

THE IMPACT OF REGULATORY AND PERMITTING ISSUES ON LOUISIANA INDUSTRY IN 2011 AND BEYOND

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Air – The Plate Is Full

- Operating Permits Workgroup Issues
- Ozone NAAQS
- Other New/Upcoming NAAQS
- Louisiana Air Toxics Statutory/Regulatory Revisions
- LDEQ Air Dispersion Modeling Policies
- Emissions Reporting Inventory Center (ERIC)
- Combustion Source Standards
- Enhanced Monitoring Activities
- Climate Change Regulations
- Clean Air Transport Rule



Operating Permits Workgroup Issues

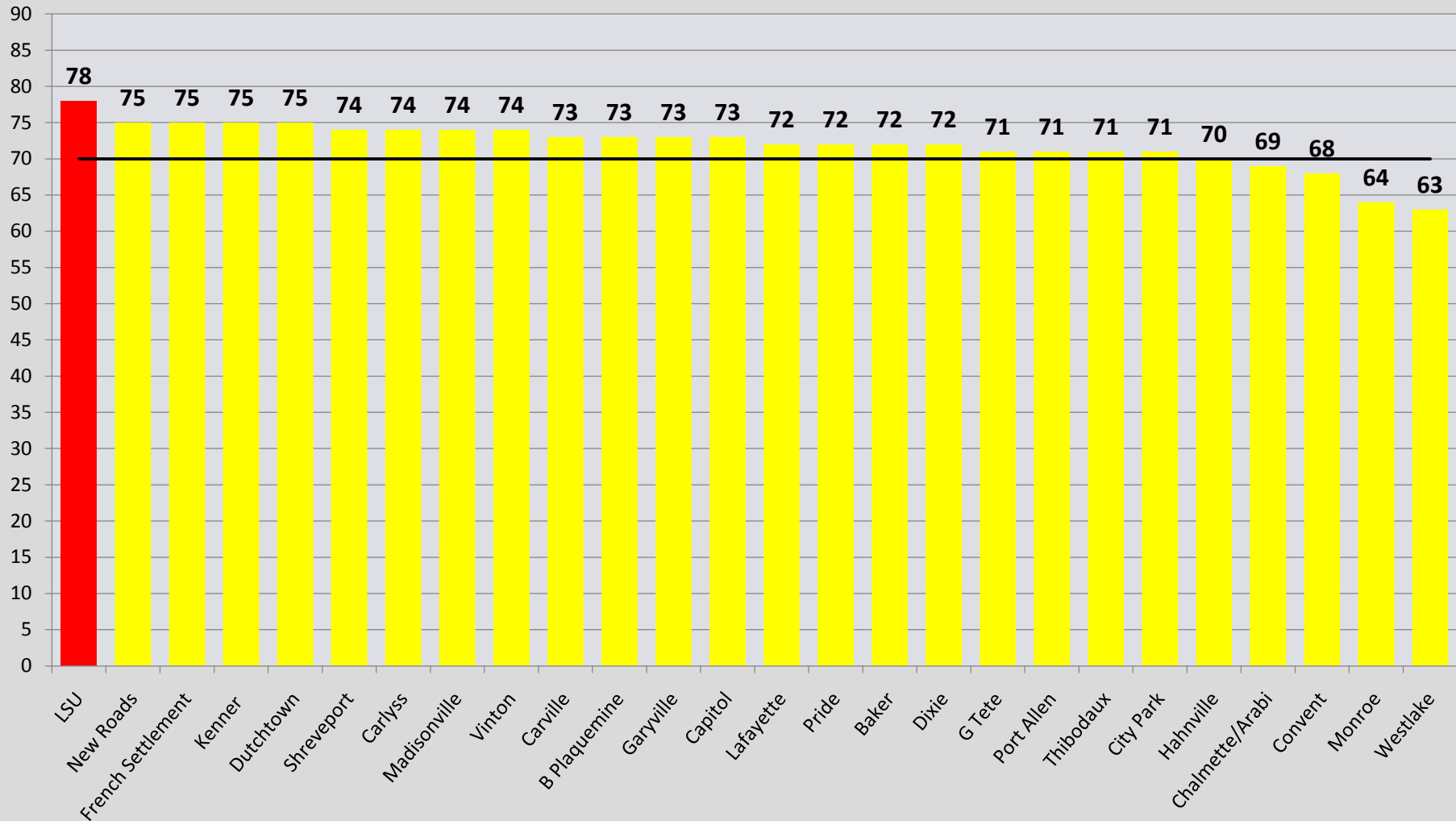
- Revision to Air Toxics Regulations
- Expanded Use of Regulatory Permits & General Permits
- ERIC Rulemaking (AQ300)
- State Air Modeling Policy
- PSD Permit Renewal Guidance
- TEMPO Revisions
- Act 986 (Technical Review)

Ozone NAAQS

- **1-Hr Standard (124 ppb)**
 - Baton Rouge Area received final Clean Data Policy Determination in Feb. 2010 for 2006-2008, 2007-2009
- **1997 8-hr Standard (85 ppb)**
 - Baton Rouge Area received final Clean Data Policy Determination in Sept. 2010 for 2006-2008, 2007-2009
 - LDEQ submitted formal request for redesignation Aug. 2010
 - EPA must make final determination within 18 mos.
- **2008 8-hr Standard (75 ppb)**
 - Implementation delayed by EPA while standard is reconsidered
 - EPA proposed lowering to a level between 60-70 ppb
 - EPA has delayed final rule until 2011
 - Nonattainment Designations likely within 1 year of final rule
 - SIP deadlines and requirements depend on severity of classification

Status of Louisiana Monitors/Parishes

8-hr Design Value as of December 31, 2010



Recent/Upcoming NAAQS Revisions

NAAQS Action	Form of Standard	Designations of Areas	LDEQ SIP Due	New Ambient Monitoring Requirements
NO _x – 1 hr standard added effective 1/21/2010	3-yr avg of the 98 th % of daily max. 1-hr avg must not exceed 100 ppb	LDEQ Recommendation due 1/2011 (none nonattainment-most unclassifiable) EPA to classify by 1/2012	Infrastructure SIP and good neighbor SIP due 1/2013	1 monitor by major road in area with pop. >500,000 2 nd monitor by road in with ann. avg. daily traffic count > 250,000 Vehicles in operation by 1/2013
SO ₂ – 1-hr standard added effective 6/2/1010	3-yr avg of the 99 th % of the daily max. 1-hr avg must not exceed 75 ppb	LDEQ Recommendation due 6/2011 (WBR and St. Bern. Monitored nonattainment) EPA to classify by 6/2012	Infrastructure SIP and good neighbor SIP for attainment areas due 6/2013 Nonattainment SIP due 2/2014	By 1/2013 add 3 monitors in CBSAs with index values of >1,000,000 ; – 2 monitors in CBSAs with index values < 1,000,000 but >100,000; and – 1 monitor in CBSAs with index values > 5,000
PM _{2.5} – pending revision of 24-hr and annual	3-yr avg of 98 th % of 24-hr concentrations must not > 35 µg/m³ (proposed to lower to 25 µg/m³) 3-yr avg of the wghtd ann. mean PM _{2.5} from single or multiple monitors must > 15.0 µg/m³ (proposed to lower to 10-13 µg/m³)	State recommendations 10/2012 ? (many nonattainment parishes) EPA designations 10/2013?	Infrastructure/ good neighbor SIP due 10/2014? Nonattainment SIP due 12/2016?	? Likely new ambient monitor requirements

Act 103 of 2010 – State Toxic Air Pollutant Program Revisions

- Act 103 clarified that compliance with federal MACT constitutes compliance with all of Chapter 51
 - LDEQ can require “state MACT” only where a facility is not required to comply with the federal NESHAPs standards (except for asbestos requirements)
- Clarifications to TAP Ambient Air Standards
 - Do not apply to off-site “roads, railroads, or water bodies where activities are transient in nature and long-term exposure ...is not reasonably anticipated”
 - Do not apply to “industrial properties” that are “adjacent to or impacted by” a regulated source of TAPs if the regulated source can “demonstrate” that OSHA permissible exposure limits are not being exceeded at the adjacent industrial property “because of” the TAP emissions from the regulated source

Emission Reporting Inventory Center (ERIC)

- Advance Notice of Public Rulemaking published in May 2009
- Proposed rule published in Nov. 2010
- Comments submitted by trade associations (LCA, LMOGA, LPPA, and LOGA) and many individuals
- Final rule should be issued in 2011

Combustion Sources

- Revised Standards
- MACT Implementation
- Stack Testing Guidance

Climate Change/GHG Regulation - 2010

- **Jan. 1** – GHG Mandatory Reporting Rule start date for many industries
- **April** – Coalition for Responsible Regulation and numerous other parties/states file challenge to the EPA GHG endangerment finding in the DC Cir.
- **May 7** - Mobile Source Rule (Light Duty Vehicle Rule) – making GHGs “regulated pollutants”
- **May 13** - GHG Tailoring Rule published
- **Nov.** - GHG Tailoring Rule Guidance

Climate Change/GHG Regulation - 2010

- **Dec. 1** – EPA Final Rule for FIP -13 states that did not take agree to implement tailoring rule
- **Dec. 10** - DC Circuit refuses to stay Tailoring Rule, but schedules combined argument on legal challenge to Endangerment Finding with challenges to Tailoring Rule (*Coalition for Responsible Regulations v. EPA*)
- **Dec. 20** – LDEQ proposes rule to partially implement GHG Tailoring Rule
- **Dec. 29** – DC Circuit grants emergency stay of EPA's taking over the Texas permit program to allow oral argument

Climate Change/GHG Regulation - 2011

- **Jan. 2** – Phase 1 of GHG Tailoring Rule becomes effective
- **Jan. 7** – US Sup Ct upholds 5th Cir dismissal of *Comer v. Murphy Oil* (case alleging Hurricane Katrina made worse due to global warming – defendants were all major oil refineries and chemical producers)
- **Jan. 12** – Court grants lifts stay and allows EPA to take over Texas permit program
- **Jan. 20** - LDEQ expected date for final rule for AQ₃₁₄ state equivalent of GHG Tailoring Rule
- **Spring term 2011** - Oral argument for *Connecticut v. AEP* in US Supreme Court (review of whether 8 states, New York City and 3 environmental land trusts can bring federal common law nuisance claims against 6 electric power corporations based on greenhouse gas emissions)
- **July 1** – Phase 2 of GHG Tailoring Rule

Clean Air Transport Rule (a/k/a CATR)

- **CATR proposed 2010 -substitute for the former Clean Air Interstate Rule (CAIR) which was remanded by court as being too lax**
- **CATR proposed that:**
 - Louisiana to be included due to “significant impact” on PM_{2.5} attainment in Houston area and 1997 8-hr ozone attainment in Houston and Dallas/Ft. Worth areas
 - Because LDEQ did not submit a timely SIP to address, EPA would enact a FIP
 - FIP to regulate only certain large electrical generating units – EGUs, not all Louisiana sources
- **LDEQ, LCA, numerous comments filed objecting to conclusions on inclusion of Louisiana and on allocations of NO_x/SO₂ to Louisiana sources – basis**
 - Houston area has attained the PM_{2.5} standards for several years
 - Houston has attained the 1997 8-hr ozone standard
 - DFW monitors in question are not significantly impacted by LA sources – EPA significantly overestimated LA NO_x, SO₂, and PM_{2.5} emissions inventory
 - Almost no allocations given to power plants in So. and SW LA – based on EPA use of erroneous model
- **EPA has decided to remodel based on numerous comments and may change basis of allocations. Final rule expected June 2011 – potential outcomes**
 - LA will be excluded for SO₂ and/or NO_x emission reductions
 - LA will not be excluded, but EPA may allow LDEQ to determine necessary reductions through SIP rather than FIP
 - LA will be included, and EPA will control reductions through FIP

LDEQ/EPA Enhanced Monitoring

- HAWK
- MAML
- SMART LDAR

Water – the Cup Runneth Over

- Triennial Review – Ambient Water Quality Standards
- TMDL Studies
- LPDES Permit Renewal Conditions
- Nutrient Criteria/Hypoxia Reduction Activities
- Electronic Discharge Monitoring Reports (DMRs)
- Antidegradation Implementation Procedures
- Cooling Water Intake Structures Requirements
- Minimum Quantitation Levels (MQLs)



Water Rights

- Act 955 of 2010 La. Legis. (HB 1486) (Driven by Haynesville Shale Issues, but impact statewide)
 - Provides a **process for the state to allow the non-riparian use of surface water, and enter into contracts for the sale of such water** with restrictions based on conservation needs, until more comprehensive law addressing water rights, value and sale can be enacted.
 - Being implemented by DNR through **Cooperative Agreements** see: <http://dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=92>
- HCR 1 of 2010 La. Legis.
 - Requests the La. Groundwater Resources Comm. to prepare a report on status/use of **groundwater and surface water**; impacts of current and anticipated water uses including for hydraulic fracturing, agricultural and industrial uses in high water demand areas; **procedure for sale of water from running surface waters of the state and the impacts associated with such sale and use**; and to make recommendations for optimal management of state's water resources including incentives for conservation/recycling; findings to the Legislature by March 1, 2012

Waste and Remediation

- **Hazardous Waste Rules Revision**
- **Solid Waste Rules Revision**
 - Permitting
 - Financial Assurance
- **Construction & Demolition Debris Disposal**
- **EPA Revised Definition of Solid Waste**
- **Exploration & Production (E & P) Exemption**
- **RECAP Revision**

Other State and Federal Issues

- State Agency Streamlining (Roles/Priorities)
- DEQ Fee Structure Revision
- DEQ/EPA Surveillance/Enforcement Activities
- Environmental Justice Guidance
- Oil Spill Response Plans Post-Deepwater Horizon
- Release Reporting (LDEQ/State Police)
 - Revision of LDEQ brine RO
 - State Police revisions/guidance
- Louisiana Coastal Zone Program
 - Boundary
 - Revised Use Permits
- Hydraulic Fracturing
- Louisiana Environmental Leadership (VPP) Program