

**Comment Summary Response
Part 70 General Conditions
(LAC 33:III.535)
Log Number AQ400**

COMMENT 1: 1. Background

The proposed rule would amend LAC 33:III.535 to require use of department-approved forms for submitting the Title V Semiannual Monitoring Report and the Title V Annual Compliance Certification and to limit referencing of previously reported permit deviations. According to the preamble, “[t]he basis and rationale for this Rule are to make the Part 70 reporting process uniform.” On or about September 20, 2023, the Department published a notice of intent that included the revisions proposed here and others not included in this rulemaking. The Associations submitted comments at that time. A copy of those comments is attached here and incorporated by reference. As noted in the prior comments to the September 2023 rulemaking, the Associations acknowledge that the use of universal forms will assist the regulated community in understanding the information required by LDEQ and to fully comply with semiannual and annual reporting obligations. However, the Associations have practical, economic, and legal concerns with the proposed amendments, as discussed in summary below and more fully described in the attachments hereto.

FOR/AGAINST: No argument is necessary; the comment does not suggest amendment or change to the proposed regulatory language.

RESPONSE: No response is necessary.

COMMENT 2: 2. The removal of incorporation by reference provisions would lead to duplicative and unnecessarily burdensome reporting.

The proposal would amend LAC 33:III.535.K and §535.R.3 to remove the option to incorporate other reports by reference. The Associations urge the Department not to finalize these amendments and to continue allowing incorporation by reference of reports that contain all of the required information. This established practice streamlines the reporting process, making the proposed changes unnecessary and burdensome. Indeed, the proposed amendments would create redundant reporting requirements while imposing additional costs on member companies—costs that do not appear to have been considered.

Further, removing incorporation by reference and introducing redundant reporting would increase the risk of unnecessary clerical errors, disrupting what is currently a clear, standardized, and efficient system for coordinating multiple responses. This proposal, if finalized, would weaken the consistency and uniformity that existing reporting practices ensure.

The Associations would not object to a requirement that the any incorporation by reference provide the Department's Electronic Document Management System ("EDMS") document ID number, as available.

FOR/AGAINST: The department acknowledges the comment. As stated in the Notice of Intent, there is currently no rule or regulation requiring permittees to utilize the department's forms. The Air Enforcement Section receives semiannual and annual Title V reports in multiple formats. LAC 33:III.535 states, "The permittee shall submit, at least semiannually, a report of any required monitoring, clearly identifying all instance of deviations from permitted monitoring requirements." The current use of referencing previously submitted reports has not resulted in clarity or efficiency for the department. Deviations are not always clearly identified or have sufficient information to make a compliance determination. The lack of clear identification or supporting information results in a request for additional information or a compliance order for information. A Title V permittee can currently reference all previously submitted reports. Staff has to review each referenced report. The proposed revision to the language is not requiring permittees to gather new information, only to report the readily available information in a standard format. The incorporation by reference process will be modified in the revised Title V forms. Incorporation by reference will no longer be allowed for semiannual reporting; however, permittees will be allowed to reference the detailed Title V Semiannual Reports in the Title V Annual Compliance Certifications. Using a standard form will ensure consistent required content and promote clarity. The department does not require a Title V permittee to contract a third party to complete the required reports. Any costs incurred by a Title V permittee are voluntary.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 3: **3. LDEQ should allow a compliance timeline for implementing the forms and amend the forms only through formal comment and rulemaking.**

The proposal to amend LAC 33:III.535.K also includes a new requirement to submit semiannual deviation reports “using the current version of the Louisiana DEQ Title V Semiannual Monitoring form found on the department’s website or other means as approved by the department.” Similarly, the proposal would amend LAC 33:III.535.M to require use of the “Louisiana DEQ Title V Annual Compliance Certification form found on the department’s website or other means as approved by the department.” The Associations acknowledge that a streamlined form would provide clarity on the requirements and a unified system for the Department. However, the change to using the Department’s forms will impose significant administrative burdens for many member-companies. These burdens would also be subject to frequent reoccurrence given that the Department currently maintains authority to amend the forms it post on its website on will. At the least, the Department should notice the forms for public comment and provide for an implementation timeline to allow facilities the opportunity to integrate the necessary changes to current data and reporting systems. For instance, the Department should not require use of the provided forms until, at least, the deadline for submittal of the second half of 2025 semiannual reporting, or March 30, 2026.

Further, the Fiscal and Economic Impact Statement for the Proposed Rule does not take into account member-company costs to implement the new reporting structure. Member-companies will bear costs associated with updating all prior LDEQ-approved processes to adapt to the new reporting requirements and forms required by the Proposed Rule. Therefore, the Associations request that the Department provide a more accurate and complete analysis of the fiscal and economic impacts to the regulated community.

Finally, the Department provided a draft set of forms in connection with the 2023 rulemaking referenced above. However, those forms are not currently posted on the website. If the Department intends to use the amended forms that include, among other things, categories of deviations, the Associations particularly incorporate the discussion in the attached November 2, 2024 comments detailing the challenges associated with the categories and use of separate forms for separate categories. These prior comments highlight the need for the Department to only amend any required form under notice and comment rulemaking.

FOR/AGAINST: The department acknowledges the comment. The department will establish an effective date for use of the revised Title V Report forms via a potpourri notice. The department does not require a Title V permittee to contract a third party to complete the required reports. Any costs incurred by a Title V permittee are voluntary. Implementing mandatory forms will not require the department to make any procedural or personnel changes, e.g., hiring of new staff adding additional costs to the department. Submitting the forms under notice and rulemaking would require the Department to undergo the rulemaking process to revise the forms.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 4: **4. The LDEQ should continue the use of a negative declaration.**

The 2023 proposal included amendments to Section 507.H.5.f to codify the use of reporting by exception, specifically allowing a negative declaration for annual compliance certifications. The proposed 2023 forms—distinct from those currently posted on the Department’s website—incorporated an optional negative declaration statement.

The Associations’ enclosed comments discuss the appropriateness of a negative declaration and its alignment with federal requirements for both semi-annual deviation reporting and annual compliance reporting. However, it appears that neither the current rulemaking nor the latest version of the forms explicitly codifies the availability of a negative declaration for annual compliance certifications.

Although the current form for semi-annual deviation reports includes an option to indicate “no” deviations for the reporting period, a similar option is not provided for annual compliance certifications. The Associations will continue using a negative declaration for semi-annual deviation reporting and urge the Department to incorporate this option for annual compliance certifications, as outlined in their 2023 comments.

FOR/AGAINST: The department acknowledges the comment. The current version of the Title V report forms on the website do not include the optional negative declaration statement. Further review determined the negative declaration statement should not be added to LAC 33:III.507.H. The negative declaration statement is an option

included on the form with the appropriate certification requirements as outlined in LAC 33:III.507.H.5.

RESPONSE: The department will not make any changes to the regulatory text at this time. The negative declaration statement on the form will be revised to capture all compliance requirements outlined in LAC 33:III.507.H.5.

COMMENT 5: **General Comments**

In AQ400, LDEQ proposes to revise Part 70 General Conditions K, M, and R to mandate the use of an agency form to submit Title V Semiannual Monitoring Reports and Title V Annual Compliance Certifications. LDEQ also proposes eliminating a longstanding provision that allows regulated facilities to cross-reference previously submitted reports to LDEQ that are required by other air quality programs. Cross-referencing other federal and state reports and the “reporting by exception” format options have existed since the inception of LDEQ’s Part 70 program in 1995.

For the reasons discussed in these comments, LEUEG objects to the proposed changes to the Title V deviation reporting system set forth in LAC 33:III.535. The mandated use of a “department approved” form and the proposed change to preclude cross-referencing of previously submitted reports will result in a significant and unnecessary burden to the regulated community. The proposed changes fail to recognize the complexity and variety of Title V facilities that operate in Louisiana. Requiring the use of a single form for all industrial facilities will decrease efficiency for both LDEQ and the regulated community.

For these reasons, LEUEG urges LDEQ to maintain the current flexibility allowed in Title V reporting by continuing to: (1) allow facilities to cross-reference other reports; (2) allow larger facilities to only report the deviations that occurred during a period in lieu of repeating every requirement set forth in a Title V permit on a prescribed form; and (3) allow facilities the option to use LDEQ’s form.

Specific Comments

Comment 1: LDEQ should continue to allow flexibility in Title V deviation reporting and not mandate the use of a form for semiannual reports or annual compliance certifications.

The U.S. Environmental Protection Agency (“EPA”) first approved Louisiana’s Title V program on October 12, 1995. See, 60 Fed. Reg. 47,296. Since EPA’s initial approval, LDEQ has allowed flexibility in how facilities report Title V deviations on a periodic basis. For the past 30 years, LDEQ has correctly recognized that flexibility is essential based, in part, on the wide variety and complexity of industrial facilities that operate pursuant to Title V permits in Louisiana. The proposed changes in AQ400 will terminate this longstanding framework by mandating the use of a “department-approved” form. EPA is not mandating this change and there is no indication that the delegating authority has issues with LDEQ’s current reporting system.

One potential disadvantage of a mandatory form is that it can be amended at any time by LDEQ without public notice or input by the regulated community. In fact, this is one reason why the existing Part 70 General Conditions (currently set forth in LAC 33:III.535) were incorporated into the Louisiana Air Quality Regulations – to allow for adequate notice and comment on proposed changes that impact and affect all Part 70 sources. By allowing LDEQ to amend a mandatory form at any time, for any reason, and without prior notice will not promote efficiency or clarity of the Title V reporting system. As noted, the use of a mandatory form also disregards the fact that many different types of industrial facilities operate pursuant to Title V permits.

Forcing all facilities to use the same form will result in unnecessarily large reports for many permittees. For example, the current LDEQ Title V reporting form requires facilities to list every Specific Requirement in the permit and all other federally applicable requirements and permit limits. For major industrial facilities, this will result in voluminous reports that contain extraneous information already included in the permit. Allowing facilities to report only the deviations that occurred during a reporting period in a clear and understandable format will help LDEQ, the regulated community and the public.

There are approximately 700 facilities in Louisiana that operate pursuant to Title V permits issued by LDEQ. These range from major industrial complexes such as refineries, chemical plants, and paper mills to smaller facilities with relatively few emissions points. In addition, a large number of Title V facilities fall within these two margins. In the past, LDEQ has allowed necessary flexibility to the regulated community to use LDEQ’s current reporting form or a template that better fits their particular facility. All Title V deviations

are required by regulation to be submitted to LDEQ in a clear and understandable report by March 31 and September 30 each year. Because this requirement is already in place, LEUEG believes that a mandatory form is not necessary. For these reasons, LEUEG requests that LDEQ leave Part 70 General Conditions K, M, and R in their current form.

FOR/AGAINST: The department acknowledges the comment. As stated in the Notice of Intent for the proposed regulation, the department has Title V Semiannual Monitoring and Title V Annual Compliance Certification forms for optional use by Title V permittees. There are major industrial facilities that currently include all specific permit requirements as well as other applicable requirements and permit limits in Title V reports. Other permittees opt for “short form reporting,” i.e., certifying compliance with all requirements except those listed in the Title V report, for annual compliance certifications. This flexibility will continue under the proposed rule. There are standard permit application forms for Title V permits regardless of industry type. Requiring the use of standard Title V Semiannual Monitoring and Annual Compliance Certification forms ensures consistency, clarity, and efficiency. There are methods to notify Title V permittees of any changes to the reporting forms.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 6: *Comment 2: LDEQ should continue to allow facilities to cross-reference other air quality reports in Title V deviation reports and annual compliance certifications.*

Part 70 General Conditions K and R currently provide the following allowance: “For previously reported deviations, in lieu of attaching the individual deviation reports, the semiannual report may clearly reference the communications or correspondences constituting the prior report, including the date the prior report was submitted.” Similar to “reporting by exception,” LDEQ’s current reporting system allows facilities the option to cross-reference reports required by other federal air quality standards in periodic Title V reports. Thus, as long as a facility “clearly references” a prior report in the Title V semiannual report, LDEQ does not require those deviations to be restated in the Title V report.

As LDEQ is aware, there are hundreds of federal New Source Performance Standards (“NSPS”) and National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for many different source

categories. Most of these air quality standards require periodic reporting of deviations to the federally delegated authority (i.e., LDEQ) and most Title V sources in Louisiana are subject to one or more of these standards. LDEQ incorporates federal NSPS and NESHAP in LAC 33:III.3003 and LAC 33:III.5122, respectively, on an annual basis. In addition, EPA periodically updates LDEQ's delegation of NSPS and NESHAP through Federal Register notices. See, 80 Fed. Reg. 9613.

Allowing Title V facilities to cross-reference other federally mandated reports in Title V submittals is fundamental and important. If LDEQ removes this allowance, as proposed in AQ400, Title V deviation reports will become unwieldy and voluminous. This is especially the case for large and complex facilities that are subject to numerous NSPS and NESHAP. Therefore, to promote efficiency and prevent the same deviations from being reported numerous times, LEUEG requests that LDEQ retain the following language in both Part 70 General Conditions K and R:

“For previously reported deviations, in lieu of attaching the individual deviation reports, the semiannual report may clearly reference the communications or correspondences constituting the prior report, including the date the prior report was submitted.”

LEUEG believes that retaining this provision will promote clarity and simplicity for LDEQ, the public and the regulated community. The removal of this provision will result in a significant burden to Louisiana industry and significantly increase the size of reports submitted to LDEQ and posted on the agency's Electronic Data Management System (“EDMS”) in multiple formats. As noted, all relevant information is already required to be submitted to LDEQ in a format specified by each federal air quality standard.

FOR/AGAINST: The department acknowledges the comment. LAC 33:III.535 states, “The permittee shall submit, at least semiannually, a report of any required monitoring, clearly identifying all instance of deviations from permitted monitoring requirements.” The current use of referencing previously submitted reports has not resulted in clarity for the department. Deviations are not always clearly identified or have sufficient information to make a compliance determination. The lack of clear identification or supporting information results in a request for additional information or a compliance order for information. As stated in the comment, there are large and complex facilities subject to numerous New Source Performance Standards (NSPS) and

National Emissions Standards for Hazardous Air Pollutants (NESHAP). There are over 700 effective Title V permits. In lieu of reporting deviations, a Title V permittee can currently reference all previously submitted reports that have deviations in the two (2) semiannual report and annual compliance certification. Staff must review each referenced report as a part of the compliance evaluation. The proposed revision to the language is not requiring permittees to gather new information, only to report the readily available information in a standard format. Using a standard form will ensure consistent required content and promote clarity. The incorporation by reference process will be modified in the revised Title V forms. Incorporation by reference will no longer be allowed for semiannual reporting; however, permittees will be allowed to reference the detailed Title V Semiannual Reports in the Title V Annual Compliance Certifications.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT 7: *Comment 3: LDEQ has failed to consider the costs associated with the changes proposed in AQ400, which will be significant and burdensome to the regulated community.*

Paragraph III of the Fiscal and Economic Impact Statement for Administrative Rules attached to AQ400 states: "There is no estimated costs and/or economic benefits to directly affected persons, small businesses or non-governmental groups anticipated as a result of the proposed rule change." LEUEG disagrees with this conclusion and requests that LDEQ properly reconsider the actual costs to the regulated community if cross-referencing other air quality reports are disallowed or if LDEQ mandates the use of the Title V reporting forms in their current format. The costs to Louisiana industrial facilities will, in fact, be significant if the method and format in which Title V reports have been submitted for the past 30 years will be changed as proposed by LDEQ.

As noted, Louisiana facilities are frequently subject to numerous NSPS and NESHAP regulations that each require reports to be submitted to LDEQ on a periodic basis, typically quarterly or semiannually. These reports are already scanned and posted by LDEQ on EDMS. Requiring facilities to repeat this information again on Title V reports will be time-consuming and costly. In addition, the additional costs that LDEQ will expend to scan and post significantly larger reports with redundant information will decrease efficiency. For these reasons, LEUEG requests that LDEQ retain the current

language in LAC 33:III.535. If LDEQ decides to finalize any portion of the rule, it should comply with its statutory obligations to assess the actual costs of the proposed rule to “directly affected persons” and to LDEQ.

FOR/AGAINST: The department acknowledges the comment. The department engaged the commenter to obtain information related to additional costs if the proposed rule is finalized. The commenter stated the amount provided for additional costs is based on assistance from a third party for the two (2) semiannual reports and annual compliance certification. The department does not require a Title V permittee to contract a third party to complete the required reports. Any costs incurred by a Title V permittee are voluntary.

RESPONSE: The department will not make any changes to the regulatory text at this time.

COMMENT #

SUGGESTED BY

1-4

Lauren J. Rucinski, Louisiana Chemical Association
and Louisiana Mid-Continent Oil & Gas Association

5-7

Kyle Beall, Louisiana Electric Utilities Environmental
Group

Comments reflected in this document are repeated verbatim from the written
submittal.

Total Commenters: 2

Total Comments: 8