

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

DEQ Notifications to State Police
(LAC 33:I.3913, 3915, 3917, 3923, 3925; VII.315, 713; and XI.713) (MM012)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Environmental Quality regulations, LAC 33:I.3913, 3915, 3917, 3923, 3925; VII.315, 713; and XI.713 (Log #MM012).

This rule adjusts the reporting requirements to the one-call system for unauthorized releases in excess of an applicable reportable quantity. Proper notification to the Department of Public Safety and Corrections through the one-call system for a release in excess of applicable reportable quantities, as well as those that cause an emergency, will now satisfy the reporting obligations for these events, except for releases of radionuclides in excess of reportable quantities. This rule implements Act 81 of the 2008 Regular Session of the legislature. The basis and rationale for this rule are to update the Environmental Quality regulations for the one-call state notification system for release notifications. This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on March 30, 2010, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Donald Trahan at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by MM012. Such comments must be received no later than April 6, 2010, at 4:30 p.m., and should be sent to Donald Trahan, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3398 or by e-mail to donald.trahan@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of MM012. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

Title 33
ENVIRONMENTAL QUALITY

Part I. Office of the Secretary
Subpart 2. Notification

Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges

Subchapter A. General

§3913. Effective Date

A. ~~These regulations shall be in full force and effective 60 days after final publication in the *Louisiana Register*. Repealed.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), repealed by the Office of the Secretary, Legal Affairs Division, LR 36:

Subchapter B. Requirements for Emergency Notification

§3915. Notification Requirements for Unauthorized Discharges That Cause Emergency Conditions

A. - A.3. ...

4. ~~Dischargers are not relieved from any requisite~~ Compliance with this Section does not relieve dischargers of the necessity of following any applicable written notification procedures in LAC 33:I.3925 or of any permit or license terms and conditions of any applicable permit or license issued under the Louisiana Environmental Quality Act.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2204(A), 2194(C), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), LR 30:1668 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 36:

Subchapter C. Requirements for ~~Prompt~~ Non-Emergency Notification

§3917. Notification Requirements for Unauthorized Discharges That Do Not Cause an Emergency Conditions

A. In the event of an unauthorized discharge that exceeds a reportable quantity specified in Subchapter E of this Chapter but that does not cause an emergency condition, the discharger shall promptly notify ~~the department~~ DPS by telephone at (225) 925-6595 (collect calls accepted 24 hours a day) within 24 hours after learning of the discharge. Notification should be made to SPOC in accordance with LAC 33:I.3923.

B. ~~Dischargers are not relieved from any requisite~~ Compliance with this Section does not relieve dischargers of the necessity of following any applicable written notification

procedures in LAC 33:I.3925 or of any ~~permit or license~~ terms and conditions of any applicable permit or license issued under the Louisiana Environmental Quality Act.

C. Notification to the Department of Environmental Quality. In the event of an unauthorized discharge that requires notification under Subsection A of this Section, the DPS 24-hour Louisiana Emergency Hazardous Materials Hotline will notify the Department of Environmental Quality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), repromulgated LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), repromulgated LR 27:38 (January 2001), amended LR 30:1668 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007) LR 36:

Subchapter D. ~~Notification~~ Procedures for Notifying the Department

§3923. ~~Prompt~~ Notification Procedures for Other Regulatorily Required Reporting

A. ~~Prompt~~ Notifications not required by LAC 33:I.3915 or 3917 shall be provided to the department within a time frame not to exceed 24 hours, or as specified by the specific regulation or permit provision requiring the notification, and shall be given to SPOC, as follows:

1. by the Online Incident Reporting screens found at [http://www.deq.louisiana.gov/surveillance/irf/forms/apps/forms/irf/forms/;](http://www.deq.louisiana.gov/surveillance/irf/forms/apps/forms/irf/forms/)
2. by e-mail utilizing the ~~Incident Report Form and instructions~~ information needed for reporting releases found at <http://www.deq.louisiana.gov/surveillanceportal/tabid/279/Default.aspx;>

A.3. - B. ...

C. Content of ~~Prompt~~ Notifications. The following guidelines will be utilized as appropriate, based on the conditions and circumstances surrounding any unauthorized discharge, to provide relevant information regarding the nature of the discharge:

1. - 7.d. ...

D. Compliance with this Section does not relieve dischargers of the necessity of following any applicable written notification procedure in LAC 33:I.3925 or any terms and conditions of any applicable permit or license issued under the Louisiana Environmental Quality Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1668 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007), LR 36:

§3925. Written Notification Procedures

A. Written reports for any unauthorized discharge that requires notification under LAC 33:I.3915.A, 3917, ~~or 3919~~, or 3923 shall be submitted by the discharger to SPOC in accordance with this Section within seven calendar days after the notification required by LAC 33:I.3915.A, 3917, ~~or 3919~~, or 3923, unless otherwise provided for in a valid permit or other department regulation.

A.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C) and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:1669 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007), LR 33:2628 (December 2007), LR 36:

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 3. Scope and Mandatory Provisions of the Program

§315. Mandatory Provisions

A. - G. ...

H. Notice of Fire or Damage to Structures in a Solid Waste Facility. The Office of Environmental Compliance shall be notified ~~within the time frame and in the manner provided in accordance with~~ LAC 33:I.~~3923~~3915 in the case of an *emergency condition* as defined in LAC 33:I.3905, or in accordance with LAC 33:I.3923 in the case of a non-emergency condition, when damage to or degradation of any structure of a solid waste facility occurs that would impair the ability of the facility to meet the conditions of its permit, or when any fire occurs in the waste management area at a solid waste facility.

I. - O. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), LR 19:1315 (October 1993), repromulgated LR 19:1421 (November 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:954 (August 1997), LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2516 (November 2000), LR 30:1675 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2487 (October 2005), LR 33:1030 (June 2007), LR 34:1400 (July 2008), LR 36:

Chapter 7. Solid Waste Standards

Subchapter A. Landfills, Surface Impoundments, Landfarms

§713. Standards Governing Surface Impoundments (Type I and II)

A. - D.3.c. ...

d. If a leak in an impoundment is found, the ~~administrative authority~~ Office of Environmental Compliance shall be notified in accordance with LAC 33:I.~~Chapter 39~~3915 in the case of an *emergency condition* as defined in LAC 33:I.3905, or in accordance with LAC 33:I.3923 in the case of a non-emergency condition.

D.3.e. - F.2.b.iv. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2524 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:1676 (August 2004), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2493 (October 2005), LR 33:1053 (June 2007), LR 33:2146 (October 2007), LR 36:

Part XI. Underground Storage Tanks

Chapter 7. Methods of Release Detection and Release Reporting, Investigation, Confirmation, and Response

§713. Reporting and Cleanup of Spills and Overfills

A. Owners and operators of UST systems must contain and immediately clean up all spills and overfills. Owners and operators of UST systems ~~must contain, immediately clean up, and report a spill or overfill to the Office of Environmental Compliance in accordance with LAC 33:I.3923 within 24 hours.~~ The owner or operator shall report and begin corrective action in accordance with LAC 33:XI.715 in the following cases.

1. Any spill or overfill of petroleum that has resulted in a release to the environment that exceeds one barrel (42 25 gallons), or that causes a sheen on nearby surface water. ~~If the spill or overfill, or results in an *emergency condition*, as defined in LAC 33:I.3905, the incident~~ must be reported in accordance with LAC 33:I.Chapter 39 immediately, but in no case later than one hour, regardless of the amount released.

2. Any spill or overfill of a hazardous substance that has resulted in a release to the environment that equals or exceeds the reportable quantity for that substance in LAC 33:I.3931. ~~If the spill or overfill or results in an *emergency condition*, as defined in LAC 33:I.3905, the incident~~ must be reported in accordance with LAC 33:I.Chapter 39 immediately, but in no case later than one hour, regardless of the amount released. A release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 24 hours) to the National Response Center, under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to appropriate authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986 (40 CFR 355.40).

B. ...

C. Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than ~~one barrel~~ 25 gallons and a spill or overfill of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished

within 24 hours, owners and operators must immediately notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 18:728 (July 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), LR 30:1677 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 36:

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

LOG #: MM012

Person Preparing Statement: <u>JiYoung Wiley</u> <u>Ji.Wiley@LA.GOV</u> (email address) Phone: <u>219-3621</u>	Dept.: <u>Environmental Quality</u> Office: <u>Environmental Compliance</u>
Return Address: <u>P.O. Box 4312</u> <u>Baton Rouge, LA 70821-4312</u>	Rule Title: <u>DEQ Notifications to State Police</u> <u>LAC 33.I.3913, 3917, 3923, 3925,</u> <u>33:VII.315, 713, and XI:713</u> Date Rule Takes Effect: <u>Upon Promulgation</u>

SUMMARY
(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. **THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no costs or savings to state or local governmental units as a result of the proposed rule. DEQ initially estimated in the fiscal note for Act 81 of 2008 that requiring use of the State Police administered "one-call" system to report certain non-emergency unauthorized discharges would necessitate up to 3 additional positions or additional overtime for existing positions to immediately receive and handle up to 7,600 of these calls per year that previously could be reported within a 24 hour time frame, but would now go through the State Police system with subsequent notification of DEQ. However, State Police is able to email these non-emergency notifications, and DEQ can address these incidents in the same time frame as before the use of the "one-call" system. Therefore, no additional costs to DEQ are anticipated due to the use of this system. However, in order for State Police to adequately respond to the responsibility of the "one-call" system, they will need to recover, at a minimum, the four full time employees lost subsequent to the passage of Act 81 of 2008, or provide additional overtime for the existing six positions to accommodate the non-emergency calls previously reported to DEQ. The Public Safety Hotline is currently adding additional duties to Louisiana State Police Troopers to answer the Hotline in necessary rotation, but this is not their primary objective.

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

There will be no effect on revenue collections of state or local governmental units.

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

Industry and business will be benefited as a result of this proposed rule by having just one number to call when reporting unauthorized discharges that exceed reportable quantities as well as those that cause emergency conditions.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no impact on competition or employment as a result of this proposed rule.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This rule adjusts reporting requirements to the one-call system for unauthorized releases in excess of an applicable reportable quantity. Proper notification to the Department of Public Safety and Corrections through the one-call system for releases in excess of applicable reportable quantities, as well as those that cause an emergency, will now satisfy the reporting obligations for these events, except for releases of radionuclides in excess of reportable quantities.

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

This proposed rule is to implement Act 81 of the 2008 regular legislative session.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session
(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

DEQ will not experience any expenditure of funds, however, DPS will need to recover, at a minimum, the four full time employees lost subsequent to the passage of Act 81 of 2008, or provide additional overtime for the existing six positions to accommodate the non-emergency calls previously reported to DEQ.

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

- (a) ___ Yes. If yes, attach documentation.
(b) ___ No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

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

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

COSTS	FY09-10	FY10-11	FY11-12
PERSONAL SERVICES	0	0	0
OPERATING EXPENSES	0	0	0
PROFESSIONAL SERVICES	0	0	0
OTHER CHARGES	0	0	0
EQUIPMENT	0	0	0
TOTAL	0	0	0
MAJOR REPAIR & CONSTR	0	0	0
POSITIONS (#)	0	0	0

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

There will be no costs or savings to state agencies as a result of this proposed rule. DEQ initially estimated in the fiscal note for Act 81 of 2008 that requiring use of the State Police administered "one-call" system to report certain non-emergency unauthorized discharges would necessitate up to 3 additional positions or additional overtime for existing positions to immediately receive and handle up to 7,600 of these calls per year that previously could be reported within a 24 hour time frame, but would now go through the State Police system with subsequent notification of DEQ. However, State Police is able to email these non-emergency notifications, and DEQ can address these incidents in the same time frame as before the use of the "one-call" system. Therefore, no additional costs to DEQ are anticipated due to the use of this system. However, in order for State Police to adequately respond to the responsibility of the "one-call" system, they will need to recover, at a minimum, the four full time employees lost subsequent to the passage of Act 81 of 2008, or provide additional overtime for the existing six positions to accommodate the non-emergency calls previously reported to DEQ. The Public Safety Hotline is currently adding additional duties to Louisiana State Police Troopers to answer the Hotline in necessary rotation, but this is not their primary objective.

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

SOURCE	FY09-10	FY10-11	FY11-12
STATE GENERAL FUND	0	0	0
AGENCY SELF-GENERATED	0	0	0
DEDICATED	0	0	0
FEDERAL FUNDS	0	0	0
OTHER (Specify)	0	0	0
TOTAL	0	0	0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

There are sufficient funds to implement the proposed rule for DEQ.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There will be no costs or savings to local governmental units as a result of this proposed rule.

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

Sources of funding will not be affected as a result of this proposed rule.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

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

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

REVENUE INCREASE/DECREASE	FY09-10	FY10-11	FY11-12
STATE GENERAL FUND	0	0	0
AGENCY SELF-GENERATED	0	0	0
RESTRICTED FUNDS*	0	0	0
FEDERAL FUNDS	0	0	0
LOCAL FUNDS	0	0	0
TOTAL	0	0	0

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

There will be no change in revenue as a result of the proposed rule.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Industry and business will be benefited as a result of this proposed rule by having just one number to call when reporting unauthorized discharges that exceed reportable quantities as well as those that cause emergency conditions.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

There will be no impact on receipts and/or income by this proposed rule.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There will be no impact on competition or employment as a result of this proposed rule.