiate collectively at multi-party sites.

**D.** To attain the goal set forth in Subsection C of this Section, the de minimis settlement should ordinarily involve a payment to the Office of Management and Finance by the settling party or parties, rather than a commitment to perform work. Where a remedial action is being conducted in whole or in part by PRPs, it may be appropriate for the settling de minimis parties to deposit the amount paid in accordance with the de minimis settlement into a site-specific trust fund to be administered by a third party trustee and used for remedial action for that site.

**E.** In evaluating a de minimis settlement offer the department may consider any factors and information it deems appropriate, including:

1. amount of waste contributed;
  2. toxicity of potential settling party's waste;
  3. costs of litigation;
  4. public interest considerations;
  5. value to the department of a present sum certain;
- and
6. nature and strength of the case against nonsettling PRPs.

**F.** De minimis agreements shall be entered into as cooperative agreements or judicial orders, in accordance with these regulations. Any de minimis settlement shall contain, in addition to other standard provisions, the following terms:

1. requirement that the settling party be responsible for a percentage of site remedial costs in excess of that amount the department and the party agree may be allocated to the settling party for purposes of settlement (premium payment);
2. reservation of natural resource damage recovery, except where expressly waived by the natural resource trustee(s); and
3. reopener clauses allowing the department to pursue the settling de minimis parties if information not known to the department at the time of settlement indicates that the volume and/or toxicity criteria for settlement is no longer satisfied with respect to the settling party or parties.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2271 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2195 (November 1999), amended LR 26:2513 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2139 (October 2007), LR 35:2180 (October 2009).

#### **§711. Mixed Funding**

**A.** PRP Lead Site. The department may provide funds from the *Hazardous Waste Site Cleanup Fund*, as defined in R.S. 30:2205, to a responsible party for the purpose of

assisting with the cost of remediation incurred by the responsible party. This assistance may be provided through cooperative agreements in accordance with R.S. 30:2032.

**B.** Department Lead Site. The department may accept funds from PRPs for the purpose of assisting with the payment of remedial costs incurred by the department, regardless of when those costs are incurred. This assistance may be provided solely in the form of cash contributions, which may go to either the Hazardous Waste Site Cleanup Fund or to the *Environmental Trust Fund*, as defined in R.S. 30:2015, at the department's discretion.

**C.** Eligibility and Mixed Funding Criteria. The Office of Environmental Assessment shall make a determination whether a proposal is eligible for funding. The only circumstances under which mixed funding can be approved by the department are when the funding will achieve both:

1. substantially more expeditious or enhanced remediation than would otherwise occur; and
2. the prevention or mitigation of unfair economic hardship. In considering this criterion the department shall consider the extent to which mixed funding will either prevent or mitigate unfair economic hardship faced by the PRP, if the remedial action were to be implemented without public funding, or achieve greater fairness with respect to the payment of remedial costs between the PRP entering into a cooperative agreement with the department and any nonsettling PRPs.

**D.** Funding Decision. The department may hold informal discussions on mixed funding with PRPs for a particular site. If a responsible party is found to be eligible for mixed funding, the administrative authority shall make a determination regarding the amount of funding to be provided, if any. This shall be determined at the discretion of the administrative authority and is not subject to review. A determination of eligibility is not a funding commitment. Actual funding will depend on the availability of funds.

**E.** Remedial Costs. The department may recover the amount of public funding spent on remedial actions from the nonparticipating PRPs. For purposes of such cost recovery action, the amount in mixed funding attributed to the site shall be considered as remedial costs paid by the department.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2195 (November 1999), amended LR 26:2513 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2139 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2759 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2141 (November 2017).

#### **§713. Availability of Facilitation/Mediation**

**A.** The department, at its sole discretion, will entertain PRP requests to participate in alternative dispute resolution procedures such as mediation, nonbinding arbitration, and facilitation at the PRP's expense. The department must agree



upon the selection of any facilitator or mediator engaged to conduct the dispute resolution procedure.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2195 (November 1999).

## Chapter 8. Public Information and Participation

### §801. Public Information

A. The department shall ensure that site-related information is available to the public by providing access to all public records and information obtained by the department unless such information has been designated confidential by the secretary, as authorized in R.S. 30:2030 and/or LAC 33:I.501.

B. As appropriate, the department, or PRPs as directed by the department, shall actively disseminate information to the public concerning site remedial activities. All information dissemination activities undertaken by PRPs shall be performed under the direction and approval of the department. Methods for disseminating site information include, but are not limited to, the methods listed in Paragraphs B.1-3 of this Section.

1. **Information Repositories.** The Office of Environmental Assessment may establish and maintain an information repository in a public location near the site. If a repository is established, PRPs shall provide the department with copies of all necessary documents.

2. **Fact Sheets or Newsletters.** The department, or PRPs as directed by the department, may draft and distribute fact sheets or newsletters concerning site activities. If directed by the department, PRPs shall provide for the drafting, printing, and distribution of the fact sheets or newsletters.

3. **Informational Open Houses.** The department may hold informational open houses to discuss site activities with interested citizens. If directed by the department, the PRPs shall assume all costs of these informational meetings and shall provide materials as directed by the department.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2196 (November 1999), amended LR 26:2513 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2139 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2759 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2141 (November 2017).

### §803. Public Participation

A. In order to ensure that the public has an opportunity to comment on site-related decisions, the Office of Environmental Assessment, or PRPs as directed by the

department, shall provide opportunities for public participation as listed in this Section. All public participation activities undertaken by PRPs shall be performed under the direction and approval of the department.

1. For sites that have been declared abandoned in accordance with R.S. 30:2225, an opportunity for public comment shall be provided for any site closure plan in which the department proposes to treat, store, or dispose of hazardous wastes at the site.

a. Notice of the public comment period and any public hearing on the closure plan shall be placed in the newspaper of general circulation in the parish where the site is located. The contents and format of the notice shall follow guidelines established by the department.

b. Prior to the commencement of the public comment period, the department, or PRPs as directed by the department, shall place a copy of the site closure plan in a public location near the site.

2. For sites where the secretary has made a demand for remedial action in accordance with R.S. 30:2275, the department shall, upon written request, provide an opportunity for a public meeting prior to approval of a site remedial investigation plan and selection of a remedy. Additionally, if a written request is received, the department shall hold a public comment period of not more than 60 calendar days duration prior to approval of a site remedial investigation plan and selection of a site remedy. Written requests shall be mailed to the Office of Environmental Assessment.

a. Notice of the public comment period and public meeting should be placed in the newspaper of general circulation in the parish where the site is located. The contents and format of the notice shall follow guidelines established by the department.

b. Prior to any public comment period, the Office of Environmental Assessment, or PRPs as directed by the department, shall place a copy of the document being reviewed in a public location near the site.

B. The department shall, as appropriate, provide or direct PRPs to provide additional opportunities for public participation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2221 et seq. and 2271 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2196 (November 1999), amended LR 26:2513 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2139 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2759 (November 2012), repromulgated LR 39:85 (January 2013), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2141 (November 2017).

## Chapter 9. Voluntary Remediation

### §901. Authority and Purpose

A. These regulations are established by the Department of Environmental Quality in accordance with R.S. 30:2001 et seq., in particular, R.S. 30:2285 et seq. The purpose of these regulations is to promote the voluntary assessment, remediation, and sustainable reuse of contaminated properties, while protecting public health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:514 (April 2001).

### §903. Definitions

A. The following definitions apply to terms used in this Chapter. Except as provided in this Section, the terms in this Chapter retain the definitions provided in LAC 33:VI.117.

**Applicant**—a person who has submitted an application, as described in LAC 33:VI.911, to participate in the voluntary remediation program.

**Application**—a submission to the department, as described in LAC 33:VI.911, for participation in the voluntary remediation program.

**Certificate of Completion**—written approval for a specific voluntary remediation site issued by the administrative authority to a person who has undertaken and completed a voluntary remedial action at the site in accordance with a previously-approved remedial action plan and that achieved the remedial action goals in the plan. Upon issuance, this approval provides release from liability in accordance with LAC 33:VI.907.

**Nonresponsible Person**—a person who is not a responsible person as defined in this Section.

**Partial Voluntary Remedial Action**—a voluntary remedial action for which not all discharges or disposals or threatened discharges or disposals at a voluntary remediation site are removed or remediated (e.g., soils are remediated, but groundwater is not, or only a portion of the site is remediated). *Partial voluntary remedial actions* must be consistent with RECAP, and any reuse of the site must not pose a significant threat to public health, safety, and welfare and the environment.

**RECAP**—Louisiana Risk Evaluation/Corrective Action Program as presented in LAC 33:I.Chapter 13.

**Responsible Person or Responsible Landowner**—a person who is responsible under the provisions of R.S. 30:Chapter 12.Part II and LAC 33:VI for the discharge or disposal or threatened discharge or disposal of a hazardous substance or hazardous waste at a voluntary remediation site, except that, for the purposes of this Chapter, a person who owns or has an interest in a voluntary remediation site is generally not a *responsible person* or *responsible landowner*, unless that person:

a. was engaged in the business of generating, transporting, storing, treating, or disposing of a hazardous substance or hazardous waste on or in the site, or knowingly permitted others to engage in such a business on the site;

b. knowingly permitted any person to make regular use of the site for disposal of waste;

c. knowingly permitted any person to use the site for disposal of a hazardous substance;

d. knew or reasonably should have known that a hazardous substance was located in or on the site at the time right, title, or interest in the site was first acquired by the person and engaged in conduct associating that person with the discharge or disposal; or

e. took action that significantly contributed to the discharge or disposal after that person knew or reasonably should have known that a hazardous substance was located in or on the site.

**Voluntary Remedial Action**—risk-based cleanup of a voluntary remediation site performed in accordance with an approved voluntary remedial action plan. Unless specified as a partial voluntary remedial action, all discharges or disposals or threatened discharges or disposals are removed or remediated. *Voluntary remedial actions* must be consistent with RECAP.

**Voluntary Remediation**—participation in the voluntary remediation program, including application, remedial investigation, remedial action, and receipt of certificate of completion.

**Voluntary Remediation Program**—program operated in accordance with R.S. 30:Chapter 12.Part II and this Chapter, under which persons may apply to the department to investigate, perform voluntary remedial actions at, and receive certificates of completion for voluntary remediation sites.

**Voluntary Remediation Site**—area of immovable property that is clearly identified by survey and legal description at which a voluntary remedial action is to be performed, is being performed, or has been performed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:514 (April 2001).

### §905. Eligibility

A. Eligible Sites. All sites shall be eligible for voluntary remediation, except for the following:

1. permitted hazardous waste management units (HWMU) regulated under LAC 33:V or federal hazardous waste regulations (if the HWMU is located within a larger site, then only that portion of the site inside the HWMU boundary is ineligible);

2. sites that have been proposed in the *Federal Register* to be placed on the National Priorities List (however, sites that are proposed to be placed on the

National Priorities List, but which are determined not to be appropriate for listing, will become eligible if not otherwise ineligible);

3. sites that have been placed on the National Priorities List (however, such sites become eligible if they are subsequently removed from the National Priorities List and are not otherwise ineligible);

4. trust-fund-eligible underground storage tank systems, as defined in and regulated by LAC 33:XI; and

5. sites that have pending, unresolved federal environmental enforcement actions (not including simple cost recovery actions) that are related to the proposed voluntary remediation.

#### **B. Eligible Persons**

1. All persons shall be eligible to receive certificates of completion after completing approved voluntary remedial actions, except as otherwise provided in this Chapter.

2. *Nonresponsible persons*, as defined in this Chapter, are eligible to receive Certificates of Completion for partial voluntary remedial actions. *Responsible persons*, as defined in this Chapter, are not eligible to receive certificates of completion for partial voluntary remedial actions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:515 (April 2001).

### **§907. Liability and Exemptions from Liability**

**A. Persons Exempt from Liability.** Following a completed voluntary remedial action and issuance of a certificate of completion, the following persons shall be exempt from liability provided in R.S. 30:Chapter 12.Part I and LAC 33:VI:

1. the person who undertook and completed the voluntary remedial action at the voluntary remediation site;

2. the owner of the voluntary remediation site, if he is not a responsible person;

3. a person who acquires or develops all or part of the voluntary remediation site;

4. a successor or assignee of any person to whom the liability exemption applies; and

5. a person who provides financing for the implementation of the voluntary remedial action plan or for the development of the voluntary remediation site in accordance with the applicable use restrictions.

**B. Persons Not Exempt from Liability.** Notwithstanding Subsection A of this Section, the exemption from liability provided in this Chapter does not apply to:

1. a person who aggravates or contributes to a discharge or disposal or threatened discharge or disposal that was not remedied under an approved voluntary remedial action plan;

2. a person who was a responsible person under R.S. 30:Chapter 12.Part I and LAC 33:VI for a discharge or disposal or threatened discharge or disposal that was identified in the approved voluntary remedial action plan before taking an action that would have made the person subject to the exemptions under Paragraphs A.2-5 of this Section; or

3. a person who obtains approval of a voluntary remedial action plan by fraud or misrepresentation or by knowingly failing to disclose material information, or who knows that the approval was so obtained before taking an action that would have made the person subject to the exemptions from liability under Subsection A of this Section.

**C. Performance Liability.** Persons specified in Subsection A of this Section shall not be liable for aggravating or contributing to any discharge or disposal or threatened discharge or disposal identified in an approved voluntary remedial action plan, for the purpose of Paragraph B.1 of this Section, as a result of their performance of the remedial actions required in accordance with the plan and the direction of the administrative authority. Nothing in this Chapter relieves a person of any liability for failure to perform the work required by the plan in a workman-like manner and in accordance with generally accepted standards of performance and operation applicable to such remedial work.

**D. Liability from Participation.** No person who is not already liable for a site under R.S. 30:Chapter 12.Part I or LAC 33:VI shall incur such liability from simply having participated in the voluntary remediation program, except as provided in Paragraph B.1 and Subsection C of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:515 (April 2001).

### **§909. Voluntary Remedial Investigation and Remedial Action Requirements**

**A. Remedial Investigations.** Voluntary remedial investigations shall be consistent with the methods and processes provided by RECAP. Voluntary remedial investigations must include:

1. the determination of the nature and extent of potential threats to human health and the environment through data collection and site characterization; and

2. the development of remedial action goals.

**B. Remedial Actions.** Voluntary remedial actions shall protect human health and the environment and comply with the RECAP standards determined in accordance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:516 (April 2001).

**§911. Application Process**

**A. Voluntary Remedial Investigation Applications.** Prior to performing a remedial investigation and submission of the application in Subsection B of this Section, the applicant may submit a voluntary remedial investigation application for review and approval by the administrative authority, which consists of the following:

1. a Voluntary Remedial Investigation Application Form VCP001, available from the Office of Environmental Assessment and on the department's website, with required attachments, accompanied by the remedial investigation work plan review fee; and

2. a remedial investigation work plan, which shall conform to the site investigation requirements of RECAP and, at a minimum, include the following:

a. identification of all data needs following the review of existing preliminary evaluation reports and other existing data;

b. identification of all potential exposure pathways/receptors and associated data needs;

c. identification of all potentially applicable, relevant, and appropriate requirements (ARARs) and associated data needs;

d. a site-specific health and safety plan including necessary training, procedures, and requirements;

e. a site-specific sampling and analysis plan that includes the number, type, and location of all samples to be taken and the types of analyses to be conducted during the required site characterization activities; and

f. a quality assurance/quality control plan that identifies the quality assurance objectives and the quality control procedures necessary to obtain data of a sufficient quality for the remedial investigation.

**B. Voluntary Remediation Applications.** Prior to implementation of a voluntary remedial action at a site, applicants must submit a voluntary remediation application to the Office of Environmental Assessment for review and final approval. The application shall consist of the following:

1. a Voluntary Remediation Application Form VCP002, available from the Office of Environmental Assessment and on the department's website, with required attachments, accompanied by the remedial action plan review fee;

2. a voluntary remedial action plan that contains a remedial investigation report, a remedial design, and a remedial project plan;

3. the remedial investigation report, which shall, at a minimum, include:

- a. the scope and description of the investigation;
- b. a site background summary;
- c. sampling and analysis results;

- d. identification of the sources of the release;
- e. identification of the horizontal and vertical extent of the contamination;
- f. proposed remedial action goals; and
- g. conclusions and recommendations for further action; and

4. the remedial design, which shall implement the remedy that is being proposed in order to attain the remedial action goals. The remedial project plan shall include all tasks, specifications, and subplans necessary for the implementation of the remedial design, including construction and operation of the final remedy. The requirements for the remedial project plan include:

- a. a work plan, including:
  - i. a general description of the work to be performed and a summary of the engineering design criteria;
  - ii. maps showing the general location of the site and the existing conditions of the facility;
  - iii. a copy of any required permits and approvals;
  - iv. detailed plans and procedural material specifications necessary for the construction of the remedy;
  - v. specific quality control tests to be performed to document the construction, including specifications for the testing or reference to specific testing methods, frequency of testing, acceptable results, and other documentation methods as required by the administrative authority;
  - vi. start-up procedures and criteria to demonstrate the remedy is prepared for routine operation; and
  - vii. additional information to address ARARs;
- b. a sampling and analysis plan;
- c. a quality assurance/quality control plan;
- d. a site-specific health and safety plan;
- e. a project implementation schedule;
- f. if deemed necessary by the administrative authority, an operation and maintenance plan for post-remedial management including, but not limited to:
  - i. the name, telephone number, and address of the person responsible for the operation and maintenance of the site;
  - ii. a description of all operation and maintenance tasks and specifications;
  - iii. all design and construction plans;
  - iv. any applicable equipment diagrams, specifications, and manufacturer's guidelines;
  - v. an operation and maintenance schedule;
  - vi. a list of spare parts available at the site for repairs;

- vii. a site-specific health and safety plan; and
- viii. other information that may be requested by the administrative authority;

g. if deemed necessary by the administrative authority, a monitoring plan for post-remedial management. This monitoring plan must include a description of provisions for monitoring of site conditions during the post-remedial management period to prevent further endangerment to human health and the environment, including:

- i. the location of monitoring points;
- ii. the environmental media to be monitored;
- iii. the hazardous substances to be monitored and the basis for their selection;
- iv. a monitoring schedule;
- v. monitoring methodologies to be used (including sample collection procedures and laboratory methodology);
- vi. provisions for quality assurance and quality control;
- vii. data presentation and evaluation methods;
- viii. a contingency plan to address ineffective monitoring; and
- ix. provisions for reporting to the department on a semiannual basis including, at a minimum:
  - (a). the findings from the previous six months;
  - (b). an explanation of any anomalous or unexpected results;
  - (c). an explanation of any results that are not in compliance with the RECAP standards; and
  - (d). proposals for corrective action; and
- h. other information that may be required by the administrative authority. The department may allow information to be incorporated by reference to avoid unnecessary duplication.

#### C. Acceptance for Public Review

1. After a satisfactory review of the voluntary remediation application and the incorporation of necessary modifications required by the administrative authority into the application, the administrative authority will accept the application for public review.

2. After the application is accepted for public review and before the beginning of the public comment period provided in Subsections D and F of this Section, the applicant shall provide the number of copies of the accepted application specified by the administrative authority to the Office of Environmental Assessment.

3. The applicant shall also place copies of the accepted application in local public facilities, to be

determined by the administrative authority (e.g., public library, local government office), near the voluntary remediation site.

D. Public Notice. Upon acceptance of the voluntary remediation application, as set forth in Subsection C of this Section, the applicant must place a public notice of the proposed voluntary remedial action plan in the local newspaper of general circulation in the parish where the voluntary remediation site is located. The public notice shall be a single classified advertisement at least 4 inches by 6 inches in size in the legal or public notices section. The applicant must provide proof of publication of the notice to the Office of Environmental Assessment prior to final approval of the plan. The public notice shall:

1. solicit comments, for a minimum of 30 days, on the voluntary remedial action plan from interested parties;
2. provide the names of all of the applicants and the physical location of the voluntary remediation site;
3. indicate that comments shall be submitted to the Office of Environmental Assessment (including the contact person, mailing address, and physical address), as well as indicate the deadline for submission of comments;
4. indicate where copies of the proposed plan can be reviewed by the public; and
5. inform interested parties that they may request a public hearing on the voluntary remedial action plan.

E. Direct Notice to Landowners. Within five days of the public notice in Subsection D of this Section, the applicant must send a direct written notice of the voluntary remedial action plan to persons owning immovable property contiguous to the voluntary remediation site. This notice shall be sent to persons listed as owners of the property on the rolls of the parish tax assessor as of the date on which the voluntary remediation application is submitted. The notice must be sent by certified mail and contain the same information that is provided in the public notice. Return receipts or other evidence of the receipt or attempted delivery of the direct notice must be provided to the Office of Environmental Assessment prior to final approval of the plan.

#### F. Public Hearing and Comment

1. Comments on the voluntary remedial action plan shall be accepted by the Office of Environmental Assessment for a period of 30 days after the date of the public notice and shall be fully considered by the administrative authority prior to final approval of the plan. However, if the administrative authority determines a shorter or longer comment period is warranted, the administrative authority may provide for a shorter or longer comment period in the public notice described in Paragraph D.1 of this Section. Also, the comment period provided in the public notice may be extended by the administrative authority if the administrative authority determines such an extension is warranted.

2. A public hearing may be held if the administrative authority determines a hearing is necessary based on public comments or other information.

3. The applicant shall be responsible for the actual costs of any such public hearing including, but not limited to, the costs of building rental, security, court reporter, and hearing officer.

**G.** Prior to final approval of the voluntary remediation application, the administrative authority may require further modifications of the proposed plan if warranted based on issues brought forth by the public.

**H.** Upon final approval of the voluntary remediation application, the administrative authority may include in the approval an acknowledgement that, upon certification of completion of the remedial actions, the applicant shall receive the exemption from liability provided for in this Chapter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:516 (April 2001), amended by the Office of Environmental Assessment, LR 30:2024 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2485 (October 2005), LR 33:2139 (October 2007), LR 34:1901 (September 2008), amended by the Office of the Secretary, Legal Division, LR 38:2759 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2142 (November 2017).

### **§913. Completion of Voluntary Remedial Actions**

**A.** Implementation. Voluntary remedial actions must be performed in accordance with the voluntary remedial action plan approved by the administrative authority. Any modification in the plan must be approved by the administrative authority in advance of implementation of the modification. Modifications that result in a fundamental change of the plan (e.g., less stringent cleanup standards or changes in remedial approach with greater local impact, such as bioremediation to incineration) must undergo the public notice and hearing procedure in LAC 33:VI.911 prior to approval and implementation.

**B.** Inspections. The department reserves the right to inspect and oversee voluntary remedial actions in accordance with LAC 33:VI.517.

#### **C. Completion of Voluntary Remedial Actions**

1. Upon completion of a voluntary remedial action, the applicant shall submit a voluntary remedial action report, which must include:

a. a general description of the remedial action activities conducted at the site;

b. a demonstration that the remedial actions have resulted in the attainment of the remedial action goals approved by the department in the voluntary remediation application;

c. a description of the volume and final disposal or reuse location and a copy of any waste manifests or other documentation of the disposition for wastes or environmental media that were removed from the site;

d. documentation that any physical control and/or treatment system, or combination of physical controls and treatment systems, have been constructed or completed and are functioning as described in the remedial design and remedial project work plan; and

e. other information that may be required by the department.

2. After satisfactory completion of a voluntary remedial action demonstrating that the remedial action goals have been accomplished and approval of the voluntary remedial action report, the administrative authority shall issue a certificate of completion to the applicant.

3. Certificates of completion that are issued to a responsible person for a voluntary remedial action in which a voluntary remediation site is remediated for industrial use are valid only as long as the use of the site is industrial. Furthermore, where the approved remedial action incorporates use restrictions, institutional controls, or engineering controls, the certificate of completion is subject to compliance with such use restrictions, institutional controls, or engineering controls.

**D.** Termination at Will. The applicant may terminate participation in the voluntary remediation program at any time and for any reason, provided that:

1. the applicant provides written notice to the Office of Environmental Assessment at least 15 days in advance of the termination;

2. the applicant has reimbursed the department for any reasonable costs incurred by the department up through the time of termination; and

3. termination of participation does not pose an immediate threat to public health, safety, and welfare and the environment and does not substantially increase the cost of future remediation. (This Paragraph does not apply to conditions created prior to the participation of the applicant in the program.)

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2285 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:518 (April 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2485 (October 2005), LR 33:2140 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2760 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2142 (November 2017).

### **§915. Additional Requirements for Partial Voluntary Remedial Actions**

**A.** Criteria for Partial Remediation. The administrative authority may approve a voluntary remediation application

for partial voluntary remedial action submitted in accordance with LAC 33:VI.911, provided:

1. the applicant is a nonresponsible person;
2. the voluntary remedial action plan provides for all remedial actions necessary to allow for any proposed reuse or redevelopment of the site in a manner that does not pose a significant threat to public health, safety, and welfare and the environment;
3. the remedial action and the activities associated with any proposed reuse or redevelopment of the site will not:
  - a. aggravate or contribute to discharges or disposals or threatened discharges or disposals that are not required to be removed or remedied under the voluntary remedial action plan; and
  - b. interfere with or substantially increase the cost of future remedial actions to address the remaining discharges or disposals or threatened discharges or disposals; and
4. that prior to approval of the voluntary remediation application, the owner of the voluntary remediation site agrees, in writing, to the following terms necessary to carry out remedial actions to address the remaining discharges or disposals or threatened discharges or disposals:
  - a. to cooperate with the administrative authority or his authorized representatives in taking remedial actions necessary to investigate or address remaining discharges or disposals or threatened discharges or disposals, including:
    - i. providing access to the property to the administrative authority and his authorized representatives;
    - ii. allowing the administrative authority or his authorized representatives to undertake activities at the property, including placement of borings, wells, equipment, and structures on the property; and
    - iii. granting rights-of-way, servitudes, or other interests in the property to the department for any of the purposes provided in Clause A.4.a.i or ii of this Section;
  - b. to avoid any action that interferes with the remedial actions in Subparagraph A.4.a of this Section; and
  - c. to impose restrictions on the future use of the property as provided in Subsection C of this Section.

**B. Written Agreement.** The written agreement provided for in Paragraph A.4 of this Section shall be binding on the successors and assigns of the owner, and the owner shall record the agreement, or a memorandum approved by the administrative authority summarizing the agreement, with the clerk of court in the official records of the parish where the voluntary remediation site is located prior to the issuance of a certificate of completion for the site.

**C. Future Use Restrictions for Voluntary Remediation Sites Subject to Partial Voluntary Remedial Actions**

1. **Use Restrictions Mandatory.** No partial voluntary remedial action shall be approved and no certificate of

completion shall be issued for the partial voluntary remedial action unless the owner of the voluntary remediation site imposes and records necessary restrictions on the future use of the site, as provided in this Subsection.

2. **Determination of Use Restrictions.** The administrative authority shall determine the appropriate restrictions on the future use of the site that are necessary to prevent a significant threat to the public health, safety, and welfare and the environment. The administrative authority may conduct public hearings in the parish where the site is located to determine the reasonableness and appropriateness of such restrictions.

3. **Imposition and Recordation of Use Restrictions.** The owner of the voluntary remediation site shall impose restrictions on the future use of the site, as determined by the administrative authority under Paragraph C.2 of this Section, and shall record the use restrictions with the clerk of court in the official records of the parish in which the site is located prior to the issuance of a certificate of completion for the site. If such use restrictions are excessively lengthy and complex, the administrative authority may allow, on a site-specific basis, a notice of the use restrictions to be recorded in the parish records instead of the actual use restrictions. The form and content of the notice must be acceptable to the administrative authority.

4. **Modification or Removal of Use Restrictions**

a. Restrictions on the future use of the voluntary remediation site shall not be modified, canceled, or removed unless authorized in advance by the administrative authority.

b. The administrative authority shall not authorize the modification, cancellation, or removal of restrictions on the future use of the site unless the site is further remediated to remove or remedy the remaining discharges or disposals or threatened discharges or disposals under the requirements of this Chapter.

c. The administrative authority must conduct at least one public hearing in the parish in which the site is located at least 30, and not more than 60, days prior to authorizing the modification, cancellation, or removal of restrictions on the future use of the site as provided in Subparagraphs C.4.a and b of this Section.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2285 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:518 (April 2001).

## **§917. Fees and Direct Cost Recovery**

### **A. Fees**

1. **Voluntary Remedial Investigation Application Review Fee.** Remedial investigation work plans submitted to the department for review must be accompanied by a \$500 review fee.

2. **Voluntary Remediation Application Review Fee.** Voluntary remediation applications must be accompanied by a \$500 review fee.

3. No application shall be accepted or reviewed unless accompanied by the appropriate review fee as required in Paragraphs A.1 and 2 of this Section.

**B. Cost Recovery.** Participants in the voluntary remediation program shall reimburse the department for actual direct costs associated with reasonable and appropriate oversight activities of the department conducted in accordance with this Chapter including, but not limited to, review, supervision, investigation, and monitoring activities.

1. Application review fees required by Subsection A of this Section, which are paid by the applicant, are subtracted from the actual direct costs for which the applicant is invoiced.

2. No certificate of completion shall be issued by the administrative authority unless the actual direct costs assessed by the department are paid in full by the applicant.

3. The department shall invoice the applicant for accrued actual direct costs (less any application review fees already paid) on a quarterly basis following the date of application. A final invoice shall be sent after the voluntary remedial action is completed and prior to issuance of a certificate of completion.

#### 4. Methods of Payment

a. All payments made by check, draft, or money order shall be made payable to the Department of Environmental Quality, and mailed to the department at the address provided on the invoice.

##### b. Electronic Methods of Payment

i. Persons wishing to make payments using the electronic pay (e-pay) method shall access the department's website and follow the instructions provided on the website.

ii. Persons wishing to make payments using the electronic funds transfer (EFT) method shall contact the Office of Management and Finance for further instructions.

c. Cash is not an acceptable form of payment.

5. Payment shall be made by the due date shown on the invoice.

a. Payments that are not received within 15 days of the due date will be assessed a late payment fee equal to 5 percent of the invoiced amount.

b. Payments not received within 30 days of the due date will be assessed a late payment fee of an additional 5 percent of the original invoiced amount.

c. Payments not received within 60 days of the due date will be assessed a late payment fee of an additional 5 percent of the original invoiced amount.

d. If payments are not submitted within 90 days of the due date, the department may suspend all work on the site until such time as payment is received by the department.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:519 (April 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2180 (October 2009).

### §919. Record Retention

**A.** All data, reports, plans, drawings, correspondence, and other investigation and remediation records generated by applicants for voluntary remediation must be maintained by the applicants for at least three years after the date of issuance of the certificate of completion, or if no certificate is issued, for at least three years after termination of participation in the voluntary remediation program.

**B.** All data, reports, plans, drawings, correspondence, and other records generated during post-remedial management, as described in LAC 33:VI.911.B.3.f and g, must be maintained by the owner of the voluntary remediation site as long as post-remedial management is required. The owner of a voluntary remediation site undergoing post-remedial management must notify the subsequent owner of the site of these recordkeeping requirements.

**C.** The records required to be maintained in Subsections A and B of this Section must be made available to the department by the applicant or owner upon request.

**D.** For sites for which a notice of use restrictions has been placed into the parish record instead of the actual use restrictions, as provided in LAC 33:VI.915.C.3, the department shall maintain the use restrictions for as long as the use restrictions remain in effect for the site and for at least three years thereafter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2285 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:520 (April 2001).

## Chapter 11. Brownfields Cleanup Revolving Loan Fund Program

### §1101. Introduction

**A.** The Louisiana Legislature has found that the cleanup, redevelopment, and reuse of brownfields sites in the state should be encouraged and facilitated for the benefit of the citizens of the state by way of economic development, health, and aesthetics. The legislature has also found that providing loans for the cleanup of brownfields sites will result in benefits to the public by reducing risk to public health and the environment.

**B.** The purpose of these regulations is to establish procedures for the establishment and operation of a Brownfields Cleanup Revolving Loan Fund Program that will make low-interest loans available to political subdivisions, public trusts, quasi-governmental



organizations, nonprofit organizations, or private entities for the cleanup of brownfields properties.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2217 (September 2005).

### §1103. Authority

**A.** Act 655 of the 2004 Regular Session of the Louisiana Legislature enacted R.S. 30:2551-2552, which authorize the creation of a Brownfields Cleanup Revolving Loan Fund. This Act also authorizes the department to make loans to political subdivisions, public trusts, quasi-governmental organizations, nonprofit organizations, or private entities for the cleanup of brownfields properties.

**B.** Act 655 of 2004 further provides authority for the department to establish regulations and procedures for the loan program and authorizes political subdivisions, public trusts, quasi-governmental organizations, nonprofit organizations, or private entities to make loans from the fund.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2217 (September 2005).

### §1105. Definitions

**Applicant**—any entity that submits an application for a loan in accordance with these regulations.

**Bonds**—bonds, notes, renewal notes, certificates of indebtedness, refunding bonds, interim certificates, debentures, warrants, commercial paper, or other obligations or evidences of indebtedness authorized to be issued by the department.

**Brownfields Site**—real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Such property may also be referred to as a brownfield or as brownfields property.

**Department**—the Department of Environmental Quality.

**Eligible Costs**—those project costs that are reasonable, necessary, and allocable to the project, permitted by appropriate federal and state cost principles and approved in the loan agreement, and that are not prohibited by federal or state regulations or guidance.

**Fund**—the Brownfields Cleanup Revolving Loan Fund.

**In-Kind Contributions**—non-cash third-party contributions made directly to a federally assisted project or program, including donated time and effort, real and nonexpendable personal property, and goods and services that meet the requirements of applicable federal guidance.

**Loan**—a loan of money from the Brownfields Cleanup Revolving Loan Fund.

**Nonprofit Organization**—any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; is not organized principally for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization.

**Responsible Person**—a *responsible person* as defined in R.S. 30:2285.2.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2217 (September 2005).

### §1107. Eligibility for Participation in the Program

**A.** Applicant Eligibility. The applicant must meet all of the following requirements to be eligible to participate in the Brownfields Cleanup Revolving Loan Fund Program.

1. The applicant must be authorized to incur debt and enter into legally binding agreements.

2. The applicant must own the brownfields site to be remediated using loan funds prior to the initial disbursement of funds.

3. The applicant must not be a *responsible person* as defined in LAC 33:VI.1105.

4. The applicant must demonstrate the financial ability to repay the loan in a timely fashion.

5. The applicant must not be subject to any unpaid fines or penalties for lack of compliance with environmental laws or regulations at the brownfields site subject to the loan.

6. The applicant must not be subject to any past-due fees owed to the department.

7. The credit history of the applicant must be in good standing.

8. Applicants for loans made from federal brownfields funding sources must meet requirements for such applicants provided in federal guidance.

**B.** Site Eligibility. All sites must meet the following requirements in order to be eligible and to remain eligible to participate in the Brownfields Cleanup Revolving Loan Fund Program.

1. Only brownfields sites located in the state of Louisiana are eligible.

2. The site must be eligible for participation in the Louisiana Voluntary Remediation Program as provided in LAC 33:VI.Chapter 9, and the applicant must enter the program by submitting a completed voluntary remediation application for the site to the department within 120 days of the execution of the loan agreement, unless an extension is granted by the administrative authority. The site must remain in the Louisiana Voluntary Remediation Program to remain eligible for the loan program. All application and oversight

fees associated with the voluntary remediation shall be paid in a timely fashion in accordance with those regulations.

3. Cleanup of the site shall be accomplished within 18 months of the date of the execution of the loan agreement, unless an extension is granted by the administrative authority.

4. The cleanup of contamination associated with motor fuels underground storage tanks that are eligible for the Louisiana Motor Fuels Underground Storage Tank Trust Fund is not eligible for the loan program.

5. Sites at which only petroleum contamination is present (petroleum-only sites) must meet eligibility requirements for petroleum sites found in federal guidance.

6. Sites at which loans would be funded from federal brownfields funding sources must meet all requirements provided in federal guidance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2217 (September 2005).

#### **§1109. Ineligible and Eligible Costs**

**A.** Ineligible Costs. Loan funds cannot be used for:

1. payment of penalties or fines, or for federal cost-sharing requirements;
2. indirect costs or for any administrative costs such as direct costs associated with grant administration incurred to comply with the Uniform Administrative Requirements for Grants in 40 CFR Part 30 (however, loan funds may be used for programmatic costs);
3. payment of any fees or oversight cost reimbursements required by the department;
4. site acquisition or development/redevelopment and construction activities that are not corrective actions;
5. pre-cleanup activities (i.e., site investigation and identification of the nature and extent of contamination and associated data collection);
6. monitoring and data collection necessary to apply for, or comply with, environmental permits under other state or federal laws, unless such a permit is a required component of the corrective action;
7. ordinary operating expenses of the local government or nonprofit or private organization;
8. personal injury compensation or damages arising out of the project;
9. purchase of any equipment costing more than \$5,000;
10. cleanup of a substance that occurs in a natural condition at a site; or
11. any other costs prohibited by federal regulation or guidance.

**B.** Eligible Costs. Loan funds may be used for:

1. programmatic costs that are integral to achieving the purposes of the loan as described in the most current edition of the federal "Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants" guidance document or its equivalent;
2. preparation of a voluntary remediation application, including development of the voluntary remedial action plan, as described in LAC 33:VI.911.B;
3. remediation of an eligible site pursuant to and in conformance with the Louisiana Voluntary Remediation Program;
4. preparation of a voluntary remedial action report, as described in LAC 33:VI.913.C.1;
5. required public notice, public hearing, and other community involvement activities associated with the remediation of an eligible site; and
6. purchase of environmental insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2218 (September 2005).

#### **§1111. Loan Requirements**

**A.** The maximum loan amount shall be \$200,000 per brownfields site and shall not exceed the estimated cost of the project. Under special circumstances this maximum loan amount may be increased by the department. The department may award loans that are less than the total project cost for a brownfields site. Loan amounts cannot be increased after the loan award due to cost overruns or other reasons. The borrower must apply for another loan to get additional funds.

**B.** The interest rate for loans will be updated by the department as needed and will be less than the current prime interest rate. Loan agreements may provide for reduction or forgiving of interest rates for early repayment of the loan. There shall be no penalties imposed for early repayment of a loan.

**C.** The term of the loan (the time period over which the loan must be paid back) shall not exceed 20 years from the date of the completion of the project. The actual term for each loan shall be determined by the department and the department may require a shorter loan term based on circumstances. Loan principal and interest repayment schedules shall be set by the department, with the first installment being due within one year of the date of the project's completion.

**D.** A match (cost-share) of up to 20 percent of the loan amount may be required of the applicant by the department for any loan made. Eligible "in-kind" contributions may be allowed as cost-shares by the department.

**E.** Applicants must demonstrate their ability to repay the loans. The department may require a loan recipient to provide security or collateral for the loan, including the

subject property. A local government or nonprofit applicant may be required to provide evidence of a dedicated revenue source to repay the loan.

F. Applicants subject to oversight by the State Bond Commission must comply with R.S. 30:2552.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2218 (September 2005).

### **§1113. Loan Application Process**

A. The department may choose to accept loan applications on a continuous basis as funding permits or may announce specific application periods for acceptance of loan applications. If the department announces specific application periods, loan applications must be received on or before the deadline set by the department.

B. Applicants for loans shall complete and submit to the department an application package in a format specified by the department, including a Brownfields Cleanup Revolving Loan Fund Application Form that will be provided by the department. The application package must also include, but is not limited to:

1. a complete description of the project, including the sources and uses of funds, the project schedule, the estimated cost to complete the project, the estimated completion date, the amount of loan funds requested, and the source of other funding, if needed, to complete the project;

2. the last three years of the borrower's financial statements, which shall include the income statement, balance sheet, and cash flow statement, and tax returns;

3. an interim financial statement no more than 90 days old;

4. two years of financial projections, which must include an income statement, balance sheet, cash flow statement, and notes to the financial statements for each year;

5. an approved remedial investigation report as described in LAC 33:VI.911.B.3;

6. a written access agreement providing the department and its authorized representatives full access to the site;

7. an agreement to maintain financial records of the project, to conduct financial audits of these financial records, and to make the records available to the department promptly upon request;

8. if a cost-share is required by the department during this loan application period, a description of how the applicant will provide the cost-share for the project;

9. all information regarding the site required by the department to assist the department in determining eligibility of the site for participation in the loan program;

10. other information regarding the project requested in the application package to assist the department in ranking the project for funding;

11. proof of ownership of the property, or a purchase agreement with the current owner of the property, including evidence of clear title;

12. an appraisal of the estimated value of the property after the voluntary remedial action is complete;

13. discussion and evidence, as requested in the application form, demonstrating the eligibility under these regulations of the applicant and the property for a revolving loan;

14. a comprehensive redevelopment plan describing the future redevelopment and use of the property, including cost estimates for the redevelopment plan, and any economic and community benefits resulting from the cleanup and redevelopment of the property; and

15. other items specified in the application form or otherwise required by the department.

C. The department may request clarification or further information from applicants after receiving the applications. The department also reserves the right to reject incomplete applications.

D. Brownfields Cleanup Revolving Loan Fund applications accepted by the department may be ranked according to prioritization criteria to be established by the department.

E. Applicants will be accepted for loan funding based upon ranking and site-specific criteria, state-wide priorities, funds currently allocated and available for lending, and other relevant factors as determined by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2218 (September 2005).

### **§1115. Loan Agreements, Closing of Loans, and Disbursement of Loan Funds**

A. Upon selection of an applicant to receive a loan, the department will prepare and execute a loan agreement with the applicant. The loan agreement will provide for:

1. the loan term;

2. the repayment schedule;

3. the interest rate;

4. provisions in case of default;

5. a cost-share, if required;

6. timelines and budgets for completing various phases of the project of voluntary remediation;

7. provisions for disbursement of loan funds to the borrower;

8. any required security or collateral for the loan; and

9. other necessary provisions as determined by the department.

**B.** No loan funds shall be disbursed to the borrower until the loan agreement is executed and until such costs are incurred by the borrower.

**C.** Disbursement requests shall be of the form and type required by the department and shall be supplemented with copies of all invoices for each cost incurred. The borrower shall maintain complete documentation of all project costs for audit purposes. The borrower shall be responsible for maintaining financial control of the project by carefully reviewing all disbursement requests and supplemental documentation before submitting disbursement requests to the department. The borrower must certify each disbursement request before submittal.

**D.** Disbursement requests must be received by the date established by the department.

**E.** The borrower shall promptly remit each disbursement to the firm or individual to whom payment is due, and the borrower is solely responsible for paying those firms or individuals. The department may at its discretion make certain payments directly to such firms or individuals as provided in specific loan agreements.

**F.** Documentation of project costs paid for with revolving loan funds, as well as disbursement requests and invoices, must record and account for costs separately from any project costs paid or to be paid for from other funding sources.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2219 (September 2005).

#### **§1117. Recordkeeping, Confidentiality of Records, and Inspection of Records and Participating Sites**

**A.** The applicant must maintain complete financial and other records as required in the loan application and loan agreement, and make them available promptly to the department upon request as provided in Subsection B of this Section. Financial records must account for and record costs and expenditures to be funded with revolving loan funds separately from costs and expenditures to be funded from other funding sources. Recordkeeping shall meet the requirements of applicable federal guidance, and all records shall be kept by the borrower until the loan is completely repaid or at least three years after the cleanup is completed, whichever is later.

**B.** From the time of first submission of the loan application, throughout all stages of remediation, and at any time during the applicant's participation in the loan program, authorized representatives of the department shall have the right to inspect any and all projects, and any and all incidental works, areas, facilities, and premises otherwise pertaining to the project for which the application was made. The department shall further have the same right to inspect any and all books, accounts, records, contracts or other

instruments, documents, or information possessed by the applicant or entity representing the applicant that relates to the receipt, deposit, or expenditure of loan funds or to the planning, design, construction, and operation of any facilities that may have been constructed as a result of such loan funds. By submittal of a revolving loan fund application, the applicant shall be deemed to consent and agree to the right of reasonable inspection and the applicant shall allow the department all necessary and reasonable access and opportunity for such purposes.

**C.** Any requests for confidentiality of any documents submitted by an applicant or loan recipient must be handled in accordance with and will be governed by LAC 33.I.Chapter 5.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2219 (September 2005).

#### **§1119. Prioritization of Applicants and Sites to Receive Loan Funds**

**A.** Applicants may be prioritized for receipt of loan funds based on the ranking criteria in this Section. These factors may be further elaborated, refined, or detailed in the loan application.

**B.** The criteria (not in order of importance) for ranking applicants are as follows:

1. the potential of the site for redevelopment and productive reuse;
2. the potential for creation of temporary and permanent jobs and/or increased state and local tax revenues by the cleanup, redevelopment, and reuse of the site;
3. the potential of the project to create greenspace;
4. the ability of the applicant to repay the loan;
5. other cleanup funds available to the applicant to supplement revolving loan fund dollars;
6. funds available to the applicant to redevelop the property;
7. the degree of need for community revitalization in the area surrounding the site, as evidenced by significant deterioration, job loss, majority low-income households, or other factors as determined by the department;
8. the estimated value of the remediated property as compared to the estimated cost of the cleanup of that property; and
9. other ranking factors provided by the department.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2220 (September 2005).

