

**Laura Almond**

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**From:** Laura Almond  
**Sent:** Tuesday, September 17, 2024 2:49 PM  
**To:** apa.s-envq@legis.la.gov; 'apa.h-natr@legis.la.gov'; 'apa.housespeaker@legis.la.gov'; 'apa.senatepresident@legis.la.gov'  
**Cc:** Aurelia Giacometto (DEQ Secretary); Noah Hoggatt (DEQ); Jill Clark  
**Subject:** Summary Report for Proposed Rule WQ114  
**Attachments:** WQ114 Response to Comments.pdf; WQ114 NOI.pdf

September 17, 2024

The Honorable Eddie J. Lambert, Chairman  
c/o Committee Staff  
Senate Committee on Environmental Quality

The Honorable Brett F. Geymann, Chairman  
House Committee on Natural Resources and Environment  
c/o Committee Staff

RE: Summary Report for Proposed Rule WQ114  
Freshwater Ammonia Aquatic Life Criteria  
(LAC 33:IX.1105, 1113, 1115, and 1117)  
Proposed on May 20, 2024

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Environmental Quality is submitting a report regarding the above-referenced proposed rule, which was published in the *Louisiana Register*. Comments were received. No changes have been made to the proposed rule since the report provided for in R.S. 49:966(B) was submitted. Attached are computer files comprising the summary report along with a copy of the notice of intent. The original proposed rule was previously provided to you and is not being resubmitted with this report.

***We would appreciate it if you would acknowledge receipt of this message by return email.*** Please contact Laura Almond at (225) 219-3981 if you have any questions regarding this material.

Sincerely yours,

W. Noah Hoggatt  
Executive Counsel

This concludes this transmission.

Laura Almond  
Environmental Project Specialist  
Louisiana Department of Environmental Quality  
Legal Affairs Division

(225) 219-3985

## NOTICE OF INTENT

Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division

Freshwater Ammonia Aquatic Life Criteria  
(LAC 33:IX.1105, 1113, 1115, and 1117)(WQ114)

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 Water Quality regulations, LAC 33:IX.1105, 1113, 1115, and 1117 (Log #WQ114).

This Rule will revise LAC 33:IX Chapter 11 of the Surface Water Quality Standards regulations to add freshwater ammonia criteria. LDEQ has the regulatory obligation to evaluate and adopt, where appropriate, federally recommended water quality criteria. See La. R.S. 30:2074(B)(1)(a). See also 40 C.F.R. § 131.20 and 40 C.F.R. § 131.22. This revision will adopt and clarify the applicability of freshwater ammonia criteria. This Rule will give the agency the necessary amount of time to complete adoption of freshwater ammonia criteria.

This Rule complies with the statutory law administered by LDEQ. See La. R.S. 30:2074(B)(1)(a). The basis and rationale for this proposed rule are to conform to Section 303 of the Clean Water Act and to maintain and protect state waters. In accordance with Section 304(a) of the Clean Water Act, the Environmental Protection Agency (EPA) publishes water quality criteria that accurately reflect the latest scientific knowledge. In 2013, EPA announced final nationally recommended criteria for the protection of aquatic life from the effects of ammonia in freshwater, and published the Section 304(a) document *Aquatic Life Ambient Water Quality Criteria for Ammonia - Freshwater* (see 78 FR 52192 and Docket Number EPA-822-R-18002). The nationally recommended criteria incorporates the latest scientific knowledge on the toxicity of ammonia to freshwater aquatic life. Elevated concentrations of ammonia in freshwater have a direct toxic effect on aquatic life, exacerbated by elevated pH and temperature. Many effluents must be treated in order to keep concentrations of ammonia in surface waters from being unacceptably high. Freshwater mussels belonging to Family Unionidae are the primary aquatic organisms sensitive to ammonia and such freshwater mussels are widely distributed in Louisiana. Criteria are expressed in the form of a formula, in which temperature and pH are input to calculate the ammonia criterion. There are criteria formulas for situations in which mussels are either present or absent for a given site and criteria formulas for acute and chronic effects of ammonia. To provide for both the protection of water quality when mussels are either absent or present, LDEQ proposes to adopt a performance-based approach. See 65 FR 24641, Docket Number FRL-6571-7. A performance-based approach relies on the adoption of a process rather than a specific outcome and does not require site-specific decisions to be codified in the regulations, so long as the process is transparent, predictable, and repeatable and also provides the opportunity for public participation. The process is described in proposed revisions to the Water Quality Management Plan, Volume 3:

Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards. See accompanying notice 2405Pot1. Based on this review of information, the agency determined adoption of the freshwater ammonia criteria is appropriate.

The department has submitted a report to the Legislative Fiscal Office and the Joint Legislative Committee on the Budget demonstrating that the environmental and public health benefits outweigh the social and economic costs reasonably expected to result from the Rule. These reports are published in the Potpourri section of the May 20, 2024, issue of the *Louisiana Register*.

### Title 33

## ENVIRONMENTAL QUALITY

### Part IX. Water Quality

#### Subpart 1. Water Pollution Control

### Chapter 11. Surface Water Quality Standards

#### §1105. Definitions

*1Q10 Flow*—the minimum 1-day average stream flow with a recurrence level of once every 10 years.

*30Q10 Flow*—the minimum 30-day average stream flow with a recurrence level of once every 10 years.

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2401 (December 1999), LR 26:2545 (November 2000), LR 29:557 (April 2003), LR 30:1473 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:456 (March 2007), LR 33:827 (May 2007), LR 35:445 (March 2009), amended by the Office of the Secretary, Legal Division, LR 40:2243 (November 2014), LR 42:736 (May 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Divisions, LR 46:1545 (November 2020), amended by the Office of the Secretary, Legal Affairs Division, LR 50:

#### §1113. Criteria

##### A. - C.5.f. ...

##### 7. Ammonia

a. Water quality criteria for ammonia are for the protection of aquatic life. Toxic effects of ammonia are dependent on pH and temperature. Ammonia is expressed in terms of total ammonia nitrogen (TAN), which includes its un-ionized (ammonia) and ionized (ammonium) fractions. TAN is measured in units of mg/L and referenced with Chemical Abstracts Service (CAS) Registry Number 7664-41-7.

i. Freshwater criteria for ammonia are structured on the presence or absence of freshwater mussels at a site, and are expressed as formulas for both acute and chronic criteria. The reason is because mussels siphon water to filter pollutants and heavy metals. Due to the ubiquity of freshwater mussels of the family Unionidae in Louisiana waters, applying the mussel-present criteria formulas are considered protective of aquatic life. The mussels-present formulas apply to all freshwater water bodies, except as provided below. If Unionidae mussels are absent when conducting a mussel survey, per approval from the LDEQ Secretary, appointed authority, or administrative authority, then mussels absent criteria formulas may be applied on a site-specific and/or water body basis.

(a). Mussels Present

(i). Freshwater Acute Criterion

$$\text{mg (IAD)/L} = 0.7249 \left( \frac{0.0114}{1+10^{0.284-28}} + \frac{1.6181}{1+10^{0.728-7.28}} \right) \cdot \text{MIN}(51.93, 23.12 \cdot 10^{0.036 \cdot (24-T)})$$

(ii). Freshwater Chronic Criterion

$$\text{mg (IAD)/L} = 0.5576 \left( \frac{0.0278}{1+10^{0.284-28}} + \frac{1.1994}{1+10^{0.728-7.28}} \right) \cdot (2.126 \cdot 10^{0.026 \cdot (24-T)})$$

(b). Mussels Absent

(i). Freshwater Acute Criterion

$$\text{mg (IAD)/L} = 0.7249 \left( \frac{0.0114}{1+10^{0.284-28}} + \frac{1.6181}{1+10^{0.728-7.28}} \right) \cdot \text{MIN}(51.93, 62.15 \cdot 10^{0.036 \cdot (24-T)})$$

(ii). Freshwater Chronic Criterion

$$\text{mg (IAD)/L} = 0.5405 \left( \frac{0.0278}{1+10^{0.284-28}} + \frac{1.1994}{1+10^{0.728-7.28}} \right) \cdot \text{MIN}(6.820, 7.347 \cdot 10^{0.026 \cdot (24-T)})$$

ii. Formula Calculations

(a). All formulas require data inputs for pH and temperature to calculate a criterion. The minimum and maximum pH values used for criteria calculation are 6.5 to 9.0. The minimum and maximum temperature values used for criteria calculation are 7°C to 30°C.

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:967 (October 1991), repromulgated LR 17:1083 (November 1991), amended LR 20:883 (August 1994), LR 24:688 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2402

(December 1999), LR 26:2547 (November 2000), LR 27:289 (March 2001), LR 30:1474 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:457 (March 2007), LR 33:829 (May 2007), LR 35:446 (March 2009), amended by the Office of the Secretary, Legal Division, LR 42:736 (May 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1188 (September 2019), LR 46:1550 (November 2020), LR 48:1498 (June 2022), amended by the Office of the Secretary, Legal Affairs Division LR 50:

§1115. Application of Standards

A. C.7.c. ...

d. For the application of ammonia aquatic life criteria, the following flows may be used.

i. Acute ammonia aquatic life criteria will be evaluated using the 1Q10 flow and the water body categorizations listed in Table 2a of this Section.

ii. Chronic ammonia aquatic life criteria will be evaluated using the 30Q10 flow and the water body categorizations listed in Table 2a of this Section.

8. - 13.f ...

D. Ammonia Criteria Application

1. The application of the appropriate ammonia criteria formula in development of permit limitations will be determined using a performance-based approach as described in the state's Water Quality Management Plan (WQMP), Volume 3, Permitting Guidance Document for Implementing Surface Water Quality Standards, Appendix H. The mussel-present criteria formulas, as expressed in LAC 33:IX.1113.C.7.a.i.(a), will be the default formulas utilized in permit implementation. The mussels absent formulas, as expressed in LAC 33:IX.1113.C.7.a.i.(b), may be utilized in permit implementation after satisfactory completion of a mussels survey indicating no evidence of historical or current presence of mussels of the family Unionidae, and with approval from the administrative authority.

1	Streams with 7Q10 flow greater than 100 cfs <sup>c</sup>	7Q10	10 cfs or 1/30 of the flow, whichever is greater	100 cfs or 1/3 of the flow, whichever is greater
2	Streams with 7Q10 flow less than or equal to 100 cfs	7Q10	1/10	1
3	Tidal channels with flows greater than 100 cfs	1/3 of the average or typical flow averaged over one tidal cycle irrespective of flow direction	10 cfs or 1/30 of the flow, whichever is greater	100 cfs or 1/3 of the flow, whichever is greater
4	Tidal channels with flows less than or equal to 100 cfs	1/3 of the average or typical flow averaged over one tidal cycle irrespective of flow direction	1/10	1
5	Freshwater lakes and ponds	Not Applicable	25 feet	100 feet
6	Coastal bays and lakes	Not Applicable	50 feet	200 feet
7	Gulf of Mexico	Not Applicable	100 feet	400 feet

<sup>a</sup>ZID = zone of initial dilution

<sup>b</sup>MZ = mixing zone

<sup>c</sup>cfs = cubic feet per second

1	Streams with 7Q10 flow greater than 100 cfs	7Q10	Harmonic Mean
2	Streams with 7Q10 flow less than or equal to 100 cfs	7Q10	Harmonic Mean
3	Tidal channel	The average or typical flow averaged over one tidal cycle irrespective of flow direction	
4	Freshwater lakes and ponds	Not Applicable	Not Applicable
5	Coastal bays and lakes	Not Applicable	Not Applicable
6	Gulf of Mexico	Not Applicable	Not Applicable

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:967 (October 1991), repromulgated LR 17:1083 (November 1991), amended LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2403 (December 1999), LR 26:2548 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:831 (May 2007), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:1554 (November 2020), amended by the Office of the Secretary, Legal Affairs Division LR 50:

**§1117. References**

A. - A.16.

17. U.S. Environmental Protection Agency. April 2013. *Aquatic Life Ambient Water Quality Criteria for Ammonia-Freshwater 2013*. Office of Water. EPA 822-R-18002.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2403 (December 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2507 (October 2005), LR 33:2163 (October 2007), amended by the Office of the Secretary, Legal Division, LR 42:737 (May 2016), LR 50:

**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 may have an impact on small business as described in R.S. 49:974.1-974.8. Directly affected permittees may incur costs associated with monitoring, treatment of wastewater prior to discharge, and reporting.

**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 WQ114. Such comments must be received no later than July 2, 2024, at 4:30 p.m., and should be sent to William Little, Attorney Supervisor, Office of the Secretary Legal Affairs Division, P.O. Box 4302, Baton Rouge, LA 70821-4302, by fax (225)

219-4068, or by E-mail to DEQ.Reg.Dev.Comments@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 WQ114. This regulation is available on the Internet at <https://deq.louisiana.gov/page/monthly-regulation-changes-2024%20>.

**Public Hearing**

A public hearing will be held on June 25, 2024, 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 in person or via Zoom at <https://deqlouisiana.zoom.us/j/93737929547?omn=84655071922> or by telephone by dialing (636) 651-3182 using the code 725573. Should individuals with a disability need an accommodation in order to participate, contact Doug Bordelon at the address given below, or at (225) 219-1325.

The proposed regulation is available for inspection at the following LDEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 508 Downing Pines Road, 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.

Aurelia S. Giacometto  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Freshwater Ammonia Aquatic Life Criteria**

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

There are no estimated implementation costs or savings to the state as a result of the proposed rule change. Local governments who operate a publicly owned treatment works may incur costs associated with monitoring, treatment of wastewater prior to discharge, and reporting. Although data is not available for every potentially affected facility, the Louisiana Department of Environmental Quality (LDEQ) has received information that indicates the costs for installing new treatment technology would be significant. Local governments may also be subject to additional testing costs to demonstrate compliance with ammonia-nitrogen limits.

The proposed rule change will revise Chapter 11 of the Water Quality regulations to add freshwater ammonia criteria recommended by the U.S. Environmental Protection Agency

(EPA) to protect aquatic species present in freshwater water bodies of Louisiana. The proposed rule changes will adopt and clarify the applicability of freshwater ammonia criteria.

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

The proposed rule change is not anticipated to have any impact on the revenues of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

Directly affected permittees may incur costs associated with monitoring, treatment of wastewater prior to discharge, and reporting. LDEQ expects costs to be incurred by publicly and privately owned treatment works that discharge 100,000 gallons per day (GPD) of treated wastewater or more and some industrial facilities with a Louisiana Pollutant Discharge Elimination System (LPDES) permit. Although data is not available for every potentially affected facility, LDEQ has received information that indicates the costs for installing new treatment technology would be significant. Facilities may also be subject to additional testing costs to demonstrate compliance with ammonia-nitrogen limits.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment related to this rule change.

Aurelia S. Giacometto  
Secretary  
2405#042

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Crime Victims Reparations Board**

**Compensation (LAC 22:XIII.301)**

In accordance with the provisions of R.S. 49:950 et seq., which is the Administrative Procedure Act, and R.S. 46:1801 et seq., which is the Crime Victims Reparations Act, the Crime Victims Reparations Board hereby gives notice of its intent to promulgate rules and regulations regarding the awarding of compensation to applicants. There will be no impact on family earnings or the family budget as set forth in R.S. 49:972.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part XIII. Crime Victims Reparations Board**

**Chapter 1. Authority and Definitions**

**§103. Definitions**

A. ...

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**Healthcare Facility**—a facility or institution providing healthcare services, including but not limited to a hospital or other licensed inpatient center; ambulatory surgical or treatment center; skilled nursing facility; inpatient hospice facility; residential treatment center; diagnostic, laboratory, or imaging center; or rehabilitation or other therapeutic health setting.

**Healthcare Provider**—a physician or other healthcare practitioner licensed, certified, registered, or otherwise authorized to perform specified healthcare services consistent with state law.

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1801 et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:538 (May 1994), amended LR 22:709 (August 1996), LR 23:861 (July 1997), LR 24:327 (February 1998), LR 37:1605 (June 2011), LR 42:569 (April 2016), LR 50:

**Chapter 3 Eligibility and Application Process**

**§301. Eligibility**

A. - A.2.b. ...

i. The victim/claimant must process any potential insurance before applying for reimbursement of mental health claims.

ii. Repealed.

3. - 3.g. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1801 et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:538 (May 1994), amended LR 22:709 (August 1996), LR 31:2009 (August 2005), LR 35:65 (January 2009), LR 36:2278 (October 2010), LR 37:1605 (June 2011), LR 41:1487 (August 2015), amended LR 44:2143 (December 2018), LR 47:364 (March 2021), LR 49:922 (May 2023), LR 50:

**§303. Application Process**

A. - A.2.a. ...

b. Repealed.

A.2.c. - 4. ...

5. All invoices, bills, etc. must indicate the victim/claimant as the guarantor and indicate balances owed. For claims that pertain to victims of sexually oriented criminal offenses, the victim has the discretion to choose whether or not to file for private insurance or Medicaid coverage.

A.6. - D.3. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1801 et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Crime Victims Reparations Board, LR 20:539 (May 1994), amended LR 22:710 (August 1996), amended by the Office of the Governor, Crime Victims Reparations Board, LR 41:1668 (September 2015), LR 42:570 (April 2016), LR 42:743 (May 2016), LR 49:922 (May 2023), LR 50:

**Chapter 5. Awards**

**§501. Payments of Awards**

A. - C. ...

D. Repealed.

E. - F.4. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1801 et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Crime Victims Reparations Board, LR 20:539 (May 1994), repromulgated LR 22:710 (August 1996), amended LR 24:328 (February 1998), LR 50:

**§503. Limits on Awards**

A. - D.8.f. ...

g. Nurse practitioner or physician assistant (under supervision of licensed physician)

D.9. - G.5. ...

6. Rates for Reimbursement

a. Physicians, psychiatrists, state-certified or state-licensed psychologists, licensed professional counselors, and board-certified social workers are eligible for

**Comment Summary Response & Concise Statement**  
**LAC 33:IX.1105, 1109, 1113, 1115, and 1117**  
**Log Number WQ114**

Freshwater Ammonia Aquatic Life Criteria (LAC 33:IX.1105, 1109, 1113, and 1115) and Associated Documents: Updates to the Water Quality Management Plan Volume 3: Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards (2405Pot1), La. R.S. 49:963(B) Report on Proposed Rule WQ114 (2405Pot2), Withdrawal of Log Number WQ112 (2405Pot3), and La. R.S. 30:2019(D) Determination on Proposed Rule WQ114 (2405Pot4)

Concise statement arguments:

COMMENT 1: WQ114 is not necessary, not appropriate, and will cost the dischargers of Louisiana billions to implement, all to fulfill an unexplained and unarticulated attempt to address a species that is ubiquitous, common, widespread, and prevalent in Louisiana waters.

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

RESPONSE 1: The Louisiana Department of Environmental Quality (LDEQ) has a regulatory obligation to evaluate and adopt federally recommended water quality criteria where those criteria are warranted for protection of water quality in the state. LDEQ has established that adoption of appropriate freshwater ammonia criteria are necessary and appropriate for the protection of aquatic life, as well as enhancing overall water quality in Louisiana. LDEQ is proposing a performance based criteria approach and accompanying implementation procedures that are designed to be protective of water quality, but also consider the costs of implementation and impacts to the regulated community. Also see Response 2.

COMMENT 2: In WQ114, 2405Pot1, 2405Pot2, and 2405Pot4, LDEQ cites no federal law specifically mandating or requiring that it adopt the Freshwater Criteria at this, or any other, time. Indeed, when the Freshwater Criteria were first issued by EPA in 2013, EPA did not require that LDEQ adopt the criteria and merely encouraged LDEQ "to consider adoption of these criteria into your water quality standards" and "recommend[ed] that you adopt these criteria." EDMS #9356281. Thus, there is no federal requirement that the Freshwater Criteria be adopted by LDEQ.

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

**RESPONSE 2:** LDEQ is authorized under La. R.S. 30:2074(B)(1)(a) to adopt the U.S. Environmental Protection Agency's (EPA) nationally recommended criteria. Pursuant to 40 C.F.R. § 131.20(a), LDEQ must, at least once every 3 years, review federally promulgated water quality standards and, as appropriate, modify and adopt such standards. If LDEQ does not adopt a new or revised criteria for parameters for which EPA has published a Clean Water Act (CWA) 304(a) criteria recommendation, then it must provide an explanation for its decision to the EPA. Pursuant to 40 C.F.R. § 131.22, if LDEQ does not provide an explanation, EPA is mandated to promulgate criteria for the state.

LDEQ first adopted numeric freshwater ammonia criteria into state water quality standards, LAC 33:IX. Chapter 11 as part of a previous Water Quality Standards Triennial Revision, finalized on November 20, 2020. See WQ097, approved by EPA on January 28, 2021. Because LDEQ determined it was appropriate to adopt freshwater ammonia criteria without modifying the national recommendation as part of that standards revision, no additional justification was provided. During promulgation of WQ097, LDEQ received no public comments related to the proposed freshwater ammonia criteria, and no comments related to the proposed criteria were received at the public hearing.

After adoption of the standard, LDEQ discovered additional information pertaining to the cost of implementation of the criteria. Accordingly, LDEQ promulgated WQ110, which rescinded the freshwater numeric ammonia criteria so that LDEQ could reconsider the costs to directly affected persons, in the aggregate, to implement the freshwater ammonia criteria together with the environmental and or human health risks and benefits. Pursuant to 40 C.F.R. § 131.20(C), LDEQ must submit any revisions to its water quality standards to EPA. In accordance with federal law, LDEQ will submit WQ114, along with WQ110 as a package, to the EPA for approval.

Pursuant to 40 C.F.R. § 131.21, EPA may approve or disapprove LDEQ's standards revisions. If EPA disapproves LDEQ's revisions, it will specify changes needed to assure compliance with the Clean Water Act. Pursuant to 40 C.F.R. § 131.22(b), if LDEQ does not adopt the changes specified by EPA within 90 days of any disapproval, then EPA will propose and promulgate a water quality



standard for the state. EPA also has the authority to promulgate regulations setting forth a new or revised standard for the state, upon determining that such standard is necessary to meet the requirements of the Clean Water Act. See 40 C.F.R. § 131.22(b).

Further, after promulgation of WQ110, EPA sent a letter to LDEQ explaining its position: “[O]nce a state [water quality standard (WQS)] is approved by the EPA pursuant to CWA § 303(c), it becomes the applicable WQS for CWA purposes and is retained in the CWA WQS docket unless or until EPA approves a state revision to that standard, or the EPA promulgates a more stringent standard (40 C.F.R. part 131.21(c), (e)). Consequently, Louisiana’s previously adopted freshwater numeric ammonia criteria, which were approved by the EPA for CWA purposes in January 2021, will remain the applicable CWA criteria unless and until they are superseded by revised criteria either approved or promulgated by the EPA, regardless of whether the criteria have been rescinded from the Louisiana Administrative Code. The EPA-approved criteria must continue to be used as the basis for all CWA implementation activities, including the development of water quality-based effluent limitations for NPDES permits and the development of total maximum daily loads (TMDLs).” See LDEQ’s Electronic Document Management System (EDMS) Document No. 13418996.

COMMENT 3: LDEQ claims that the Freshwater Criteria are “identical” to a federal law or regulation or required for compliance with a federal law or regulation. See EDMS #14283113, p. 3 of 4. This is inaccurate.

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

RESPONSE 3: LDEQ does not claim the proposed rule is identical to federal law. The document cited by the commenter, EDMS Document No. 14283113, is the Request to Initiate Rulemaking Activity form, which is an internal form within LDEQ to initiate and summarize a requested rulemaking. This form is for internal use, and provides relevant information to LDEQ’s regulation development staff. This internal form asks the LDEQ Office or Division requesting to initiate rulemaking activity to identify any federal law or regulation relevant to the requested rulemaking. The internal form cites the correct federal regulations relevant to the adoption of freshwater ammonia criteria in WQ114. See Response 2.

COMMENT 4: Section 30:2074(B)(1), the statute LDEQ identifies as its source of authority for the promulgation of WQ114, is an invalid delegation of legislative authority as it does not prescribe sufficient standards to guide LDEQ in the execution of the policies declared in the Louisiana Water Control Law. As a result, WQ114 is an unlawful exercise of legislative power and authority.

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

RESPONSE 4: All statutory enactments, including La. R.S. 30:2074(B)(1), are presumed constitutional. *Westlawn Cemeteries, L.L.C. v. La. Cemetery Bd.*, 2021-01414 (La. 3/25/22); 339 So. 3f 548, 559 (citing to *Carver v. Louisiana Dep't of Pub. Safety*, 2017-1340, p. 5 (La. 1/30/18), 239 So. 3d 226, 230). "This presumption is based on the premise that legislators are presumed to have weighed the relevant constitutional considerations in enacting legislation." *Id.*

La. R.S. 30:2074 gives the Secretary of LDEQ those powers and duties necessary to prepare and develop a general plan for the proper protection and control of waters of the state. See La. R.S. 30:2074(A). When enacting the Louisiana Water Control Law, including La. R.S. 30:2074, the legislature found and declared that "the waters of the state of Louisiana are among the state's most important natural resources and their continued protection and safeguard is of vital concern to the citizens of this state." La. R.S. 30:2072. "To ensure proper protection and maintenance of the state's waters" the legislature found that "it is necessary to adopt a system to control and regulate the discharge of waste materials, pollutants, and other substances into the waters of the state." La. R.S. 30:2072. The power to promulgate regulations establishing water quality standards is necessary both for LDEQ to fulfill the stated intention of the legislature in enacting the Louisiana Water Control Law, and for LDEQ to satisfy its obligations and responsibilities in administering the Louisiana Pollutant Discharge Elimination System (LPDES) program in order to maintain delegation of the program to LDEQ from the EPA.

La. R.S. 30:2074(B)(1) appropriately provides broad discretion to the Secretary "to establish such standards, guidelines, or criteria as he deems necessary or appropriate to prohibit, control, or abate and of the following...(a) water pollution." Pursuant to La. R.S. 30:2073(6), for purposes of the LPDES, water pollution "includes but is not limited to any addition of any pollutant or combination of pollutants to the waters of the state from any source ..." Ammonia

is a pollutant that is discharged into surface waters of the state, and accordingly, La. R.S. 30:2074(B)(1) gives the Secretary of LDEQ the power to establish freshwater ammonia criteria as she deems necessary or appropriate.

**COMMENT 5:** However, LDEQ does not provide all of the information in its possession in the documents associated with WQ114. LDEQ is well aware that the cost of WQ114 to affected facilities is “significantly greater than one million dollars.” EDMS #13384421 LDEQ has not properly informed the public of the staggering costs of WQ114 because LDEQ omitted the true and accurate costs of imposing WQ114 from the documents associated with WQ114.

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

**RESPONSE 5:** LDEQ completed a Small Business Analysis (SBA) Form as part of the draft rule package for WQ114, as well as a Fiscal and Economic Impact Statement (FEIS) Form, which are reviewed and approved by the Legislative Fiscal Office. See La. R.S. 49:961(C). See also, Fiscal and Economic Impact Statements, procedures issued by the Louisiana Legislative Fiscal Office, January 2023, available at <https://lfo.louisiana.gov/files/forms/FEISinstructions.pdf>. LDEQ included all information available to the Department in terms of impacts to small businesses. The final rule and associated implementation procedures (see WQMP, Vol. 3) include provisions, such as the performance-based approach and compliance schedules, to minimize unnecessary impacts on small businesses.

**COMMENT 6:** Under La. R.S. 30:2019(D), LDEQ must submit a written determination that the benefits of the proposed rule outweigh the economic costs “to the Joint Legislative Committee on the Budget for its approval,” which shall include “the estimated economic cost to all persons directly affected by the proposed rule.” LDEQ seems to have submitted the written determination (2405Pot4), along with the notice of intent, the proposed rule, and the fiscal and economic impact statement on April 18, 2024 and April 25, 2024. EDMS #14283139 and EDMS #14283141. However, based on available information, none of these documents include the full estimated costs noted above, a fact that is known to LDEQ and which is in its possession.

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

RESPONSE 6: LDEQ submitted its determination to the Joint Legislative Committee on the Budget in accordance with La. R.S. 30:2019(D). The Committee approved the report on August 9, 2024. See EDMS Document No. 14439568. Also see Response 5.

COMMENT 7: As an initial matter, LDEQ has not fulfilled the statement it made in the March 2022 Notice (WQ110). In that document, LDEQ stated that it planned to “reconsider the costs to directly affected persons” and reconsider “the environmental and/or human health risks and benefits.” WQ110 (March 2022 Notice). LDEQ has done no such thing.

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

RESPONSE 7: As stated in its Notice of Intent, WQ110 rescinded the freshwater ammonia numeric criteria so that LDEQ could reconsider the costs to directly affected persons, in the aggregate, to implement the freshwater ammonia criteria, together with the environmental and/or human health risks and benefits. LDEQ has followed through with the intentions of Rule WQ110 by reevaluating the freshwater ammonia criteria and proposing to adopt a performance based approach, utilizing mussels-present and mussels-absent formulas. Additionally, LDEQ has proposed appropriate permit implementation procedures and allowances for extended compliance schedules, which consider the cost to affected facilities.

LDEQ documented the potential for increased costs related to testing and reporting in its Small Business Analysis, pursuant to La. R.S. 49:974.1 – 974.8. The maximum estimated cost for testing and reporting for ammonia was \$936 per year, for privately-owned treatment works discharging more than 500,000 gallons per day, or for minor industrial facilities. Most publicly-owned treatment works (POTWs) and privately owned treatment works are already required to test for ammonia-nitrogen as a condition of their current permits, as most already have limitations based on the existing WQMP. Further, LDEQ does not expect all businesses to incur the maximum estimated cost.

LDEQ conducted research into various treatment technologies and laboratory testing costs. Since each facility and/or treatment works

varies greatly in its operations and/or its purpose, the most cost effective methods of implementing the criteria were vetted by LDEQ through a request for stakeholder input regarding adoption and implementation of the numeric freshwater ammonia criteria, including information regarding treatment options and costs. See 2203Pot1. Failure on the part of the regulated community to provide more specific, detailed information to assist LDEQ's efforts is not an indication that LDEQ did not fulfill the statement. LDEQ Potpourri Notice 2203Pot1 was published on March 20, 2022, requesting information and comments from any potentially affected and interested person, including the general public and regulated community, regarding treatment options and costs, as well as implementation criteria and potential revisions to the WQMP. All information received was evaluated and considered in the adoption and implementation of freshwater ammonia criteria.

LDEQ also held a series of stakeholder meetings, which are documented in LDEQ's Electronic Document Management System (EDMS) under Agency Interest (AI) number 234719. See EDMS Document No. 13387099, 13513996. LDEQ also conducted surveys of other states' permit implementation methodologies over the course of two years and selected methodologies that are appropriate for Louisiana's water bodies, providing comprehensive environmental protection while striking a balance with sound policy for employment and economic development, consistent with LDEQ's Strategic Plan. LDEQ's efforts to collect and consider all available information are documented in the stakeholder meeting presentations and other documents in EDMS, under AI number 234719.

**COMMENT 8:** Since LDEQ first adopted water quality standards, no ammonia standards have been included even though, according to LDEQ, ammonia is a "common toxic pollutant discharged" by public and private entities and many facilities may "discharge a significant concentration of ammonia." See 2405Pot2 and 2405Pot4. LDEQ also notes that elevated concentrations of ammonia have a direct toxic effect on aquatic life, such as mussels. ... Unless and until LDEQ collects such information and determines the extent to which ammonia discharges have actually impacted mussels and how the Freshwater Criteria will lessen that impact, LDEQ cannot adequately claim that there are benefits to WQ114.

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

**RESPONSE 8:** Freshwater ammonia criteria were initially adopted by LDEQ, and approved by the EPA, as part of Rule WQ097, the Triennial Revision of Water Quality Standards finalized on November 20, 2020. EPA has stated that, because the freshwater ammonia criteria originally promulgated as part of WQ097 was approved by EPA for Clean Water Act purposes, that criteria remains the applicable criteria unless and until it is superseded by a revised criteria that has been approved or promulgated by the EPA. See EDMS Document No. 13418996. Also see Response 2.

The significant difference between the criteria promulgated in Rule WQ097 and the criteria proposed in Rule WQ114 is the inclusion of a performance-based approach for implementing the freshwater ammonia criteria. This performance-based approach benefits a permittee, a group of permittees, or any other interested party by allowing the use of a mussel survey in order to determine the appropriate criteria formula on a site-specific basis. The criteria approved by EPA as part of WQ097 includes only the mussels-present criteria formula, which is notably more stringent as scientific studies have indicated mussel species are the most sensitive to toxic effects of ammonia. The performance-based approach proposed in WQ114 relies on the adoption of a process rather than a specific outcome. A performance-based approach does not require site-specific decisions to be codified in the regulations, so long as the process is transparent, predictable, and repeatable and also provides the opportunity for the public participation. The performance-based approach provides a method for ensuring water quality criteria are protective of aquatic life and appropriate for the water body/area in question, while not being unnecessarily stringent. Further, in conjunction with Rule WQ114, the Department has developed permit implementation procedures in its WQMP that are specific to ammonia criteria, which were not developed with the previous rulemaking action. LDEQ has also developed procedures for considering freshwater ammonia as part of conducting a reasonable potential analysis, and allowances for extended compliance schedules, which consider the cost to affected facilities.

Peer-reviewed scientific literature on the direct toxic effect between ammonia and aquatic life, including freshwater mussels, is documented in EPA's freshwater ammonia criteria development document: Aquatic Life Ambient Water Quality Criteria for Ammonia-Freshwater 2013. Office of Water. EPA 822-R-18002. The EPA's development document includes all appropriate analyses, including but not limited to: problem formulation,

assessment of endpoints, and effects analyses for freshwater organisms, and protection of endangered species.

**COMMENT 9:** LDEQ cannot even articulate the actual number of facilities that will be impacted by WQ114. LDEQ notes that there are “other industrial facilities (not yet identified) that may require ammonia limitations.” As a result, without a true quantification of impacted facilities, the total costs to each, and the total cost the State, costs are understated and the cost estimates are inadequate to establish, as required by statute, the “estimated economic cost to all persons directly affected by the proposed rule.” Emphasis supplied. Further, without a full, complete, and adequate quantification of costs, there is no sound method to conduct the required benefit to cost analysis.

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

**RESPONSE 9:** See Responses 5, 7, and 8. The commenter suggests that LDEQ must determine an exact quantification of facilities impacted by the proposed freshwater ammonia criteria, and the total costs to each. However this is not required by any regulation or statute, and would be an absurd interpretation of applicable law. LDEQ can only reach a final determination regarding the inclusion of an ammonia-nitrogen permit limit through a final permitting action after a full, complete, and careful review of information submitted by each individual facility.

LDEQ appropriately identified the approximate number of facilities that may be potentially affected in the FEIS for WQ114, noting that not all potentially affected facilities will have ammonia-nitrogen limits that are more stringent than the existing permit limits, or will have limits where no ammonia limits are included in the existing permits. The FEIS for WQ114 has been approved and signed by the Legislative Fiscal Office. See La. R.S. 49:961(C).

**COMMENT 10:** LDEQ failed to articulate the benefits of WQ114 and failed to quantify the actual costs of WQ114. At a cost of \$1 billion (LDEQ's admitted cost) to \$9 billion (using a facility's actual estimate of costs and the estimated number of impacted facilities), the benefits of WQ114 need to be extraordinary to outweigh these costs, especially when the mussel population has grown to be ubiquitous, common, widespread, and prevalent without a rule such as

WQ114.

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

RESPONSE 10: See Responses 5, 7 and 8.

COMMENT 11: LDEQ relies on La. R.S. 30:2074(B)(1), which merely provides authority for LDEQ to establish criteria as it “deems necessary or appropriate” to control or abate water pollution. See WQ114: “Authority Note: Promulgated in accordance with R.S. 30:2074(B)(1).” However, this grant of authority is not a mandate or statutory requirement that LDEQ must adopt each and every criterion published by EPA.

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

RESPONSE 11: See Responses 2, 4 and 8.

COMMENT 12: LDEQ has not adequately explained why the adoption of WQ114 is “necessary or appropriate” at this time when forty-eight years have passed without the adoption of any criteria relating to ammonia and when freshwater mussels are currently ubiquitous, common, widespread, and prevalent in Louisiana waters.

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

RESPONSE 12: See Responses 1, 2 and 8.

COMMENT 13: Based on the intensive interaction between LDEQ and EPA which resulted in “significant revisions” to one or more drafts of the rule, LDEQ does not seem to be promulgating WQ114 because it is “necessary and proper.” Instead, it seems LDEQ is promulgating WQ114 because EPA is mandating and directing that LDEQ adopt these provisions.

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

RESPONSE 13: See Responses 1, 2 and 8. LDEQ is delegated authority to administer the National Pollutant Discharge Elimination System



(NPDES) program from EPA, and EPA has oversight of the LDEQ's LPDES program. Pursuant to the NPDES Memorandum of Agreement (MOA) executed between the LDEQ and EPA, effective August 27, 1996, and modified on August 2, 2000, April 28, 2004, and December 29, 2004, EPA provides technical support and assistance to LDEQ in the development of technology-based effluent requirements. EPA also oversees administration of the LPDES program on a continuous basis for consistency with the Clean Water Act and all applicable federal regulations, including EPA guidance and policies.

**COMMENT 14:** LDEQ states that the threats to mussels “have been linked to habitat and flow alteration, invasive species, loss of host fish, increased siltation, and degradation of water quality.” EDMS #14198991, p. 58 of 64. Thus, degradation of water quality, which WQ114 purports to address, is only one of six threats. ... LDEQ should pursue other, less costly alternatives to address the other five threats before and/or instead of pursuing the most expensive alternative.

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

**RESPONSE 14:** See Responses 1, 2 and 8.

**COMMENT 15:** LDEQ is, in essence, simply adopting EPA's Freshwater Criteria and generally repeating information from the April 2013 Report. Regardless, there is no need to adopt the Freshwater Criteria to “conform” to Clean Water Act Section 303 or maintain and protect state waters. ... Adoption of the Freshwater Criteria is not necessary to “conform” to Clean Water Act Section 303, 33 USC §1313. First, Clean Water Act Section 303(c)(1) relates to the triennial review of water quality standards. However, other than holding public hearings and providing the results of the review to EPA, it does not mandate or require the adoption of any water quality standards. At best, it merely requires adoption “as appropriate.” LDEQ cannot ‘bootstrap’ adoption of the Freshwater Criteria on this provision; instead, LDEQ must clearly establish that adoption is “appropriate” pursuant to state law.

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

RESPONSE 15: See Responses 1, 2 and 8.

COMMENT 16: The LDEQ Secretary authorized or approved WQ114 on April 12, 2024. EDMS #14283113. The approved version of the WQ114 was submitted to the Legislature on April 18, 2024. EDMS #14283139. However, on or about April 25, 2024, WQ114 was substantially revised and the revised version was sent to the Legislature. EDMS #14283141. However, there is no record that the LDEQ Secretary approved the revision as submitted to the Legislature. Only Ms. Laura Almond of the LDEQ is noted in the transmission of the revised version of WQ114.

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

RESPONSE 16: The document cited by the commenter, EDMS Document No. 14283113, is the Request to Initiate Rulemaking Activity form, an internal form within LDEQ to initiate a requested rulemaking. This form is for internal use to provide relevant information to LDEQ's regulation development staff. After this form is completed, LDEQ staff work internally to prepare a draft proposed rulemaking.

Once complete, a Fiscal and Economic Impact Statement and a La. R.S. 30:2019(D) Determination were submitted to the Louisiana Legislative Fiscal Office, in accordance with La .R.S. 49:961(C)(1) and (2) and La. R.S. 30:2019(D). LDEQ also sent the notice of intent and the rule language to the Louisiana Legislative Fiscal Office, to facilitate their review. LDEQ later submitted updated rule language with non-substantive changes to the Louisiana Fiscal Office.

Simultaneously, LDEQ submitted the La. R.S. 30:2019(D) Determination to the Joint Legislative Committee on the Budget for its approval, in accordance with La. R.S. 30:2019(D). To facilitate the Committee's review, LDEQ also sent the notice of intent, the proposed rule, and the fiscal and economic impact statement to the Joint Legislative Committee on the Budget. LDEQ also submitted the updated rule language with non-substantive changes to the Joint Legislative Committee on the Budget, as a courtesy.

There have been no changes to the La. R.S. 30:2019(D) Determination since its initial simultaneous submission to the Louisiana Legislative Fiscal Office and the Joint Legislative Committee on the Budget on April 18, 2024 in accordance with La.

R.S. 30:2019(D). The final proposed rule language, signed by the Secretary of the Louisiana Department of Environmental Quality, was submitted to the Louisiana Division of Administration, Office of the State Register (Louisiana Register).

**COMMENT 17:** WQ114 includes a Fiscal and Economic Impact Statement. See 50 La. Reg. 715-716 (May 20, 2024). Additionally, WQ114 (as it appears on LDEQ's web-site) includes a Fiscal and Economic Impact Statement For Administrative Rules and a Fiscal and Economic Impact Statement Worksheet, which do not appear in the Louisiana Register.

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

**RESPONSE 17:** LDEQ gave notice of its intention to adopt WQ114, and a copy of the proposed rule to the Louisiana Register, in accordance with La. R.S. 49:961. The Louisiana Register determines what information should be published in the register.

Pursuant to La. R.S. 49:961(A)(2)(b) and (c), the notice submitted to the Louisiana Register must include a statement by the Legislative Fiscal Office on whether the proposed action will result in a fiscal or economic impact. La. R.S. 49:961(A) does not require the submission of the Fiscal and Economic Impact Statement Worksheet, which is prepared for use by the Louisiana Legislative Fiscal Office in accordance with procedures, available at <https://lfo.louisiana.gov/files/forms/FEISinstructions.pdf>.

**COMMENT 18:** LDEQ's fiscal impact analysis is inadequate. LDEQ states that there are no "estimated costs or savings to the state." ... LDEQ's permit reviewers will have to review survey plans, interact with EPA regarding survey plans, approve survey plans, review survey results, and incorporate such findings into an individual permits.

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

**RESPONSE 18:** LDEQ found that there were no anticipated increases in costs to implement the proposed action, and that there are currently sufficient funds to implement the proposed rule change as part of completing the Fiscal and Economic Impact Statement Worksheet. LDEQ's FEIS was reviewed and approved by the Louisiana Legislative Fiscal Office. See La. R.S. 49:961(C).

COMMENT 19: LDEQ's economic impact analysis is woefully inadequate. ... LDEQ must identify each segment of dischargers that will be affected by WQ114 (e.g., POTWs, refineries, food processors, fertilizer manufacturers, etc.), pick a representative number from each segment, and apply the discharge limits (based on mussel-present and mussel-absent formulas) to be imposed under WQ114. Then, LDEQ must determine the costs to those facilities to install technology to meet those new limits. Those costs, once extrapolated to each facility within each segment, can only then provide a true representation or estimate of the actual costs of WQ114.

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

RESPONSE 19: LDEQ is an environmental regulatory agency. LDEQ's Strategic Plan requires the Department provide comprehensive environmental protection while conducting programs that are consistent with sound policy for employment and economic development. However, LDEQ is not an economic development agency and is not responsible for maintaining cost information. LDEQ solicited information from affected facilities for consideration through publishing 2203Pot1 and through subsequent stakeholder meetings. See Response 7.

The commenter outlines various suggested methods for estimating economic impact costs, however these methods are not required by any regulation or statute. LDEQ appropriately analyzed the estimated implementation costs to state or local governmental units, estimated effects on revenue collections of state or local governmental units, estimated costs and/or economic benefits to directly affected persons, small businesses, or non-governmental groups, and estimated effects on competition and employment. The FEIS for WQ114 was based on the information received, and has been approved and signed by the Legislative Fiscal Office. See La. R.S. 49:961(C).

COMMENT 20: LDEQ also does not anticipate any impact on competition or employment. However, a small business and/or a business that operates with low profit margins may not be able to afford the "significant" costs ... to install new treatment technology, even if a three-year compliance schedule is allowed. Those businesses will be forced to close, restricting both competition and employment.

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

RESPONSE 20: See Response 19. Also see Response 22.

COMMENT 21: The Notice of Intent must include a “preamble explaining the basis and rationale for the intended action and summarizing the information and data supporting the intended action.” La. R.S. 49:961(A)(2)(g). In WQ114, LDEQ expanded on its explanation for the proposed rule compared to WQ112. However, as noted above, WQ114 simply states that the basis and rationale it is “to conform to Section 303 of the Clean Water Act and to maintain and protect state waters.” There is no explanation of how WQ114 conforms to Clean Water Act 303 or how WQ114 maintains or protects state waters in any way that protects mussels or the designated use of Fish and Wildlife Propagation.

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

RESPONSE 21: See Responses 1 and 2. The Notice of Intent for WQ114 includes a preamble explaining the basis and rationale for the rule, as recognized by the commenter. Specifically, the Notice of Intent states that “[t]he basis and rationale for this proposed rule are to conform to Section 303 of the Clean Water Act and to maintain and protect state waters.” The Notice of Intent also explains that “LDEQ has the regulatory obligation to evaluate and adopt, where appropriate, federally recommended water quality criteria” and that WQ114 “will adopt and clarify the applicability of the freshwater ammonia criteria.” The Notice of Intent for WQ114 satisfies all requirements established by La. R.S. 49:961.

COMMENT 22: The Notice of Intent merely states: “This Rule may have an impact on small business as described in R.S. 49:974.1 - 974.8. Directly affected permittees may incur costs associated with monitoring, treatment of wastewater prior to discharge, and reporting.” The statement is misleading in that it claims that permittees “may” incur costs. However, the Small Business Analysis (found at EDMS #14283103, pp. 2 - 4 of 8) very clearly concludes that permittees will incur costs. Further, the statement severely understates the profound impacts WQ114 will have on small businesses. LDEQ has characterized the costs as “significant” and which could cost at least between \$157 million to \$1 billion to implement. Indeed, using

LDEQ's own information and/or information in its possession, it could cost up to \$9 billion.

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

RESPONSE 22: See Responses 5, 7 and 19. LDEQ included all information available to the Department in terms of impacts to small businesses in the Small Business Analysis Form. LDEQ also included information regarding costs and/or economic benefits to directly affected persons, small businesses, or nongovernmental groups as part of completing the Fiscal and Economic Impact Statement Worksheet. LDEQ's FEIS was reviewed and approved by the Louisiana Legislative Fiscal Office. See La. R.S. 49:961(C).

COMMENT 23: While LDEQ addresses testing and monitoring, it fails to address the administrative costs of the mussel survey it touts as the alternative to the default mussel-present formula. In order to prove that the mussel-present formula should not apply, LDEQ mandates that a mussel survey be conducted "which must be consisted with the LDEQ's prescribed survey methodology outlined" in the revised WQMP, Vol. 3. See EDMS #1419899, p. 58-63 of 64. Thus, in order to escape the default mussel-present formula, a permit applicant must conduct the expensive and time-consuming survey. LDEQ does not even mention the costs to a permittee / permit applicant of such a survey.

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

RESPONSE 23: Any person who discharges, or proposes to discharge pollutants must submit a complete permit application to the LDEQ in accordance with Louisiana's Water Quality Regulations. See LAC 33:IX.2501.A. A permit applicant may need to conduct a mussel survey as part of preparing an application for an LPDES permit. Conducting a mussel survey may incur an additional cost, however, a survey is a one time cost to the entity conducting the survey as part of its permit application. Further, the permit applicant is already required by existing regulation to provide, at LDEQ's request, any other information that LDEQ may require to determine whether to issue an LPDES permit. See LAC 33:IX.2501.F.13.

COMMENT 24: LDEQ must provide a "description of any less intrusive or less costly alternative methods of achieving the purpose of the

proposed rule.” LDEQ failed to do so. It did not consider the no-action alternative to avoid these “significant” costs to small businesses. Additionally, LDEQ clearly considered other options that are not described. LDEQ admits that it “vetted all possible options with EPA Region 6.” EDMS #14283103, p. 4 of 8. However, LDEQ does not include any description of the other options.

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

**RESPONSE 24:** The options vetted with EPA Region 6 are included in the presentation slides and emails in EDMS under AI number 234719. EPA has stated that the freshwater ammonia criteria originally promulgated as part of WQ097 remains the applicable criteria unless and until it is superseded by a revised criteria that has been approved or promulgated by the EPA. See EDMS Document No. 13418996. Accordingly, a “no action alternative” was not a viable option. Also see Response 2 and 8.

A “no action alternative” on the part of LDEQ would prompt EPA action, which could potentially include, but is not limited to, disapproval of LDEQ’s water quality revisions pursuant to 40 C.F.R. § 131.21 and 131.22, objections to draft LDEQ permits pursuant to 40 C.F.R. § 123.44, federal promulgation of criteria on behalf of the state pursuant to 40 C.F.R. § 131.22(b), or revocation of LDEQ’s delegation to implement the NPDES program. Also see Response 2 and 8.

**COMMENT 25:** The Notice of Intent must include the “small business regulatory flexibility analysis required by R.S. 49:974.5.” La. R.S. 49:961(A)(2)(h)(iv). The Small Business Protection Act requires that LDEQ “shall prepare a regulatory flexibility analysis in which the agency shall, where consistent with health, safety, environmental, and economic welfare, consider utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small businesses.” La. R.S. 49:974.5(A). It then set forth specific “methods of reducing the impact of the proposed rule on small businesses” which LDEQ “shall consider.” *Id.* The Notice of Intent itself is completely silent as to any regulatory flexibility analysis and certainly does not address each specific method mentioned in Section 49:974.5 to reduce the impact of the proposed rule on small businesses.

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

RESPONSE 25: LDEQ completed a Small Business Regulatory Flexibility Analysis Form as part of the draft rule package for WQ114. See EDMS Document No. 14283103.

COMMENT 26: However, as noted above, LDEQ did not address the no-action alternative or describe the other options it claims to have vetted with EPA Region 6. Further, the analysis is simply a description of the chosen option (i.e., conduct a survey in an attempt to obtain the mussel-absent formula); it does not analyze various options or flexibility available to LDEQ.

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

RESPONSE 26: See Responses 2, 8 and 24.

COMMENT 27: LDEQ must publish a "statement identifying the specific risks being addressed by the policy, standard, or regulation and any published, peer-reviewed scientific literature used by the department to characterize the risks." La. R.S. 49:963(B)(1)(a). LDEQ does not explain the specific risks being addressed by WQ114. At no time does LDEQ even suggest that freshwater mussels in general and the Unionid mussel species in particular have been impacted, or are being impacted, by the level of ammonia discharged over the years or by a lack of any ammonia criteria over the last forty-eight years. Further, there is no statement that the Freshwater Criteria would preserve or protect a single mussel, a Unionid species of mussel, or any other species of mussel.

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

RESPONSE 27: LDEQ was in compliance with the requirements of La. R.S. 49:963(B)(1)(a), through publishing a report in accordance with this section in Potpourri Notice 2405Pot4. LDEQ recognized that the freshwater ammonia standard was developed to protect public health and welfare, to protect aquatic species and to enhance overall quality of surface waters. Further, LDEQ recognized its responsibility to review, establish, and revise water quality standards. LDEQ also referred to appropriate scientific literature, including EPA's final nationally recommended ambient water quality criteria for the protection of aquatic life from the effects of ammonia in freshwater, and supporting and related material



published by the EPA.

**COMMENT 28:** LDEQ must also conduct a “comparative analysis of the risks addressed by the policy, standard, or regulation relative to other risks of a similar or analogous nature to which the public is routinely exposed.” La. R.S. 49:963(B)(1)(b). LDEQ states that there are “no risks of a similar or analogous nature comparable to the toxic component of ammonia in surface waters” based on the prevalence of the discharge of ammonia into surface waters. Of course, as noted above, LDEQ failed to identify the specific risks to mussels to be addressed by WQ114 so it difficult to compare a non-stated specific risk to other risks of a similar or analogous nature. Even so, LDEQ does not explain why it waited forty-eight years to propose ammonia criteria or how the Freshwater Criteria will save or preserve freshwater mussels.

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

**RESPONSE 28:** LDEQ was in compliance with the requirements of La. R.S. 49:963(B)(1)(b), through publishing a report in accordance with this section in Potpourri Notice 2308Pot1. First, LDEQ appropriately discussed risks addressed by the standard pursuant to La. R.S. 49:963(B)(1)(a). See Response 27. LDEQ recognized that no risks of a similar or analogous nature are comparable to the toxic component of ammonia in freshwater. Unlike other toxic pollutants regulated by LDEQ, the risk posed by ammonia is ubiquitous as it is a common toxic pollutant discharged by all municipal treatment works and a large number of industry types. No other toxic criteria adopted by LDEQ are as prevalent in wastewaters discharged into waters of the state.

**COMMENT 29:** LDEQ must also conduct an “analysis based upon published, readily available peer-reviewed scientific literature, describing how the proposed and final policy, standard, or regulation will advance the purpose of protecting human health or the environment against the specific identified risks.” La. R.S. 49:963(B)(1)(c). LDEQ does not describe or analyze how WQ114 advances the purpose of protecting human health or the environment against “specified identified risks.” LDEQ does not identify specific risks and so cannot explain how WQ114 advances protections against those specific risks. Further, although LDEQ states that the performance-based approach “provides the required protection,” it fails to identify how the Freshwater Criteria protects any mussel species, why the

Freshwater Criteria are required for protection when the survey shows that no mussels are present (the mussel-absent formula), or the incremental level of protection to mussel species provided by WQ114 from the current level of protection.

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

RESPONSE 29: LDEQ was in compliance with the requirements of La. R.S. 49:963(B)(1)(c), through publishing a report in accordance with this section through Potpourri Notice 2308Pot1. LDEQ noted that Discharge Monitoring Reports (DMRs) submitted by LPDES permitted facilities between January 2016 and December 2021 included ammonia concentration values between 0.1 mg/L and 462 mg/L, with an average value of 4.58 mg/L. Calculations of EPA's nationally recommended ammonia criteria using temperature and pH from Louisiana's Water Quality Monitoring Network indicate that criteria values less than the nationally recommended criteria are often necessary to protect aquatic life. LDEQ found that, based on higher than average surface water temperatures in Louisiana, and available DMR data, controlling ammonia discharges into surface waters is a necessity to meet the requirements of the Clean Water Act.

COMMENT 30: LDEQ must also conduct an "analysis and statement that, based on the best readily available data, the proposed or final policy, standard, or regulation presents the most cost-effective method practically achievable to produce the benefits intended regarding the risks identified in Subparagraph (a) of this Paragraph." La. R.S. 49:963(B)(1)(c). [sic] LDEQ has clearly failed to provide any type of analysis or statement that WQ114 is the most cost-effective solution. In fact, LDEQ states that other options were "vetted" with EPA, but LDEQ completely fails to address those other options.

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

RESPONSE 30: Although incorrectly cited, the commenter has quoted La .R.S. 49:963(B)(1)(d). LDEQ was in substantial compliance with the requirements of La. R.S. 49:963(B)(1)(d), through publishing a report in accordance with this section in Potpourri Notice 2308Pot1.

COMMENT 31: LDEQ "shall consider any scientific and economic studies or data timely provided by interested parties which are relevant to the

issues addressed and the proposed policy, standard, or regulation being considered.” La. R.S. 49:963(B)(5). However, LDEQ did not ask for any comments on 2405Pot2.

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

RESPONSE 31: LDEQ is not required to solicit comments on the report prepared in accordance with La. R.S. 49:963(B). However, LDEQ nevertheless solicited stakeholder input regarding adoption and implementation of the numeric freshwater ammonia criteria, including information regarding treatment options and costs. See Potpourri Notice 2203Pot1. LDEQ also held a series of stakeholder meetings, which are document in LDEQ’s EDMS under Agency Interest (AI) number 234719. See EDMS Document No. 13387099 and 13513996. Further, as this commenter demonstrates, members of the public were able to raise concerns regarding the report prepared in accordance with La. R.S. 49:963(B) in comments on this proposed rule, and were able to attach any scientific or economic studies or data for LDEQ’s consideration.

COMMENT 32: LDEQ failed to identify a single environmental or public health benefit to be derived from WQ114. This purported assessment in 2405Pot4, at 50 La. Reg. 745 - 747 (May 20, 2024), is a copy of statements made in 2405Pot2. It consists of a restatement of federal regulations, mentions the April 2013 Report, and discusses the formulas to be used. Nowhere in this “assessment” are the environmental and public health benefits discussed or assessed.

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

RESPONSE 32: See Responses 1, 2, 27, 28 and 29.

COMMENT 33: LDEQ failed to identify the costs to “all persons.” ... LDEQ leaves out its own estimate of costs to install treatment technology, admits that there are facilities “not yet identified” that will be impacted by WQ114, and admits that “data is not available.” Because it did not include its own estimate of costs or identify all facilities, it failed to provide an estimate of the economic costs to “all persons.”

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

RESPONSE 33: See Response 7 and 9.

COMMENT 34: In adopting water quality criteria for toxic pollutants, LDEQ “must review water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use.” 40 CFR §131.11(a)(2); emphasis supplied. Under this provision, LDEQ must “identify specific water bodies.” WQ114 fails to adhere to this requirement. Instead of identifying “specific water bodies,” LDEQ applies the Freshwater Criteria, through either the mussel-present or mussel-absent formula, even though LDEQ is well aware that mussels are not present in many waterbodies.

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

RESPONSE 34: LDEQ has proposed and adopted a performance-based approach for application of freshwater ammonia criteria. This method of adoption and application of water quality criteria is supported by EPA. See 65 FR 24641, Docket Number FRL-6571-7. Also see Responses 1, 2 and 36.

COMMENT 35: Proposed Water Quality Management Plan, Vol. 3, references at least three documents: the Technical Support Document for Water Quality-based Toxics Control, the Technical Support Document for Conducting and Reviewing Freshwater Mussel Occurrence Surveys for the Development of Site-Specific Water Quality Criteria for Ammonia, and the EPA Review and Approval of State and Tribal Water Quality Standards, 65 Fed. Reg. 24641 (April 27, 2000). See EDMS #14198991, pp. 7 of 64 and 63-64 of 64. LDEQ very clearly states that it will rely on these three documents to implement WQ114. However, none of these documents have been included within a Notice of Intent or submitted to the Louisiana Register. La. R.S. 49:961(A)(3): “The notice ... shall be submitted with a full text of the proposed rule to the Louisiana Register at least one hundred days prior to the date the agency will take action on the rule.” Each of the documents meet the definition of a “rule” within the meaning of the Administrative Procedure Act. La. R.S. 49:951(8). Each an agency statement, guide, or requirement for conduct or action which have general applicability and the effect of implementing or interpreting substantive law or policy, or which

prescribes the procedure or practice requirements of the agency. As such, they must be published in the Louisiana Register.

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

RESPONSE 35: The criteria were proposed based on the recommendation of, and literature reviewed by, the EPA. In 2013, EPA published final national recommended water quality criteria for the protection of aquatic life from the toxic effects of ammonia in freshwater. The reference used in developing the criteria was cited in the draft rule, under §1117.A.17: Aquatic Life Ambient Water Quality Criteria for Ammonia-Freshwater 2013. Office of Water. EPA 822-R-18002. The reference used in developing the mussel survey was included in the draft revision to the Water Quality Management Plan (WQMP), Volume 3, *Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards*. The following citation was included in Section 3.B: *Technical Support Document for Conducting and Reviewing Freshwater Mussel Occurrence Surveys for the Development of Site-specific Water Quality Criteria for Ammonia*. (EPA-800-R-13-003). All literature citations that were used in the development of the mussel survey procedures are included in Appendix H.

The full text of the proposed rule has been submitted to the Louisiana Register. The rule cites to reference documents, including documents promulgated by EPA in the federal register. The text of the referenced documents are not part of the text of LDEQ's proposed rule and are not required to be published in the Louisiana Register.

COMMENT 36: LDEQ has failed to explain why, after a survey is conducted which shows no mussels in the receiving water body, a permittee / permit applicant is required to have any ammonia limits based on the mussels-absent formula. There is no need for the mussel-absent formula to be applied when there are in fact no mussels present. The costs to treat water discharges to the limits resulting from the mussels-absent formula is still "significant."

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

RESPONSE 36: Two sets of ammonia criteria formulas are included in the rule. One set is protective of the most sensitive Unionid mussel species. The second set is protective of the most sensitive freshwater fish

species, when Unionid mussels are proven absent. All aquatic species are provided protection under the Clean Water Act and Louisiana's Water Quality Standards. See Responses 1 and 2.

EPA's freshwater ammonia criteria development documents provides the states with the opportunity to adopt water quality criteria that are "...modified to reflect site-specific conditions." The mussels-absent formula is intended to be protective of aquatic life other than mussels. The mussels-absent formula, coupled with the performance-based approach, provides LDEQ a method for calculating site-specific criteria when a survey has indicated no Unioniid mussels are present, and have not been present since November 28, 1975. The mussels-absent formula removes the most sensitive species from the formula, which "could result in criteria (and associated water quality-based effluent limits (WQBELs) based on such criteria) with higher concentrations than EPA's recommendations but that are still protective of the designated use." See EPA 822-R-18-002, Appendix N. LDEQ is required to adopt and implement water quality criteria that are protective of the designated uses. Fish and Wildlife Propagation is a designated use for nearly all of Louisiana's surface waters.

COMMENT 37: LDEQ indicates that the Technical Support Document for Water Quality-based Toxics Control, Section 5.4.2, and the formula at Proposed Water Quality Management Plan, Vol. 3, p. 6 (EDMS #14198991, p. 8 of 64), will be used in the reasonable potential analysis. That formula includes only effluent flow, upstream flow, downstream concentration, and upstream concentration (assumed to be zero). At the very least, the formula does not include "existing controls" or the "variability of the pollutant ... in the effluent." The formula does not "account for" all three of the requirements in Section 2707.D.1.b. As a result, the reasonable potential analysis for application of the Freshwater Criteria in Proposed Water Quality Management Plan, Vol. 3, does not conform to this requirement and is in violation of that provision.

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

RESPONSE 37: The equation used to evaluate ammonia in the *Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards* is considered a steady-state model which projects the impact of the effluent on the receiving water under a single or steady set of design conditions. The specific steady-state model used is referred to as a mass-balance equation and was

selected based on the determination that there is rapid and complete mixing of the receiving stream. For protection of water quality, the model is run under a single set of conditions, referred to as critical conditions. The use of critical conditions requires certain factors that are accounted for in the formula, receiving water flow (1Q10 and 30Q10), the receiving water background concentration (assumed to be zero), effluent flow, and effluent concentration (from data or technology based limitations), and a mixing zone fraction ( $F_s$ ) which accounts for dilution allowance and mixing at the edge of the mixing zone. The commenter is correct in stating that there are multiple methods described that can be used when determining reasonable potential. However, it is not feasible to apply different methods based on industry and/or discharge type, etc. As with the evaluation of other parameters that is discussed in the *Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards*, one particular method was determined to be the most appropriate method for the pollutant being evaluated. This ensures a consistent approach.

The commenter is also correct in stating that regulations require existing controls, variability of effluent, and dilution of the receiving waterbody be taken into account as part of reasonable potential analysis procedures. However, it should be noted that evaluation of those items does not always take place as part of reasonable potential analysis calculations. While evaluation of each of those items may not be included as a calculation, it does occur as part of the permitting process in order to determine the necessity of reasonable potential analysis calculations are required. The equation used is the final step in determining if water quality-based limitations are required to protect the receiving waterbody.

Effluent variability can include compliance history and toxic impacts of the discharge. This information can be presented in the form of discharge monitoring report (DMR) reviews, reviews of any toxicity testing the facility has conducted, and any other information provided by the applicant that is determined applicable (treatment type, analytical data, flow data, etc.). Point source and nonpoint source controls can include existing treatment technology, industry type, and any best management practices (BMPs) implemented at the facility. Dilution of the receiving waterbody is taken into account via the mixing zone fraction ( $F_s$ ) that is part of the equation used. This information is taken directly from LAC 33:IX.1115.Table 2a. Appropriate dilution and mixing zone application in this table is stated as a fraction of flow (i.e. mixing zone fraction) for protection of aquatic life. The critical flow of the receiving stream (1Q10 and 30Q10), which are defined in the equation as  $Q_s$ , are also factors

taken into account when considering dilution and mixing.

Based on the information provided above, LDEQ believes that the reasonable potential analysis procedure is in compliance with state and federal regulations.

**COMMENT 38:** LDEQ will utilize the mussel-present formula “for receiving streams with site-specific data indicating the presence, historical or current, of unionid mussels.” Id. First, “if unionid mussels are documented as being present on or after November 28, 1975, the mussels present formulas will be utilized.” Id. Second, “if unionid mussel presence data collected prior to this date are also available, such data will also become a basis to utilize mussel present formulas.” Id. Indeed, even in “the absence of any site-specific unionid mussel presence/absence data,” mussel present formula will be used. Id.; emphasis in original. Thus, if unionid mussels have ever been documented in a water body, there is no opportunity to conduct a mussel survey. LDEQ states that it will utilize the Louisiana Department of Wildlife and Fisheries mussels list and fact sheets to determine the historical presence of mussels.

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

**RESPONSE 38:** As stated in Appendix H, the Mussels Survey Protocol: “The LDEQ is required to establish water quality criteria that are protective of designated uses, which may also be existing uses. Existing uses are those uses actually attained in the water body on or after November 28, 1975 (40 C.F.R. § 131.3(e)). Pursuant to 40 C.F.R. § 131.10(g) and (h), existing uses may not be removed.” Any documented presence of Unionid mussels is considered an “existing use”, even if mussels are not currently present. LDEQ is required to adopt criteria and procedures that are compliant with the Clean Water Act and federal regulations.

**COMMENT 39:** LDEQ has made the preparation and approval of a survey plan expensive, time-consuming, and generally beyond the reach of any small business or entity other than a large industrial facility. ... These provisions inhibit and hinder the ability to even conduct a survey. The requirements imposed by LDEQ to prepare the plan and conduct the survey are cost-prohibitive. In addition, finding a person who has the requisite qualifications and experience (which must include “expert knowledge of species habitat and life history for Unionida mussel species present in Louisiana”) will be difficult



and the cost to retain such a person will come at a premium. Further, retaining a mussel-absent designation requires ongoing efforts year after year.

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

RESPONSE 39: LDEQ reviewed EPA guidance and other state implementation procedures prior to determining a performance-based approach was an acceptable alternative to assuming Unionid mussels are and/or were present in all Louisiana surface waters, including ditches, ponds, drainage canals, etc. (see full definition of *Waters of the State* in LAC 33:IX.1105). Although LDEQ recognizes there will be a cost associated with conducting a survey, a one-time cost would be a preferred option to unnecessarily stringent limits, for which a permitted facility may require additional treatment and/upgrades for the life of the facility. Also see Response 23.

COMMENT 40: After the survey, a report “must be submitted to the LDEQ for review and approval.” However, LDEQ has established no parameters, criteria, or other conditions in Appendix H, or elsewhere in WQ114, to guide LDEQ in its decision to approve or reject the results of the survey. WQ114 contains no provision or standards which would serve to limit the exercise of LDEQ’s unbounded discretion in deciding whether to approve the mussel survey and apply the mussel-absent formula. This blatant gap “permit[s] arbitrary action by” LDEQ and allows LDEQ to exercise “unfettered” discretion. *Mid-City Automotive*, 267 So.3d at p. 177 and p. 178.

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

RESPONSE 40: A “performance-based” approach will be used to determine the application of the appropriate freshwater ammonia criteria formulas (see 65 FR 24641, Docket Number FRL-6571-7) based on the current or historical presence or absence of Unionid mussels. A performance-based approach relies on the adoption of a process rather than a specific outcome and does not require site-specific decisions to be codified in the regulations, so long as the process is transparent, predictable, and repeatable and also provides the opportunity for public participation. Survey plans that are designed and implemented in accordance with Appendix H will yield either affirmative or negative results in terms of mussel presence or absence. The determination of presence or absence will be based

solely on the data collected, verified and presented to LDEQ. The purpose of a performance-based approach is to ensure a clear answer and remove the potential for any subjective or arbitrary decisions.

**COMMENT 41:** LDEQ has quietly given EPA un-reviewable veto-power over the survey plan, survey approval, and application of the mussel-absent formula. The use of the veto by EPA is not subject to judicial review in Louisiana. EPA is not subject to jurisdiction in the Division of Administrative Law or state courts. Further, in any attempt at judicial review in Louisiana, LDEQ will simply argue that it is EPA that made the decision to not allow the use of the mussel-absent formula. It is also unlikely that the EPA's basis for the veto will be in the administrative record. ... As a result, LDEQ has ceded control of its permit program to EPA to dictate the contents of a survey plan, the approval of a survey plan, and whether the mussel-absent formula may be used.

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

**RESPONSE 41:** EPA has delegated the authority to administer the NPDES program to LDEQ. As such, EPA has oversight and authority over LDEQ's program. The National Pollutant Discharge Elimination System Memorandum of Agreement (MOA) executed between the LDEQ and EPA, effective August 27, 1996, and modified on August 2, 2000, April 28, 2004, and December 29, 2004, lays out both agency's responsibilities in implementing the LPDES program. In accordance with Section III.E.2.a.(iv), EPA will review all preliminary draft permits and major permit modifications for any discharger classified as a major source. EPA has 30 days to review, comment, approve, make recommendations or object to a preliminary draft permit. In accordance with the MOA Section III.K, EPA has waived the right to review other types of permits, with a few exceptions. However, EPA may revoke the waiver, in writing, at any time. Further, pursuant to 40 C.F.R. § 123.44, EPA has the power to comment on, and object to, any LPDES permit issued by LDEQ. After issuing an objection, EPA sets forth in writing the reasons for the objection, and the actions that must be taken by LDEQ, including effluent limitations and conditions that the permit would include, if the permit were issued by EPA instead. See 40 C.F.R. § 123.44. If EPA's concerns are not satisfied, then LDEQ may not issue the permit, and exclusive authority to issue the permit vests with EPA. See 40 C.F.R. § 123.44(h)(3).

**COMMENT 42:** First, the Associations object to the Proposed Rule in that its effective date does not provide impacted facilities with adequate time to take the necessary steps to achieve compliance with the new standard. The Proposed Rule's effective date is "upon promulgation." This date contemplates that facilities may have as little as 90 days to achieve compliance. The Associations recognize that LDEQ's proposed revisions to Volume 3 of the Water Quality Management Plan ("WQMP") provide that individual permittees may enter into compliance schedules in order to allow for adequate time to comply with the new standard. However, this is not reflected in the text of the Proposed Rule. The Associations therefore request that the Proposed Rule be amended to provide for the availability of compliance schedules and related procedures.

**FOR:** The proposed rule should be amended to include compliance schedules.

**AGAINST:** Amending the rule is not necessary, as the water quality standards regulations (LAC 33:IX, Chapter 11) and the revised WQMP, Volume 3 already provide adequate provisions.

**RESPONSE 42:** LDEQ has included options for impacted facilities to request longer compliance schedules in the revised WQMP, Volume 3. Additionally, impacted facilities may consider applying for a water quality standards variance, in accordance with LAC 33:IX.1109.E. A water quality standards variance may be adopted on a discharger-specific or water-body basis. The existing regulations provide provisions for impacted dischargers to address site-specific conditions. Further amendments to the rule are not required.

**COMMENT 43:** Where it is determined that the more stringent criteria must be met, facilities operated by Association members or by public water systems that serve Association members may experience operational impacts such as additional staff hours, the need for greater engineering and planning, and disparate costs associated with the purchase, installation, and maintenance of control technology. For example, current treatment units may require substantial changes to meet the new criteria, particularly in nitrification/denitrification units. Small wastewater systems still using lagoon-based treatment will incur additional costs due to the required construction of mechanical plants to achieve the more stringent levels. The requirements of the WQMP for the Mussel Survey Performance Based Approach alone presents logistical challenges, such as retaining a surveyor with the required

qualifications and experience and the requirement for two sampling events per year to be conducted.

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

RESPONSE 43: See Responses 39 and 42.

COMMENT 44: The Associations also request that the Proposed Rule be amended to provide an exception for disinfection processes at facilities. Lower ammonia concentrations will adversely affect chloramination used for disinfection, making it less effective to the point where it may no longer meet disinfection requirements. This will particularly affect municipalities that engage in water treatment, upon which Association members rely. Further, many of these municipalities will likely be impacted by the rule due to the low flow areas of adjacent waterbodies. Further, for some wastewater utilities that are involved in reuse projects, the generation of disinfection byproducts prevents them from using free chlorine. If chloramination is rendered ineffective by the lower ammonia levels, ultraviolet disinfection will need to be used, which is more expensive to implement and requires more electric power.

FOR: The proposed rule should be amended to provide an exception for disinfection processes.

AGAINST: No changes are necessary.

RESPONSE 44: See Responses 39 and 42. Ammonia is not recognized as a pollutant of concern in the filter backwash discharges from Potable Water Treatment facilities and therefore these discharges are not expected to be affected by this rule.

COMMENT 45: However, as written, the Proposed Rule is unduly broad. It states that the new criteria will apply "to all freshwater water bodies" (i.e., by default) unless a mussel survey is completed and shows that Unionidae mussels are absent. However, this is inconsistent with LDEQ's proposed revision to Volume 3 of the Water Quality Management Plan ("WQMP"), which provides that site specific data will first be used to determine whether to apply to 'mussels present' formulas, and that the formulas will be used by default "in the absence of site specific data." The Associations therefore request that the Proposed Rule at §1113(7)(a)(i) be amended in accordance with the WQMP Proposed Revisions that the mussels

present formula apply “in the absence of site specific data.”

FOR: § 1113(7)(a)(i) of the proposed rule should be amended to clarify the mussels-present formula applies in the absence of site-specific data.

AGAINST: No changes are necessary.

RESPONSE 45: Due to the extensive distribution of unionid mussels in Louisiana, the mussels-present criteria will be used as the default criteria, unless it can be demonstrated through a mussel survey that no mussels are present, or have historically been present. WQMP, Volume 3 includes specific procedures for conducting a mussel survey.

COMMENT 46: Regarding mussel surveys, the Proposed Rule provides that a mussel survey may be completed to demonstrate that mussels are not present at a site. While the proposed Appendix H of the WQMP provides the procedural steps for conducting a mussel survey, the Proposed Rule does not reference the WQMP process. The Associations comment that the Proposed Rule should be revised to clearly state that mussel surveys should be conducted consistent with the WQMP Appendix H process to avoid unnecessary confusion for regulated entities.

FOR: The proposed rule should be amended to reference Appendix H.

AGAINST: No changes are necessary.

RESPONSE 47: A reference to the WQMP was included in the draft rule, and remains in the final rule. Section 1115.D.1 states “The application of the appropriate ammonia criteria formula in development of permit limitations will be determined using a performance-based approach as described in the state’s Water Quality Management Plan (WQMP), Volume 3, Permitting Guidance Document for Implementing Surface Water Quality Standards, Appendix H.”

COMMENT 47: The Proposed Rule further provides, “[t]he mussels absent formulas, [...], may be utilized in permit implementation after satisfactory completion of a mussels survey indicating no evidence of historical or current presence of mussels of the Unionidae family, and with approval from both the administrative authority and EPA” (emphasis added). The Associations object to this provision as proposed. In particular, the Proposed Rule does not define what is

considered “historical” and could therefore be construed to broadly mean any potential habitat of mussels rather than mussels that are or were actually present in the waterbody. The Associations therefore request that the Proposed Rule be revised to define “historical presence” as evidence that mussels physically inhabited a waterbody, such as the presence of live specimens or spent shells, conforming with the WQMP Proposed Revisions.

FOR: “Historical presence” must be defined in the rule.

AGAINST: “Historical presence” is already defined in the implementation procedures, and including a definition in the rule is unnecessary.

RESPONSE 47: Existing uses are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in water quality standards (40 C.F.R. § 131.3 (e)). Pursuant to 40 C.F.R. § 131.10(g) and (h), existing uses may not be removed. Therefore, if unionid mussels are documented as being present on or after November 28, 1975, the mussels-present formulas will be utilized. For the purposes of this performance-based approach, presence is defined as the existence of live mussels, mussel tracks, recently dead mussels’ shells, unweathered shells, and/or historical presence data. Historical presence includes records in any database, in any published and unpublished literature, as well as the existence of only weathered or sub-fossil shells without evidence of live mussels. The above descriptions of presence and historical presence are outlined in the proposed Appendix H of WQMP, Volume 3, which is referenced in the rule. Therefore, inclusion in the rule language itself is not required or necessary.

COMMENT 48: The Proposed Rule, § 1105, provides for the addition of low flow criteria – 1Q10 and 30Q10. Currently, the only similar flow criteria contained in § 1105 is 7Q10. The WQMP provides equations for determining the value of 7Q10 flow calculation based on region.18 However, there are no similar equations for 1Q10 and 30Q10 in the proposed revisions. The Associations request that DEQ clarify whether similar region-specific formulas are applicable for 1Q10 and 30Q10 flows.

FOR: Equations for the 1Q10 and 30Q10 should be included in the WQMP, Volume 3.

AGAINST: Equations for the 1Q10 and 30Q10 are not necessary.

RESPONSE 48: Section C. of WQMP, Volume 3, Critical Flow and Harmonic Mean

Flow Determinations describes several methods of determining low flow. Specifically, for low flow calculations in non-tidal streams, Section C states the use of Technical Report 70 “Low-Flow Characteristics of Louisiana Stream” or Technical Report 75 “Analysis of the Low-Flow Characteristics of Streams in Louisiana”. The WQMP, Volume 3 does not include the specific equations for calculating low flow, as the equations are a statistical analysis for a given period (i.e. consecutive days) over a certain recurrence time interval (i.e. years). The methods and equations for calculating a 1Q10 and 30Q10 utilize the same method with different periods. The equations referenced by the commenter refer to calculation of regional values using drainage area, annual precipitation, and channel slope for ungagged sites. These equations have not been adapted to the calculations of 1Q10 and 30Q10, and therefore, are not appropriate to include in the WQMP, Volume 3 at this time.

**COMMENT 49:** The Associations agree with the Fiscal and Economic Impact Statement for the Proposed Rule, which provides that “the costs for installing new treatment technology would be significant.” The Associations comment that the lower limits provide almost no room for error in facilities that require higher levels of ammonia for their production processes. This is particularly true for facilities that treat wastewater and engage in biological nutrient removal (“BNR”), as well as processes such as denitrification and/or phosphorus removal. A BNR facility is more sensitive to fluctuations, and in some instances, it could take days to re-establish the balance between the anoxic, anaerobic and oxic zones required to achieve BNR using the new ammonia criteria. Further, facilities will need to make adjustments in operations to comply with the new standards, some of which could involve significant capital expenses for the purchase and installation of additional equipment, such as adding blowers and extra tankage. The Associations request that the Proposed Rule be revised to consider the significant costs of compliance for many impacted facilities.

**FOR:** The rule should be revised to consider cost to impacted facilities.

**AGAINST:** The proposed revisions to the Water Quality Management Plan are sufficient.

**RESPONSE 49:** See Responses 7, 39 and 42. Further, LDEQ has considered the cost of compliance for impacted facilities. In the revised WQMP, Volume 3, LDEQ included provisions for extended compliance schedules to be incorporated into a permit. Compliance schedules

longer than three years may be granted with adequate justification, including the time to secure and acquire funding. In addition, impacted facilities may also qualify for a water quality standards variance in accordance with LAC 33:IX.1109.E.

COMMENT 50: An appropriate PBA relies upon the adoption of a process (i.e., a criterion derivation methodology; in this case, a mussel survey methodology) rather than a specific outcome (i.e., concentration limit for a pollutant); is sufficiently detailed; and has suitable safeguards to ensure a predictable and repeatable outcome. In the current case, if EPA were to approve the proposed PBA, such approval would include the numeric ammonia criteria options provided in the draft water quality standards as well as the mussel survey methodology (located in Appendix H of Volume 3 of the LDEQ's WQMP) used to determine which criteria are applicable based on Unionid mussel presence or absence in a particular receiving water. As such, the mussel survey portion of Volume 3 of the WQMP would become an approved water quality standard by reference in §1115.D.1 of the state's water quality standards.

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

RESPONSE 50: LDEQ acknowledges the comment.

COMMENT 51: Region 6 WQS staff reiterate that appropriate water quality criteria for ammonia will include not only the magnitude, but also duration and frequency components in state WQS. This includes a 1-hour acute and 30-day chronic criterion duration component, representing a 30-day rolling average, with the additional restriction that the highest 4-day average within the 30 days be no greater than 2.5 times the chronic criterion magnitude. An exceedance frequency of no more than 1 in 3 years is also recommended. The EPA considers these components to be a key part of the ammonia criteria.

FOR: An additional 4-day duration average should be included as part of the criteria, which would result in three separate permit limits.

AGAINST: An additional 4-day duration average should not be included, because three permit limits is overly onerous for the regulated community and does not afford any additional protection to the water body.



RESPONSE 51: The December 22, 1999, Federal Register (FRL-6513-6-Implementation Guidance) states, "EPA believes that in the vast majority of cases, the 30Q10 is protective of both the chronic continuous concentration or, CCC, (which, for ammonia, is associated with a 30-day average) and any 4-day average at 2.5 times the CCC. If the ammonia CCC is implemented using the 30Q10, no further conditions are necessary." Since no updated recommendation for use of a design flow was provided in the EPA 2013 Aquatic Life Ambient Water Quality Criteria for Ammonia – Freshwater it can be assumed that use of a 30Q10 design flow is still protective of the chronic continuous concentration and any 4-day average as stated above. Based on EPA's own information provided in the 1999 criteria document, when the 2.5 times the 4-day average criterion was established, LDEQ believes that additional measures intended to protect this 4-day average are unwarranted, and no changes will be made to the criteria based on this comment.

COMMENT 52: §1113.C.7.a.i. and §1115.D.1: Please note that the search for mussels should include all species in the order Unionida, as presently discussed in Volume 3, Appendix H of the Water Quality Management Plan (as opposed to only species in the family Unionidae).

FOR: The mussel species in Order Unionida must be included in the survey.

AGAINST: Mussel species in Order Unionida should not be included in the survey; EPA's freshwater ammonia criteria development document only discusses mussels in Family Unionidae.

RESPONSE 52: The 2013 freshwater ammonia criteria development document (EPA 822-R-18-002) states "The 2013 recommended criteria of this document take into account data for several sensitive freshwater mussel species in the *Family* Unionidae that had not previously been tested. The 2013 criteria development document makes no mention of Order, in terms of assessing the most sensitive species of mussels to ammonia toxicity or in terms of criteria development. All of the species data utilized in the development of freshwater ammonia criteria are ranked, in order of sensitivity, by GMAV (Genus Mean Acute Value), GMCV (Genus Mean Chronic Value) and SMAV (Species Mean Acute Value). The most sensitive mussel species, which are also known to be present in Louisiana, are in the Family Unionidae. The most sensitive vertebrate species, also known to be present in Louisiana, are the Golden

Shiner (*Notemigonus cryoleucas*) and the Bluegill Sunfish (*Lepomis Macrochirus*). These two vertebrate species are ranked higher in sensitivity than other mussel species outside of the Family Unionidae. Therefore, the mussels absent formula will also be protective of other aquatic species that are not included in the Family Unionidae. Furthermore, Appendix N of EPA 822-R-18-002, Recalculation Procedure for Site-specific Criteria Derivation, utilizes the terminology "Unionid Mussels", which is referred throughout the entire document as "Family Unionidae". EPA's requirement to include species in Order Unionida is unprecedented and not supported by EPA's own criteria development document.

COMMENT 53: §1113.C.7.a.i.(b)(2) Freshwater Chronic Criterion: Please note that the last portion of the formula provided below is incorrect...The factor (20-MAX(T, 7)) is used in the chronic formula when unionids are absent and protection of early life stages (ELS) is not necessary (the Lepomis GMCV of 6.920 is also excluded when ELS protection is not necessary).

FOR: The formula in LAC 33:IX.1113.C.7.a.i.(b).(2) should be amended.

AGAINST: The formula in LAC 33:IX.1113.C.7.a.i.(b).(2) should not be changed.

RESPONSE 53: The freshwater chronic criterion at LAC 33:IX.1113.C.7.a.i.(b).(2) is correct. The criterion is for mussels absent, however protection of early life stages is necessary because Genus Lepomis is widely distributed in Louisiana.

COMMENT 54: §1115.C.7.d.i and (ii) – It would be helpful to include the two flow values cited in these two provisions (1Q10 and 30Q10) in Table 2a as well (perhaps as footnotes).

FOR: A footnote referencing LAC 33:IX.C.7.d.i and ii should be added to Table 2a.

AGAINST: A footnote referencing LAC 33:IX.C.7.d.i and ii in Table 2a is not necessary.

RESPONSE 54: The references to Table 2a in LAC 33:IX.1115.C.7.d.i and ii are sufficient. No changes have been made.

COMMENT 55: §1115.D.1 – We request that the following phrases (in red) be

added to the following paragraph to appropriately account for the fact that such criteria will apply in 303(d) assessment and TMDLs and for consistency with such language already found in Volume 3 Appendix H of the WQMP: “The application of the appropriate ammonia criteria formula in development of permit limitations and for use in Section 303(d) assessments and TMDLs will be determined using a performance-based approach as described in the state’s Water Quality Management Plan (WQMP), Volume 3, Permitting Guidance Document for Implementing Surface Water Quality Standards, Appendix H. The mussel-present criteria formulas, as expressed in LAC 33:IX.1113.C.7.a.i.(a), will be the default formulas utilized in permit implementation, Section 303(d) assessments and TMDLs. The mussels absent formulas, as expressed in LAC 33:IX.1113.C.7.a.i.(b), may be utilized in permit implementation, Section 303(d) assessments and TMDLs after satisfactory completion of a mussels survey indicating no evidence of historical or current presence of mussels of the family Unionidae, and with approval from the administrative authority.” Emphasis added.

FOR: Assessment methodology should be included in the rule language.

AGAINST: Assessment methodology is reviewed and approved by EPA through the submittal of the biennial Integrated Report; inclusion in the rule is not necessary.

RESPONSE 55: Criteria formulas will be used in assessments and TMDLs, regardless of this verbiage being included in regulation. LDEQ will consider their inclusion into the regulation as part of the current cycle of LDEQ’s triennial review of water quality standards.

COMMENT 56: In keeping with the above recommendation that ammonia criteria identified in the water quality standards include all duration and frequency components described in EPA’s 2013 304(a) ammonia criteria document, the EPA recommends that all criteria calculations, permit effluent limit derivations, and use of flow statistics described in Volume 3 of the LDEQ’s Water Quality Management Plan align with these recommended components of the ammonia criteria. The EPA recommends that the LDEQ include a footnote in the final effluent limits table or in the permit limit rational section of the fact sheet that states the chronic limitation include an additional restriction that the highest 4-day average within the 30 days be no greater than 2.5 times the chronic criterion magnitude.

FOR: An additional 4-day duration average should be included as part of

the criteria, which would result in three separate permit limits.

- AGAINST: An additional 4-day duration average should not be included, because three permit limits is overly onerous for the regulated community and does not afford any additional protection to the water body.
- RESPONSE 56: See Response 51. All criteria calculations, permit limit effluent derivations, and use of flow statistics described in WQMP, Volume 3 align with components of ammonia criteria recommended by the 2013 EPA recommended criteria document.
- COMMENT 57: Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards - Appendix H: 1. Please correct the typo on page 56, when referencing 40 CFR 131.3 (e) the € should be changed to (e).
- FOR: 40 C.F.R. § 131.3 (e) the € should be changed to (e).
- AGAINST: 40 C.F.R. § 131.3 (e) the € should not be changed to (e).
- RESPONSE 57: LDEQ agrees and has corrected the typographical error.
- COMMENT 58: Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards - Appendix H: 2. On the bottom of page 56 please revise "The survey plan must be consistent with the LDEQ's prescribed survey methodology outlined below" to "must follow LDEQ's prescribed survey methodology".
- FOR: Methodology clarification is needed
- AGAINST: Methodology clarification is not needed.
- RESPONSE 58: LDEQ agrees and has revised the sentence.
- COMMENT 59: Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards - Appendix H: 3. Phase 1, step 2: Please revise the sentence that says "Absence must be confirmed by a mussel survey (example below)." to "Absence must be confirmed by the prescribed mussel survey methodology outlined below."

FOR: Methodology clarification is needed

AGAINST: Methodology clarification is not needed.

RESPONSE 59: LDEQ agrees and has revised the sentence.

COMMENT 60: Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards - Appendix H: 4. In phase 2, bullet (3): Please re-phrase as "Consult with one or more experts such as..."

FOR: Methodology clarification is needed

AGAINST: Methodology clarification is not needed.

RESPONSE 60: LDEQ agrees and has revised the sentence.

COMMENT 61: Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards - Appendix H: 5. In phase 4, step 1: please revise the sentence "Such methods may include the use of shoreline searches performed by walking along the waterbody margins looking for live mussels in ..." to "These assessments will include at least of one of the following: shoreline searches performed..."

FOR: Methodology clarification is needed

AGAINST: Methodology clarification is not needed.

RESPONSE 61: LDEQ agrees and has revised the sentence.

COMMENT 62: Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards - Appendix H: 6. Phase 4, step 3: To improve clarity within the first paragraph, we recommend rephrasing the first part of the following sentence to: "~~With the exception of excavation techniques,~~ Searches for mussels shall include ~~any of the sampling methods described in EPA (2013b) including...~~ visual searches with the naked eye or aquascope paired with..." We also recommend that the EPA reference (EPA 2013b) be added to the end of this sentence.

FOR: Methodology clarification is needed

AGAINST: Methodology clarification is not needed.

RESPONSE 62: LDEQ agrees and has revised the sentence.

COMMENT 63: Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards - Appendix H: 7. In phase 4, step 3. The EPA recommends changing "tactile searches may serve" to "tactile searches will serve" when describing high turbidity situations.

FOR: Methodology clarification is needed

AGAINST: Methodology clarification is not needed.

RESPONSE 63: LDEQ agrees and has revised the sentence.

COMMENT 64: Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards - Appendix H: 8. The EPA recommends that all "shoulds" in the methodology need to be changed to "shalls" or "musts".

FOR: Methodology clarification is needed

AGAINST: Methodology clarification is not needed.

RESPONSE 64: LDEQ agrees and has made the changes.

COMMENT 65: EPA has pressured LDEQ to adopt Freshwater Criteria since at least January 2014 and has claimed it "retains oversight authority to ensure that authorized state NPDES programs are implemented consistent with the requirements of the CWA." See e.g., EDMS #9356281 and #13418996. ... EPA is pressuring, directing, and/or requiring LDEQ to promulgate and implement WQ114, as it also did with WQ097 and WQ112.

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

RESPONSE 65: As provided in the Notice of Intent, the public comment period for this proposed regulation closed July 2, 2024 at 4:30pm. This comment was received on August 7, 2024, and therefore was not submitted timely. La. R.S. 49:963(A)(2)(e).

See Response 2, 13 and 41.

**COMMENT 66:** EPA sent an “example unionid mussel survey SOP” to LDEQ on December 19, 2023. See Exhibit A. Other than a few minor revisions based on LDEQ’s internal comments of January 9, 2024 and February 19, 2024, LDEQ simply adopted the wording provided by EPA almost verbatim. ... Even though LDEQ adopted EPA’s text almost verbatim, EPA demands in the EPA comment that LDEQ amend the language EPA itself suggested (see Exhibit A). EPA demands that LDEQ make multiple provisions mandatory instead of allowing flexibility as part of the mussel-survey. For example, EPA demands that “all ‘shoulds’ ... need to be changed to ‘shalls’ or ‘musts.’” EDMS #14359819, p. 12. Such a revision or amendment is a substantive change and goes well beyond the current scope of the public notice for WQ114.

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

**RESPONSE 66:** As provided in the Notice of Intent, the public comment period for this proposed regulation closed July 2, 2024 at 4:30pm. This comment was received on August 7, 2024, and therefore was not submitted timely. La. R.S. 49:963(A)(2)(e).

See Response 2, 13 and 41.

**COMMENT 67:** Even though LDEQ adopted EPA’s text almost verbatim, EPA demands in the EPA comment that LDEQ amend the language EPA itself suggested (see Exhibit A). EPA demands that LDEQ make multiple provisions mandatory instead of allowing flexibility as part of the mussel-survey. For example, EPA demands that “all ‘shoulds’ ... need to be changed to ‘shalls’ or ‘musts.’” EDMS #14359819, p. 12. Such a revision or amendment is a substantive change and goes well beyond the current scope of the public notice for WQ114.

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

**RESPONSE 67:** As provided in the Notice of Intent, the public comment period for this proposed regulation closed July 2, 2024 at 4:30pm. This comment was received on August 7, 2024, and therefore was not submitted timely. La. R.S. 49:963(A)(2)(e).

Pursuant to Louisiana's Continuing Planning Process (CPP), WQMP Volume 1, LDEQ addresses comments received on proposed changes to the WQMP in a responsiveness summary, which has been incorporated into this Comment Summary Response. See also 40 C.F.R. § 130.5 and 136.6(e). Pursuant to the CPP, LDEQ's response may include incorporation of the comment into revisions to the WQMP. WQMP, Appendix H has been updated to clarify the intent of the language in the Louisiana Mussel Survey methodology, in response to comments received during the public comment period from the EPA. See Response 64. These updates do not substantively change WQMP, Appendix H, but instead merely clarify its language.

**COMMENT 68:** EPA suggests an amendment to proposed Section 1115.D.1 and WQMP, Vol. 3, Appendix H, to apply the formula to "Section 303(d) assessments and TMDL's." *Id.* Such a revision or amendment is a substantive change and goes well beyond the current scope of the public notice for WQ114.

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

**RESPONSE 68:** As provided in the Notice of Intent, the public comment period for this proposed regulation closed July 2, 2024 at 4:30pm. This comment was received on August 7, 2024, and therefore was not submitted timely. La. R.S. 49:963(A)(2)(e).

See Response 55.

**COMMENT 69:** EPA also seeks a substantive change in the formula presented in WQ114. EDMS #14359819, p. 11. EPA states that it "understands that LDEQ plans to provide protection in early life stages in all waters." *Id.* However, the goal of "protection of early life stages" is not mentioned in WQ114, 2405Pot1, 2405Pot2, 2405Pot3, or 2405Pot4 and goes well beyond the current scope of the public notice for WQ114.

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

**RESPONSE 69:** As provided in the Notice of Intent, the public comment period for this proposed regulation closed July 2, 2024 at 4:30pm. This comment was received on August 7, 2024, and therefore was not submitted timely. La. R.S. 49:963(A)(2)(e).



See Response 53.

COMMENT 70: [O]nce promulgated and approved by EPA, the provisions of WQ114 (including the use of the mussels-present formula as the default formula, the discretionary acceptance of the mussel-survey results, and EPA's veto over a completed mussel-survey showing no mussels), cannot be changed without EPA approval. At that point, EPA's control over the application of the mussels-present formula to Louisiana's waterways cannot be challenged.

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

RESPONSE 70: As provided in the Notice of Intent, the public comment period for this proposed regulation closed July 2, 2024 at 4:30pm. This comment was received on August 7, 2024, and therefore was not submitted timely. La. R.S. 49:963(A)(2)(e).

See Response 41.

COMMENT 71: On February 16, 2024, well prior to the publication of 2405Pot2, LDEQ noted internally that "it looks like Cormix can be used to simulate ammonia." See Exhibit A. Thus, LDEQ knew that it could do a comparative analysis but chose not to and instead, regurgitated the same incorrect answer to Section 49:963(B)(1)(b) that it provided in relation to WQ112. LDEQ failed to conduct the comparative analysis of risks of a similar or analogous nature as required by Section 49:963(B)(1)(b). WQ114 is flawed and cannot be finalized unless and until LDEQ conducts the mandated comparative analysis.

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

RESPONSE 71: As provided in the Notice of Intent, the public comment period for this proposed regulation closed July 2, 2024 at 4:30pm. This comment was received on August 7, 2024, and therefore was not submitted timely. La. R.S. 49:963(A)(2)(e).

See Response 28. Cormix is a modeling program that has been used in the past by LDEQ permittees to evaluate the zone of initial dilution (ZID) and mixing zones (MZ). It is not used to evaluate the risks of ammonia to freshwater mussels and the early life stages of

aquatic species.

**COMMENT 72:** The Louisiana Supreme Court and the First Circuit Court of Appeal previously adopted and/or relied on the judicial deference principals established by *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81, 81 L.Ed.2d 694 (1984). ... However, the United States Supreme Court overruled *Chevron* on June 28, 2024. *Loper Bright Enterprises, Inc., et al v. Raimondo*, — S.Ct. — (2024), 2024 WL 3208360. As a result, LDEQ is no longer afforded the deference set forth in, for example, *Recovery I* ... Thus LDEQ's construction or interpretations of the Louisiana Water Control Law as a whole, and La. R.S. 30:2074 (the stated basis for authority to promulgate WQ114) in particular, are not entitled to deference.

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

**RESPONSE 72:** As provided in the Notice of Intent, the public comment period for this proposed regulation closed July 2, 2024 at 4:30pm. This comment was received on August 7, 2024, and therefore was not submitted timely. La. R.S. 49:963(A)(2)(e).

This comment does not raise any issues or concerns with respect to WQ114, and instead merely states general legal arguments.

**Comment Summary Response & Concise Statement**  
**LAC 33:IX.1105, 1109, 1113, 1115, and 1117**  
**Log Number WQ114**

<u>COMMENT #</u>	<u>SUGGESTED BY</u>
01 – 41	Erin Colburn on behalf of Wall's Gator Farm II, LLC
42 – 49	Daniel W. Bosch, Jr. on behalf of the Louisiana Chemical Association and Louisiana Mid- Continent Oil & Gas Association
50 – 64	Andrew Pressly on behalf of EPA Region 6
65 – 72	John King on behalf of Wall's Gator Farm II, LLC

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

Total Commenters: 03  
Total Comments: 72

## Laura Almond

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**From:** APA - House Speaker <apa.housespeaker@legis.la.gov>  
**Sent:** Tuesday, September 17, 2024 2:49 PM  
**To:** Laura Almond  
**Subject:** Request received

**EXTERNAL EMAIL:** Please do not click on links or attachments unless you know the content is safe.

### ELECTRONIC RECEIPT FROM THE OFFICE OF THE SPEAKER

Your Administrative Procedure Act (APA) submission has been received by the Office of the Speaker, Louisiana House of Representatives.

(Please do not respond to this automatically generated response.)

*If your communication is unrelated to an APA required submission, it has been deleted.*

*If you would like to contact your state legislator, click here <https://www.legis.la.gov/legis/HowDol2.aspx?p=3#11> to determine the name of your state representative and state senator and to find their contact information.*

*If you would like to contact members of a particular committee, click here for House Committees*

*<https://www.legis.la.gov/legis/Committees.aspx?c=H> and here for Senate Committees*

*<https://www.legis.la.gov/legis/Committees.aspx?c=S>. The name and contact information of all committee members is available at these sites.*

## Laura Almond

---

**From:** APA - House Natural Res <apa.h-natr@legis.la.gov>  
**Sent:** Tuesday, September 17, 2024 2:49 PM  
**To:** Laura Almond  
**Subject:** Request received

**EXTERNAL EMAIL:** Please do not click on links or attachments unless you know the content is safe.

### ELECTRONIC RECEIPT BY COMMITTEE

Your Administrative Procedure Act (APA) submission has been received by the Committee on Natural Resources, Louisiana House.

(Please do not respond to this automatically generated response.)

*If your communication is unrelated to an APA required submission, it has been deleted.*

*If you would like to contact your state legislator, click here <https://www.legis.la.gov/legis/HowDoI2.aspx?p=3#11> to determine the name of your state representative and state senator and to find their contact information.*

*If you would like to contact members of a particular committee, click here for House Committees <https://www.legis.la.gov/legis/Committees.aspx?c=H> and here for Senate Committees <https://www.legis.la.gov/legis/Committees.aspx?c=S>. The name and contact information of all committee members is available at these sites.*

## Laura Almond

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**From:** APA - Senate President <APA.senatepresident@legis.la.gov>  
**Sent:** Tuesday, September 17, 2024 2:49 PM  
**To:** Laura Almond  
**Subject:** Request received

**EXTERNAL EMAIL:** Please do not click on links or attachments unless you know the content is safe.

### ELECTRONIC RECEIPT FROM THE OFFICE OF THE PRESIDENT

Your Administrative Procedure Act (APA) submission has been received by the Office of the President, Louisiana Senate.

(Please do not respond to this automatically generated response.)

*If your communication is unrelated to an APA required submission, it has been deleted.*

*If you would like to contact your state legislator, click here <https://www.legis.la.gov/legis/HowDoI2.aspx?p=3#11> to determine the name of your state representative and state senator and to find their contact information.*

*If you would like to contact members of a particular committee, click here for House Committees*

*<https://www.legis.la.gov/legis/Committees.aspx?c=H> and here for Senate Committees*

*<https://www.legis.la.gov/legis/Committees.aspx?c=S>. The name and contact information of all committee members is available at these sites.*

## Laura Almond

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**From:** APA - Senate Environment <apa.s-envq@legis.la.gov>  
**Sent:** Tuesday, September 17, 2024 2:49 PM  
**To:** Laura Almond  
**Cc:** APA - Senate Environment  
**Subject:** Request received

**EXTERNAL EMAIL:** Please do not click on links or attachments unless you know the content is safe.

### ELECTRONIC RECEIPT BY COMMITTEE

Your Administrative Procedure Act (APA) submission has been received by the Committee on Environment, Louisiana Senate.

(Please do not respond to this automatically generated response.)

*If your communication is unrelated to an APA required submission, it has been deleted.*

*If you would like to contact your state legislator, click here <https://www.legis.la.gov/legis/HowDol2.aspx?p=3#11> to determine the name of your state representative and state senator and to find their contact information.*

*If you would like to contact members of a particular committee, click here for House Committees*

*<https://www.legis.la.gov/legis/Committees.aspx?c=H> and here for Senate Committees*

*<https://www.legis.la.gov/legis/Committees.aspx?c=S>. The name and contact information of all committee members is available at these sites.*

## Laura Almond

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**From:** Jackson, Bridgette <jacksonb@legis.la.gov>  
**To:** Laura Almond  
**Sent:** Tuesday, September 17, 2024 2:49 PM  
**Subject:** Read: Summary Report for Proposed Rule WQ114

Your message

To: Jackson, Bridgette  
Subject: Summary Report for Proposed Rule WQ114  
Sent: Tuesday, September 17, 2024 2:49:27 PM (UTC-06:00) Central Time (US & Canada)

was read on Tuesday, September 17, 2024 2:49:02 PM (UTC-06:00) Central Time (US & Canada).



## Laura Almond

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**From:** Stalder, Robin <stalderr@legis.la.gov>  
**To:** Laura Almond  
**Sent:** Tuesday, September 17, 2024 2:49 PM  
**Subject:** Read: Summary Report for Proposed Rule WQ114

### Your message

To: Stalder, Robin  
Subject: Summary Report for Proposed Rule WQ114  
Sent: Tuesday, September 17, 2024 2:49:27 PM (UTC-06:00) Central Time (US & Canada)

was read on Tuesday, September 17, 2024 2:49:22 PM (UTC-06:00) Central Time (US & Canada).

**Laura Almond**

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**From:** Microsoft Outlook  
**To:** Aurelia Giacometto (DEQ Secretary)  
**Sent:** Tuesday, September 17, 2024 2:50 PM  
**Subject:** Delivered: Summary Report for Proposed Rule WQ114

**Your message has been delivered to the following recipients:**

[Aurelia Giacometto \(DEQ Secretary\) \(Aurelia.Giacometto@LA.GOV\)](mailto:Aurelia.Giacometto@LA.GOV)

Subject: Summary Report for Proposed Rule WQ114



**Summary Report  
for Proposed Ru...**

**Laura Almond**

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**From:** Microsoft Outlook  
**To:** apa.s-envq@legis.la.gov; 'apa.h-natr@legis.la.gov'; 'apa.housespeaker@legis.la.gov';  
'apa.senatepresident@legis.la.gov'  
**Sent:** Tuesday, September 17, 2024 2:50 PM  
**Subject:** Relayed: Summary Report for Proposed Rule WQ114

**Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:**

apa.s-envq@legis.la.gov (apa.s-envq@legis.la.gov)

'apa.h-natr@legis.la.gov' (apa.h-natr@legis.la.gov)

'apa.housespeaker@legis.la.gov' (apa.housespeaker@legis.la.gov)

'apa.senatepresident@legis.la.gov' (apa.senatepresident@legis.la.gov)

Subject: Summary Report for Proposed Rule WQ114



Summary Report  
for Proposed Ru...

**Laura Almond**

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**From:** Microsoft Outlook  
**To:** Jill Clark  
**Sent:** Tuesday, September 17, 2024 2:50 PM  
**Subject:** Delivered: Summary Report for Proposed Rule WQ114

**Your message has been delivered to the following recipients:**

Jill Clark (Jill.Clark@la.gov)

Subject: Summary Report for Proposed Rule WQ114



**Summary Report  
for Proposed Ru...**

## Laura Almond

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**From:** Microsoft Outlook  
**To:** Noah Hoggatt (DEQ)  
**Sent:** Tuesday, September 17, 2024 2:50 PM  
**Subject:** Delivered: Summary Report for Proposed Rule WQ114

### Your message has been delivered to the following recipients:

Noah Hoggatt (DEQ) (Noah.Hoggatt@la.gov)

Subject: Summary Report for Proposed Rule WQ114



**Summary Report  
for Proposed Ru...**