NOTICE OF INTENT

Department of Environmental Quality

Office of the Secretary

Legal Affairs and Criminal Investigations Division

Project Emissions Accounting and Offset Requirements in Specified Parished

(LAC 33:III.504) (AQ380)

 Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.504 (AQ380).

 This Rule will remove phrases from LAC 33:III.504 that explicitly preclude emissions decreases associated with a proposed project from being considered in determining whether the project results in a significant emissions increase.

It will also delete obsolete language from Footnote 4 of Table 1 and remove Livingston Parish from the list of parishes in which offsets for certain new stationary sources and modifications are required under LAC 33:III.504.

As described in EPA’s March 13, 2018, memorandum entitled “Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program,” EPA now interprets the provisions of the federal New Source Review (NSR) programs “as providing that any emissions decreases that may result from a given proposed project are to be considered when calculating at Step 1, whether the proposed project will result in a significant emissions increase.” Previously, only emissions increases were considered in determining whether a proposed project resulted in a significant emissions increase and therefore triggered consideration of the net emissions increase over the project’s contemporaneous period (i.e., Step 2), even if emissions decreases were inherently linked to the project. Accordingly, phrases which explicitly preclude emissions decreases associated with a proposed project from being considered in determining whether the project results in a significant emissions increase are being removed from LAC 33:III.504.

The reference to “a period of five years after the effective date of the rescission of the NOx waver” is also being removed from Footnote 4 of Table 1 in Chapter 504. EPA rescinded Baton Rouge’s Section 182(f) NOx exemption (i.e., the NOx waiver) on May 5, 2003, effective June 4, 2003 (68 FR 23597). Therefore, a newly proposed project could not fall within the aforementioned date range.

Finally, Livingston Parish is being removed from the list of parishes in which offsets for certain new stationary sources and modifications are required under LAC 33:III.504.M. Livingston Parish has only four Part 70 sources (AIs 9154, 11767, 19875, and 80537). Notably, none of the four are major sources of NOx, and only on (AI 19875) is a major source of VOC. Further, actual 2017 NOx and VOC emissions reported to LDEQ’s Emissions Reporting and Inventory Center (ERIC) by owners/operators of facilities located in Livingston Parish comprised only 0.7 percent and 2.5 percent of total NOx and VOC emissions, respectively, reported by owners/operators of facilities located in five parishes in which offsets may presently be required (i.e., Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge).

The basis and rationale for this Rule are to :

* + Make LDEQ’s Nonattainment New Source Procedures consistent with federal protocols by removing phrases from LAC 33:III.504 that explicitly preclude emissions decreases associated with a proposed project from being considered in determining whether the project results in a significant emissions increase;
	+ Delete obsolete language from Footnote 4 of Table of Chapter 504; and
	+ Remove Livingston Parish from the list of parishes in which offsets for certain new stationary sources and modifications are required under LAC 33:III.504.M.

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.

**Family Impact Statement**

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

**Poverty Impact Statement**

This Rule has no known impact on poverty as described in R.S. 49:973.

**Provider Impact Statement**

This Rule has no known impact on providers as described in HCR 170 of 2014.

**Public Comments**

 All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ380. Such comments must be received no later than November 6, 2018, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ380. These proposed regulations are available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

**Public Hearing**

A public hearing will be held on October 30, 2018, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

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

 Herman Robinson

 General Counsel

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§504. Nonattainment New Source Review (NNSR) Procedures and Offset Requirements in Specified Parishes

 A. — A.2. …

 3. The emissions increase that would result from a proposed modification~~, without regard to project decreases,~~ shall be compared to the trigger values listed in Subsection L, Table 1 of this Section to determine whether a calculation of the net emissions increase over the contemporaneous period must be performed.

 A.3.a. — K. …

\* \* \*

 L. Table 1—Major Stationary Source/Major Modification Emission Thresholds

\* \* \*

 1. …

 2. Consideration of the net emissions increase will be triggered for any project that would increase emissions by 40 tons or more per year~~, without regard to any project decreases~~.

 3. …

 4. Consideration of the net emissions increase will be triggered for any project that would increase VOC or NOX emissions by 5 tons or more per year~~, without regard to any project decreases,~~ or for any project that would result in a 25 ton or more per year cumulative increase in emissions of VOCor NOX within the contemporaneous period ~~or of NOx for a period of five years after the effective date of the rescission of the NOx waiver, and within the contemporaneous period thereafter~~.

 5. …

 M. Offset Requirements in Specified Parishes. Except as provided in Paragraph M.4 of this Section, the provisions of this Subsection shall apply to stationary sources located in the parishes of Ascension, East Baton Rouge, Iberville, ~~Livingston,~~ and West Baton Rouge if the parish’s designation with respect to the 8-hour national ambient air quality standard (NAAQS) for ozone is attainment, marginal nonattainment, or moderate nonattainment.

 1. …

 2. Existing Stationary Sources

 a. Consideration of the net emissions increase shall be triggered for any physical change or change in the method of operation that would increase emissions of VOC or NOX by 40 tons per year or more~~, without regard to any project decreases~~.

 2.b. — 5.b. …

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

 HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:1890 (September 2008), LR 37:1568 (June 2011), LR 38:1232 (May 2012), amended by the Office of the Secretary, Legal Division, LR 38:2766 (November 2012), LR 41:2135 (October 2015), LR 42:403 (March 2016), LR 43:926 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

FISCAL AND ECONOMIC IMPACT STATEMENT

 FOR ADMINISTRATIVE RULES LOG #: AQ380

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| PersonPreparingStatement: | Bryan D. Johnston |  | Dept.: | Environmental Quality |
| Phone: | (225) 219-3450 |  | Office: | Environmental Services |
|  | bryan.johnston@la.gov |  |  |  |
| Return Address: | 602 North Fifth Street |  | Rule Title: | Project Emissions Accounting and |
|  | Baton Rouge, LA 70802 |  |  | Offset Requirements in Specified |
|  |  |  |  | Parishes (LAC 33:III.504) |
|  |  |  |  |  |
|  |  |  | Date Rule Takes Effect: | Upon Promulgation |

SUMMARY

(Use complete sentences)

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

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

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

The purpose of the proposed rule is to make changes to the Nonattainment New Source Review (NNSR) procedures relative to project emissions and offset requirements in specified parishes. It further removes obsolete language regarding when the net emissions increase of NOx must be considered.

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 as a result of the proposed rule.

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

The proposed rule will affect owners/operators of existing stationary sources subject to NNSR provisions under LAC 33:III.504. Consistent with the EPA’s interpretation of corresponding federal provisions, the proposed rule will allow emissions decreases associated with a proposed project to be considered when determining whether the project results in a significant emissions increase. Therefore, the proposed action may result in fewer projects triggering NNSR requirements.

The proposed rule will also affect owners/operators seeking to construct a new stationary source, or modify an existing stationary source in Livingston Parish. Sources with potential NOX and/or VOC emissions in excess of 50 tons per year will no longer be subject to the offset requirements under LAC 33:III.504.M. Therefore, owners/operators proposing certain projects will not have to secure NOX and/or VOC emission reduction credits (ERC), thereby reducing their overall costs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment in the public or private sector as a result of the proposed rule.

 a

Signature of Agency Head or Designee Legislative Fiscal Officer or Designee

Herman Robinson, General Counsel

Typed Name and Title of Agency Head or Designee

 a

Date of Signature Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT

FOR ADMINISTRATIVE RULES

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

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

This rule will remove phrases from LAC 33:III.504 that explicitly preclude emissions decreases associated with a proposed project from being considered when determining whether the project results in a significant emissions increase. It will also delete obsolete language from Chapter 504, Footnote 4 of Table 1 and remove Livingston Parish from the list of parishes in which offsets for certain new stationary sources and modifications are required under LAC 33:III.504.M.

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

As described in EPA’s March 13, 2018, memorandum entitled “Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program,” EPA now interprets the provisions of the federal new source review (NSR) programs “as providing that any emissions decreases that may result from a given proposed project are to be considered when calculating at Step 1 whether the proposed project will result in a significant emissions increase.” Currently, only emissions increases are considered in determining whether a proposed project results in a significant emissions increase and therefore triggers consideration of the net emissions increase over the project’s contemporaneous period (i.e., Step 2), even if emissions decreases are inherently linked to the project. Accordingly, phrases which explicitly preclude emissions decreases associated with a proposed project from being considered in determining whether the project results in a significant emissions increase are being removed from LAC 33:III.504.

The reference to “a period of five years after the effective date of the rescission of the NOX waiver” is also being removed from Chapter 504, Footnote 4 of Table 1. EPA rescinded Baton Rouge’s Section 182(f) NOX exemption (i.e., the NOX waiver) on May 5, 2003, effective June 4, 2003, (68 FR 23597). Therefore, a newly proposed project could not fall within the aforementioned date range.

Finally, Livingston Parish is being removed from the list of parishes in which offsets for certain new stationary sources and modifications are required under LAC 33:III.504.M. Livingston Parish has only four Part 70 sources (AIs 9154, 11767, 19875, and 80537). Notably, none of the four are major sources of NOX, and only one (AI 19875) is a major source of VOC. Further, actual 2017 NOX and VOC emissions reported to LDEQ’s Emissions Reporting and Inventory Center (ERIC) by owners/operators of facilities located in Livingston Parish comprised 0.7 percent and 2.5 percent of total NOX and VOC emissions, respectively, as reported by owners/operators of facilities located in the five parishes in which offsets may presently be required (i.e., Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge).

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.

No, the proposed rule will not result in any increase in the expenditure of funds.

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

(a) Yes. If yes, attach documentation.

(b) No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

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

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

No costs or savings to state agencies are anticipated as a result of the proposed rule.

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COSTS FY 18-19 FY 19-20 FY 20-21

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PERSONAL SERVICES -0- -0- -0-

OPERATING EXPENSES -0- -0- -0-

PROFESSIONAL SERVICES -0- -0- -0-

OTHER CHARGES -0- -0- -0-

EQUIPMENT -0- -0- -0- a

TOTAL -0- -0- -0-

MAJOR REPAIR & CONSTR.

POSITIONS (#) -0- -0- -0-

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

This question is not applicable.

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

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SOURCE FY 18-19 FY 19-20 FY 20-21

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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- a

TOTAL -0- -0- -0-

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

No additional funds are required to implement the proposed action.

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

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

 No impact on local governmental units is anticipated.

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

 There will be no costs or savings to local governmental units, so no funding sources will be affected.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

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

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

No increase or decrease in revenues to state or local governmental units will be realized.

REVENUE INCREASE/DECREASE FY 18-19 FY 19-20 FY 20-21

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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- a

TOTAL -0- -0- -0-

\*Specify the particular fund being impacted.

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

No increase or decrease in revenues will be realized.

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

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

The proposed action will affect owners/operators of existing stationary sources subject to nonattainment new source review (NNSR) provisions under LAC 33:III.504. Currently, only emissions increases are considered in determining whether a proposed project results in a significant emissions increase and therefore triggers consideration of the net emissions increase over the project’s contemporaneous period, even if emissions decreases are inherently linked to the project. The proposed action will allow emissions decreases associated with a proposed project to be considered in determining whether the project results in a significant emissions increase. Therefore, the proposed action may result in fewer projects triggering NNSR requirements.

The proposed action will also affect owners/operators seeking to construct a new stationary source or modify an existing stationary source in Livingston Parish. Sources with potential NOX and/or VOC emissions in excess of 50 tons per year will no longer be subject to the offset requirements under LAC 33:III.504.M. Therefore, owners/operators proposing certain projects will not have to secure NOX and/or VOC Emission Reduction Credits (ERC), thereby reducing their overall costs.

There will be no compliance-related costs, workload adjustments, or additional administrative obligations required to comply with the proposed action.

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

No impact on receipts or income of the affected persons or nongovernmental groups is expected.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

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

There will be no effect on competition or employment in the public or private sector.