NOTICE OF INTENT

Department of Environmental Quality

Office of the Secretary

Legal Affairs and Criminal Investigations Division

Conditional Exclusion for Carbon Dioxide (CO2) Streams in Geologic Sequestration Activities

(LAC 33:V.105 and 109) (HW128ft)

 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 Hazardous Waste regulations, LAC 33:V.105 and 109 (Log #HW128ft).

 This Rule is identical to federal regulations found in 40 CFR Part 260.10 and 261.4(h), which are applicable in Louisiana. For more information regarding the federal requirement, contact Deidra Johnson at (225) 219-3985. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

 This rulemaking adopts the federal Rule published by the U.S. Environmental Protection Agency on January 3, 2014. The proposed Rule revises the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) to conditionally exclude carbon dioxide (CO2) streams that are hazardous from the definition of hazardous waste, provided these hazardous CO2 streams are captured from emission sources, are injected into Underground Injection Control Class VI wells regulated under the Safe Drinking Water Act for purposes of geologic sequestration, and meet certain other conditions. The management of these CO2 streams,when meeting certain conditions, does not present a substantial risk to human health or the environment, and therefore additional regulation pursuant to hazardous waste regulations is unnecessary.

Geologic sequestration is the process of injecting CO2 captured from an emission source into deep subsurface rock formations in order to isolate the CO2 permanently. Geologic sequestration is a key component of carbon capture and storage, which is a set of climate change mitigation technologies. This Rule will substantially reduce the uncertainty associated with identifying these CO2 streams under RCRA subtitle C, and will also facilitate the deployment of geologic sequestration by providing additional regulatory certainty. The basis and rationale for this Rule are to mirror the federal regulations. 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.

**Small Business Analysis**

This Rule has no known impact on small business as described in R.S. 49:978.1 - 978.8.

**Provider Impact Statement**

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

**Public Hearing**

A public hearing will be held via Zoom on October 27, 2021, at 1:30 p.m. Interested persons are invited to attend and submit oral comments PC, Mac, Linux, iOS or Android at https://deqlouisiana.zoom.us/j/9373792954 or by telephone by dialing 636-651-3182 using the conference code 725573. 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.

**Public Comments**

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW128ft. Such comments must be received no later than October 27, 2021, 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 by fax (225) 219-4068 or by e-mail to DEQ.Reg.Dev.Comments@la.gov. The comment period for this rule ends on the same date as the public hearing. 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 HW128ft. This regulation is available on the Internet at https://www.deq.louisiana.gov/page/monthly-regulation-changes-2021%20.

 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.

 Courtney J. Burdette

 General Counsel

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental Quality—Hazardous Waste**

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

**§105. Program Scope**

 These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to the denial of a permit for the active life of a hazardous waste management facility or individual unit at a treatment, storage, and disposal (TSD) facility under LAC 33:V.706. Definitions appropriate to these rules and regulations, including *solid waste* and *hazardous waste*, appear in LAC 33:V.109. Wastes that are excluded from regulation are found in this Section.

 A. — D.9.b.iii …

 10. Carbon Dioxide Stream Injected for Geologic Sequestration. A carbon dioxide stream that is captured and transported for purposes of injection into an underground injection well subject to the requirements for Class VI Underground Injection Control wells, including the requirements in 40 CFR Parts 144 and 146 of the Underground Injection Control Program of the Safe Drinking Water Act (or LAC 43:XVII.Subpart 6.Chapter 36 of the Louisiana Underground Injection Control Program for underground injection wells located in Louisiana), is not a hazardous waste, provided the following conditions in Subparagraphs a-d are met.

 a. Transportation of the carbon dioxide stream shall be in compliance with U.S. Department of Transportation requirements, including the pipeline safety laws (49 U.S.C. 60101 et seq.) and regulations (49 CFR Parts 190-199) of the U.S. Department of Transportation, and pipeline safety regulations (LAC 33:V.Subpart 2.Chapter 301) adopted and administered by the Louisiana Department of Natural Resources, Office of Conservation, pursuant to a certification under 49 U.S.C. 60105, as applicable.

 b. Injection of the carbon dioxide stream shall be in compliance with the applicable requirements for Class VI Underground Injection Control wells, including the applicable requirements in 40 CFR Parts 144 and 146 (or LAC 43:XVII.Subpart 6.Chapter 36 of the Louisiana Underground Injection Control Program for underground injection wells located in Louisiana).

 c. No hazardous wastes shall be mixed with, or otherwise co-injected with, the carbon dioxide stream.

 d. Certification statements are required from the generator of the carbon dioxide stream and the owner or operator of the well, as stated below in Clauses d.i–iii.

 i. Any generator of a carbon dioxide stream, who claims that a carbon dioxide stream is excluded under Paragraph D.10 of this Section, shall have an *authorized representative*, as defined in LAC 33:V.109, sign a certification statement worded as follows:

I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under LAC 33:V.105.D.10 has not been mixed with hazardous wastes, and I have transported the carbon dioxide stream in compliance with (or have contracted with a pipeline operator or transporter to transport the carbon dioxide stream in compliance with) U.S. Department of Transportation requirements, including the pipeline safety laws (49 U.S.C. 60101 et seq.) and regulations (49 CFR Parts 190-199) of the U.S. Department of Transportation, and pipeline safety regulations (LAC 33:V.Subpart 2.Chapter 301) adopted and administered by the Louisiana Department of Natural Resources, Office of Conservation, pursuant to a certification under 49 U.S.C. 60105, as applicable, for injection into a well subject to the requirements for the Class VI Underground Injection Control Program of the Safe Drinking Water Act.

 ii. Any Class VI Underground Injection Control well owner or operator, who claims that a carbon dioxide stream is excluded under Paragraph D.10 of this Section, shall have an *authorized representative*, as defined in LAC 33:V.109, sign a certification statement worded as follows:

I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under LAC 33:V.105.D.10 has not been mixed with, or otherwise co-injected with, hazardous waste at the Underground Injection Control (UIC) Class VI permitted facility, and that injection of the carbon dioxide stream is in compliance with the applicable requirements for UIC Class VI wells, including the applicable requirements in 40 CFR Parts 144 and 146 (or LAC 43:XVII.Subpart 6.Chapter 36 of the Louisiana Underground Injection Control Program for underground injection wells located in Louisiana).

 iii. The signed certification statement shall be kept on-site for no less than three years, and shall be made available within 72 hours of a written request from a duly designated representative of the department. The signed certification statement shall be renewed every year that the exclusion is claimed, by having an *authorized representative*, as defined in LAC 33:V.109, annually prepare and sign a new copy of the certification statement within one year of the date of the previous statement. The signed certification statement shall also be readily accessible on the facility’s publicly-available website, if such website exists, as a public notification with the title of "Carbon Dioxide Stream Certification" at the time the exclusion is claimed.

E. — R.8.h. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq., and in particular, 2186(A)(2).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217, LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362, 368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813, 831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:564, 567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687, 1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:268 (February 2000), LR 26:2464 (November 2000), LR 27:291 (March 2001), LR 27:706 (May 2001), LR 29:317 (March 2003), LR 30:1680 (August 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:605 (April 2006), LR 32:821 (May 2006), LR 33:450 (March 2007), LR 33:2097 (October 2007), LR 34:614 (April 2008), LR 34:1008 (June 2008), LR 34:1893 (September 2008), LR 34:2395 (November 2008), LR 35:1878 (September 2009), LR 36:2553 (November 2010), LR 38:791 (March 2012), amended by the Office of the Secretary, Legal Division. LR 40:1336 (July 2014), LR 42:2178, 2181 (December 2016), LR 43:1151 (June 2017), repromulgated by the Office of the Secretary, Legal Affairs and Criminal Investigation Division, LR 43:1523 (August 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:896 (July 2020), LR 47:

**§109. Definitions**

 For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

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 *Carbon Dioxide Stream*—carbon dioxide that has been captured from an emission source (e.g., power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003); amended by the Office of the Secretary, Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 33:1625 (August 2007), LR 33:2098 (October 2007), LR 34:71 (January 2008), LR 34:615 (April 2008), LR 34:1009 (June 2008), LR 34:1894 (September 2008), LR 34:2396 (November 2008), LR 36:1235 (June 2010), repromulgated LR 36:1535 (July 2010), amended LR 36:2554 (November 2010), LR 38:774, 781 (March 2012), repromulgated LR 38:1009 (April 2012), amended by the Office of the Secretary, Legal Division, LR 40:1338 (July 2014), LR 41:2600 (December 2015), LR 42:565 (April 2016), LR 42:2178 (December 2016), LR 43:1138 (June 2017), repromulgated by the Office of the Secretary, Legal Affairs and Criminal Investigation Division, LR 43:1531 (August 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:898 (July 2020), LR 47: