Comment Summary Response
Disposal of Coal Combustion Residuals
(LAC 33:VII.Chapter 10) (SW068)

COMMENT 1: The Department proposes to amend the LDEQ Solid Waste Regulations (LAC 33:Part VII) to incorporate federal requirements for landfills and surface impoundments that contain coal combustion residuals ("CCR"). The draft CCR regulation, LAC 33:VII.Chapter 10, proposes to adopt the federal CCR regulation by reference. The federal CCR rule was initially promulgated by the U.S. Environmental Protection Agency ("EPA") in 2015 and is set forth in 40 CFR Part 257 subpart D. As noted in the preamble to the *Notice of Intent*, "adoption of the federal Rule will allow LDEQ to obtain delegated authority from EPA for implementing the federal requirements and issuing required permits." Since 2016, LDEQ and EPA have reviewed the requirements for the creation and implementation of a state CCR permitting program in Louisiana, as authorized by the WIIN Act. LEUEG supports this effort and believes EPA should approve LDEQ's CCR permitting program after a final rule is issued by LDEQ.

LEUEG generally supports LDEQ's proposed rule and believes that delegation of the federal CR program to LDEQ is justified, in part, based on the state agency's longstanding regulation of landfills and surface impoundments in Louisiana. LDEQ has the statutory authority to regulate landfills and surface impoundments and has regulated CCR units since at least 1989. The current LDEQ Solid Waste Regulations were promulgated pursuant to authority granted in the Louisiana Solid Waste Management and Resource Recovery Law and are modeled after the federal "Subtitle D" solid waste regulations. *See*, La. R.S. 30:2151 *et seq.* and LAC 33:Part VII. As noted, LDEQ has administered these regulations for decades prior to the promulgation of the federal regulations. These regulations ensure that solid waste units manage, store, and/or dispose of solid waste, including CCR, in a manner to protect human health and the environment.

In SW068, LDEQ proposes to incorporate the federal CCR rule by reference, including certain amendments to the federal rule promulgated by EPA in 2018. LDEQ will also continue to require the existing permitting, financial assurance, and public

participation and enforcement regulations for CCR-regulated units in Louisiana. Thus, authorizing LDEQ to administer the substantive and permitting requirements of the federal CCR will promote efficiency of resources and streamline the existing federal and state programs. LDEQ is also in the best position to issue permits for these units due to knowledge of local geological and site-specific conditions, and because it has regulated all existing CCR units in Louisiana for decades.

For these reasons, LEUEG supports the delegation of the federal CCR program from EPA to LDEA that includes the promulgation of SW068. LEUEG provides the following comments to LDQ for its consideration as a part of this rulemaking.

FOR/AGAINST: No arguments necessary; comment does not suggest amendment or change.

RESPONSE 1: The department appreciates the support.

COMMENT 2: *LDEQ should amend the definition of "uppermost aquifer" as defined in LAC 33:VII.1002.A.*

In the draft rule, LDEQ proposes to define "uppermost aquifer" to mean:

> *Uppermost Aquifer* – The geologic formation (excluding the vadose zone) nearest the natural ground surface that is an aquifer, as well as lower (deeper) geologic formation that are aquifers and are hydraulically connected within the facility's property boundary. An aquifer can yield useable quantities of groundwater and for the purposes of this regulation, an aquifer is defined as being capable of yielding a groundwater sample from a monitoring well within 24 hours without purging a monitoring well dry. The upper limit of the uppermost aquifer is measured at a point nearest to the natural ground surface to which the aquifer rises during the wet season.

(Emphasis Added). To prevent confusion and for consistency, LDEQ should amend the above definition to match the definition of "uppermost aquifer" in LAC 33:VII.115. LDEQ should also delete the following sentence from the proposed definition: "An aquifer can yield usable quantities of groundwater and for the purposes of this regulation, an

aquifer is defined as being capable of yielding a groundwater sample from a monitoring well within 24 hours without purging a monitoring well dry." This sentence is not consistent with how LDEQ proposes to define "aquifer" in the proposed rule (*e.g.,* "significant quantities" of water versus "useable quantities"). LDEQ should use consistent terms in both definitions as well as the definitions in LAC 33:VII.115. LEUEG recommends that the LDEQ define "uppermost aquifer" as follows in the final rule:

> *Uppermost Aquifer* – The geologic formation (excluding the vadose zone) nearest the natural ground surface that is an aquifer, as well as lower (deeper) geologic formation that are aquifer and are hydraulically connected within the facility's property boundary. The upper limit of the uppermost aquifer is measured at a point nearest to the natural ground surface to which the aquifer rises during the wet season.

FOR: Making the change from "significant" to "usable" in the definition of aquifer will create consistency amongst the aquifer and uppermost aquifer definition and consistency with the language used in the federal Part 257 Rule.

Utilizing existing definitions would be easier for the state as definitions already exist for aquifer and uppermost aquifer.

AGAINST: While the LDEQ already has a definition of uppermost aquifer, this definition is different than the definition of uppermost aquifer codified in § 257.53. The definition in the LDEQ solid waste regulations is not as stringent as the definition in § 257.53. Developing definitions for aquifer and uppermost aquifer that are consistent with the federal Part 257 Rule will allow for consistency with the federal Part 257 Rule, even though definitions vary from those currently in the LDEQ regulations. Terms need to be as stringent/consistent with federal Part 257. Creating definitions that are in compliance with the LDEQ regulations and the federal Part 257 regulations will allow LDEQ to continue operating as it has in regards to the CCR facilities. The proposed uppermost aquifer definition is a hybrid of the definition in the federal rule and the LDEQ regulations. This definition is more stringent than the definition currently in § 257.53 and will allow LDEQ to protect

the aquifers in Louisiana. This definition has been discussed with the stakeholders and the EPA.

RESPONSE 2: Based on discussions with EPA and the definition currently listed in the federal rule, the proposed definition of uppermost aquifer will remain as written. As suggested, the definition of aquifer will also remain as written with a small change by having the word "significant" changed to "usable" to be consistent with the terminology used in the federal rule. This allows for the definition of aquifer to be consistent with the definition of uppermost aquifer.

COMMENT 3: *LDEQ should clarify what it intends to exclude from the incorporation of the federal CCR rule in LAC 33:VII.1003.A.*

In Section 1003.A of the draft rule, LDEQ proposes to incorporate the federal CCR rule into LAC 33:VII.Chapter 10 as follows:

> The department hereby incorporates by reference 40 CFR Part 257, Subpart D, *Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments,* July 1, 2022, except 40 CFR 257.50, 57.51, and all amendments made to the Federal regulations by the July 30, 2018 Final Rule (83 FR 36435), including the addition of 257.90(g).

(Emphasis added). As written, this section is unclear regarding what LDEQ intends to incorporate by reference and what the Department intends to exclude. For instance, the above sentence could be interpreted to mean that LDEQ intends to incorporate 40 CFR Art 257, Subpart D and all amendments made to the federal CCR regulations in the July 30, 2018 final rule but exclude only 40 CFR 257.50 and 257.51. LEUEG assumes this is LDEQ's intent. However, the sentence could also be interpreted that LDEQ intends to incorporate 40 CFR Part 257, Subpart D and exclude both 40 CFR 257.50-257.51 and all amendments made in the July 30, 2018 final rule. LEUEG requests that LDEQ clarify this section in the final rule as follows:

> Except as noted, the department hereby incorporates by reference 40 CFR Part 257, Subpart D, *Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments,* July 1, 2022 and

all amendments made to the Federal regulations by the July 30, 2018 Final Rule (83 FR 36435), including the addition of 257.90(g). The department does not incorporate by reference 40 CFR 257.50 or 40 CFR 257.51 into this Chapter.

FOR: This language could be interpreted to include the 2018 amendments. Including those amendments would be beneficial to the facilities in Louisiana.

AGAINST: The way this section is written could be interpreted as presented by the commenter. While it appears that what is being incorporated may be unclear, what is being incorporated by reference is clearly stated. As certain portions of the 2018 amendments cannot be incorporated by reference, they will be excluded from this program. The 2018 amendments remain under EPA authority and states will not be granted authority for these amendments.

RESPONSE 3: The way this section is currently written is accurate. EPA retains the approval authority for the July 30, 2018 amendments and as such, LDEQ will not be incorporating these amendments into LDEQ's solid waste CCR program. The EPA has recommended LDEQ not adopt the 2018 amendments, nor 40 CFR 257.50, 40 CFR 257.51, and 40 CFR 257.90(g). The amendments Parts A and B will remain under EPA authority for approval or denial of the Part A and B applications. None of the facilities in Louisiana submitted Part A or B applications; however, the LDEQ could not approve or deny even if applications are submitted at a later date.

Part 257.50 refers to legacy surface impoundments, of which, none are located in Louisiana. Therefore, it was recommended not to adopt this citation as Louisiana does not regulate any legacy CCR units. Part 257.51 was vacated from the Part 257 rule update, dated May 8, 2024. Part 257.9(g) is for the demonstration supporting the suspension of groundwater monitoring activities. As groundwater monitoring programs cannot be suspended by LDEQ (only the EPA has authority to suspend a program), this regulations is also not adopted.

COMMENT 4: *LDEQ should clarify what is required to be included in permit applications as set forth in proposed LAC 33:VII.1004.B.1.*

In the proposed rule, LDEQ references the information required in CCR permit renewal applications and permit modifications. LAC 33:VII.1004.B.1 states:

> Each CCR permit renewal application or permit modification application shall contain the information required by this Chapter, 40 CFR Part 257 subpart D, and on the department's website with regards to permit applications and permit application instructions.

As written, this section indicates that 40 CFR Part 257, Subpart D includes procedures and requirements for permits issued by LDEQ. To prevent potential confusion and also clarify what is required in permit applications, LEUEG requests that LDEQ revise LAC 33:VII.1004.B.1 to state the following:

> Each CCR permit renewal application or permit modification application shall contain the information required by application forms and instructions prescribed by the department, including the substantive information required by this section and 40 CFR part 257 subpart D.

FOR: Clarifying language to avoid confusion is important with regulations. Having the regulations state what is required in the permitting aspect and what is required with regards to requirements is important. When incorporating the federal rule by reference and utilizing the LDEQ's existing permitting requirements, it is important to state which requirements are which and will be utilized.

AGAINST: Keeping the language as is would not require a change as the requirements are currently listed in the existing language.

RESPONSE 4: Based on the proposed change, clarifying the language to state that the permitting requirements are LDEQ's and will incorporate specific substantive information from the federal Part 257 rule. This change is to avoid confusion with what is required during the permitting process. The LDEQ is adopting the proposed rule language.

COMMENT 5: *LDEQ should delete extraneous information set forth in LAC 33:VII.1004.G.1.b of the proposed rule.*

In LAC 33:VII.1004.G.1.b, LDEQ proposes the following requirement related to groundwater monitoring wells:

> A sufficient number of wells shall be installed in the uppermost aquifer, to ensure the entirety of the zone is monitored. Depending on the thickness of the aquifer, monitoring wells may be required to be installed at the top of the aquifer, middle of the aquifer, and/or bottom of the aquifer.

LDEQ should delete the second sentence of the above section. Although LDEQ requires that a "sufficient number of wells" are installed around solid waste units, neither the federal CCR rule nor LDEQ's current solid waste regulations require monitoring wells at the "top," the "middle" and the "bottom" of the aquifer as suggested by this sentence. Because the first sentence provides sufficient detail and flexibility for groundwater monitoring wells, LDEQ should remove the second sentence entirely to streamline this section and avoid confusion.

FOR: The aquifers are already being monitored and have been monitored for 30 years. Additional wells in the aquifers may not provide any additional data to protect the groundwater versus the costs of installing and monitoring wells.

AGAINST: While the federal rule does not explicitly state that monitor wells shall be installed to monitor the entirety of the aquifer, this is the intent of the rule. Additional monitoring wells may be required to ensure the total saturated thickness of an aquifer is monitored and protected. Additionally, facilities may utilize screens up to 10 feet in length to use as few wells as possible to monitor the aquifer if an aquifer exceeds 10 feet in thickness. While installing additional wells to monitor the aquifer that has been monitored for 30 years is not ideal, ensuring that the aquifer is properly monitored is required. By allowing the use of 10 foot screens, it can show that only one well or two wells would be required to adequately monitor an aquifer.

RESPONSE 5: As required in Part 257.91(a) a sufficient number of monitoring wells shall be installed at appropriate depths and locations to yield groundwater samples from the uppermost aquifer. The depths of monitoring wells shall be based on

aquifer thickness. Based on discussions with EPA, this means that the entirety of the uppermost aquifer shall be monitored. EPA is expecting the full length of the aquifer to be monitored, and if necessary monitoring wells installed in the top, middle, and bottom of the aquifer to ensure groundwater quality throughout the aquifer is monitored. As such, the language shall remain in place requiring monitoring of the entirety of the aquifer. A change to the proposed language was incorporated to eliminate the need for installing multiple wells by allowing multi length screens (not to exceed ten feet in length) that ensure adequate coverage of the aquifer. Utilizing wells with 10-foot well screens would reduce the number of wells necessary for monitoring. The thickness of the aquifer would determine how many monitoring would be required for monitoring.

COMMENT 6: *LDEQ should change the word "identified" in LAC 33:VII.1004.G.2.a-c of the proposed rule to "confirmed."*

Section 1004.G.2 of the proposed rule includes the following requirements related to "statistically significant increases" and "statistically significant levels" that may be detected during groundwater monitoring:

> If statistically significant increases (SSIs) are identified above background concentrations while in detection monitoring, or if statistically significant levels (SSLs) are identified above groundwater protection standards while in assessment monitoring, the department may require the installation of additional monitoring wells in the next (deeper) aquifer(s). Additionally, vertical and horizontal delineation of the aquifer(s) shall be required.
>
> a. If SSIs or SSLs are identified monitoring of the uppermost aquifer shall continue.
> b. If SSIs or SSLs are identified in any portion of the uppermost aquifer zone, monitoring wells shall be installed into the next (deeper) aquifer to ensure groundwater quality beneath the permitted unit.
> c. If SSIs or SSLs are identified in the aquifer beneath the uppermost aquifer, monitoring wells shall be installed in the next aquifer to

determine and monitor groundwater quality beneath the permitted unit.

(Emphasis added). LDEQ should replace the word "identified" with "confirmed." LDEQ's solid waste regulations allow for confirmatory sampling with SSIs or SSL are detected during groundwater monitoring activities. Thus, the initial "identification" of SSIs or SSLs should not be the basis for installation of additional wells in or beneath the uppermost aquifer. Rather, such activities may be required after SSIs or SSLs are confirmed. For this reason, LDEQ should use the word "confirmed" in LAC 33:VII.1004.G.2 to more appropriately describe when additional monitoring and/or installation of monitoring wells may be required.

LDEQ should also replace the word "shall" with the word "may" in LAC 33:VII.1004.G.2.a-c of the proposed rule to provide necessary flexibility during the review and recommendations associated with groundwater monitoring, which typically require case-by-case and site-specific evaluations.

FOR: Clarifying the language to state whether SSIs or SSLs are identified, confirmed, or initial is important. This language needs to be consistent with the federal rule and by utilizing differing terms, and it is currently not consistent. It can be confusing to utilizing differing terms and there is a need to be clear and concise. When there is an SSI or SSL, resampling has already occurred and the 90 day window to submit and have an ASD approved or initiate the next monitoring program begins. To ensure that the facility has their entire 90 day window, it is important to ensure language is as clear as possible.

AGAINST: The use of "initial" would indicate that any SSIs or SSLs identified during the initial detection before a confirmatory sampling event would require additional monitoring wells before determining if the SSI or SSL is indicative of a release or an outlier.

RESPONSE 6: The wording has been changed to be consistent with the federal Part 257 rule. The rule does not mention identified or confirmed with regards to SSIs or SSLs. When utilizing confirmed or identified, these terms can be confusing and do not necessarily take into account whether any resampling has

been conducted. As such, stating if there are any SSIs provides clarity. This is consistent with 257.93(h), 257.94, and 257.95. Therefore, the language was updated to be consistent with the federal Part 257 rule by stating if there are SSIs or SSLs, then what the next steps would be. With regard to the "shall" and "may", "shall" will remain as this is consistent with the federal Part 257 rule and "shall" is utilized in the federal rule citations. The EPA federal rule does not utilize "may".

COMMENT 7: *LDEQ should delete LAC 33:VII.1004.H.3.b and c of the proposed rule.*

Proposed Sections 1004.H.3.b and 1004.H.3.c include the following requirements related to alternative source demonstrations and additional investigations associated with groundwater monitoring:

> b. A facility may remain in detection monitoring if an alternative source demonstration is submitted for the SSIs and approved by the department within 90 days of initial detections of SSIs.
>
> c. If an alternative source demonstration is still under review or additional investigation is ongoing 90 days after the initial detection of SSIs, the facility shall initiate the assessment monitoring requirements.

LDEQ should delete the above sentences from the proposed rule. First, LDEQ should not mandate substantive actions based on approval deadlines that are completely outside the control of the permittee. Second, these requirements are not required by the existing LDEQ Solid Waste Regulations or the federal CCR rule. For example, circumstances may justify that a CCR unit remain in detection monitoring beyond 90 days of submittal of the demonstration and approval by LDEQ. Likewise, assessment monitoring may not be justified while a demonstration is still under review by LDEQ or additional investigation is ongoing more than 90 days after the confirmation of SSIs. For these reasons, LEUEG requests that LDEQ remove both sections from the final rule.

At a minimum, LDEQ should include flexibility in the proposed rule by stipulating that "A facility may remain in detection monitoring while an alternative source demonstration is under

review by the department." This change will provide necessary flexibility to both LDEQ and the permittee. Finally, if LDEQ decides not to delete these sentences, the phrase "initial detection of SSIs" should be changed to "confirmation of SSIs."

FOR: Changing the required timeline to greater than 90 days would be beneficial to facilities to allow them to complete an ASD without going into the next program.

Additionally, changing language from initial to confirmed as suggested would eliminate confusion. To be consistent with the federal rule identified SSIs or SSLs will be used in lieu of initial or confirmed.

AGAINST: The proposed language is from the federal Part 257 rule and as LDEQ is adopting the rule by reference the language cannot be changed to something less stringent. While changing the required timeline to greater than 90 days would be beneficial to facilities to allow them to complete an ASD without going into the next program, this would not be in compliance with the federal rule.

The use of "initial" would indicate that any SSIs or SSLs identified during the initial detection before a confirmatory sampling event would require additional monitoring wells before determining if the SSI or SSL is indicative or a release or an outlier.

RESPONSE 7: This language is taken from 257.94(e) and shall remain as the LDEQ regulations cannot be less stringent than the federal Part 257 Rule. LDEQ will update the proposed language to remove "initial" as initial is not used in the federal Part 257 Rule and to remain consistent the language will be removed.

COMMENT 8: *LDEQ should delete LAC 33:VII.1004.H.4.b-e of the proposed rule.*

Proposed Sections 1004.H.b-e include the following requirements related to corrective action associated with groundwater monitoring:

> b. A facility may remain in assessment monitoring if an alternative source demonstration for the SSLs is

submitted and approved by the department within 90 days of initial identification of SSLs.

c. If an alternative source demonstration is still under review or additional investigation is ongoing 90 days after the initial detection of SSLs, the facility shall initiate the corrective action monitoring requirements.

d. If the alternative source demonstration is denied, the facility shall initiate the corrective action requirements.

e. In addition to the requirements of this Chapter, when a facility initiates corrective action requirements, the facility shall submit a plan to the department in accordance with LAC 33:VII.805.D.7.

LDEQ should delete proposed LA 33:VII.1004.H.4.b and 1004.H.4.c in the final rule. First, LDEQ should not mandate substantive actions based on approval deadlines that are completely outside the control of the permittee. Second, these requirements are not required by the existing LDEQ Solid Waste Regulations or the federal CCR rule. For example, circumstances may justify that a CCR unit remain in assessment monitoring beyond 90 days of submittal of the demonstration and approval by LDEQ. Likewise, corrective action may not be justified while a demonstration is still under review by LDEQ or additional investigation is ongoing more than 90 days after the confirmation of SSIs. For these reasons, LEUEG requests that LDEQ remove both sections from the final rule.

At a minimum, LDEQ should include flexibility in the proposed rule by stipulating that "A facility may remain in assessment monitoring while an alternative source demonstration is under review by the department." This change will provide necessary flexibility to both LDEQ and the permittee. Finally, if LDEQ decides not to delete these sentences, the terms "initial identification" in LAC 33:VII.1004.H.4.b and "initial detection" in LAC 33:VII.1004.H.4.c should be changed to "confirmation" in the final rule.

FOR: Changing the required timeline to greater than 90 days would be beneficial to facilities to allow them to complete an ASD without going into the next program.

Additionally changing language from initial to confirmed as suggested would eliminate confusion. To be consistent with the federal rule identified SSIs or SSLs will be used in lieu of initial or confirmed.

AGAINST: The proposed language is taken directly from 257.95(g) and as LDEQ is adopting the rule by reference the language cannot be changed to something less stringent. While changing the required timeline to greater than 90 days would be beneficial to facilities to allow them to complete an ASD without going into the next program, this would not be in compliance with the federal rule.

The use of "initial" would indicate that any SSIs or SSLs identified during the initial detection before a confirmatory sampling event would require additional monitoring wells before determining if the SSI or SSL is indicative or a release or an outlier.

RESPONSE 8: This language is currently included in 257.95(g) and shall remain as the LDEQ regulations cannot be less stringent than the federal Part 257 Rule. LDEQ will update the proposed language to remove "initial" as initial is not used in the federal Part 257 Rule and to remain consistent the language will be removed.

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COMMENT #	SUGGESTED BY
01 – 08	Kyle Beall, Beall Law on behalf of Louisiana Electric Utility Environmental Group (LEUEG)

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

Total Commenters: 01
Total Comments: 08