



Current Air Issues

Air Permits Division

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South Coast Air Quality Mgmt. Dist. v. EPA

December 22, 2006

The U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded EPA's "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard – Phase 1" (69 FR 23951, April 30, 2004), finding that EPA improperly determined that areas designated nonattainment under the 1-hour ozone NAAQS, like the BRNA, would no longer be subject to 1-hour NSR requirements.

In its Phase I rule, EPA made NSR applicability thresholds and emission offset ratios dependent upon an area's 8-hour attainment status.

The BRNA became a marginal nonattainment area with respect to the 8-hour ozone NAAQS when the 1-hour standard was revoked.

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South Coast Air Quality Mgmt. Dist. v. EPA

June 8, 2007

The D.C. Circuit denied several petitions for rehearing.

In this ruling, the Appeals Court urged EPA “to act promptly in promulgating a revised rule that effectuates the statutory mandate by implementing the eight-hour standard, which was deemed necessary to protect the public health a decade ago,” *implying* that rulemaking was necessary to effectuate the original decision.

September 6, 2007

EPA and other petitioners filed a petition for a writ of certiorari with the U.S. Supreme Court.



South Coast Air Quality Mgmt. Dist. v. EPA

October 3, 2007

EPA issued a memorandum:

- noting the agency's intent to issue an "immediately-effective final rule under the Good Cause Provision of the Administrative Procedures Act to restore the NSR applicability thresholds and emission offsets associated with designated 1-hour ozone nonattainment areas"; and
- encouraging states to "comply with the court decision as quickly as possible."



South Coast Air Quality Mgmt. Dist. v. EPA

January 14, 2008

The Supreme Court denied EPA's petition for a writ of certiorari, rendering the December 22, 2006 decision effective.

February 19, 2008

EPA notified LDEQ that "there will be no immediately-effective final rule. OGC [EPA's Office of General Counsel] believes the court decision is self-implementing."



South Coast Air Quality Mgmt. Dist. v. EPA

EPA's *South Coast* Rulemaking

To date, EPA has not proposed a rule effecting the *South Coast* decision.

We do know that ...

- On October 31, 2008, the Office of Management and Budget (OMB) concluded its review of the rule.
- Other documents indicate EPA initially targeted June 2009 for promulgation, though this will undoubtedly slide.
- Our Region 6 contacts do not know any more than we do, or they have been instructed not to disseminate any details.



South Coast Air Quality Mgmt. Dist. v. EPA

So what's next?

- An emergency rule to reduce Nonattainment New Source Review (NNSR) thresholds and offset ratios to those associated with a severe nonattainment area?
 - If yes, would the trigger date be January 14, 2008, December 22, 2006, or possibly earlier?
- A SIP revision to include the reduced thresholds as a contingency measure?

There are differing legal opinions here. EPA's proposal should clarify matters a great deal, but their proposal won't be finalized under the current Administration, and any final rule will be subject to litigation.



South Coast Air Quality Mgmt. Dist. v. EPA

To avoid uncertainty ...

- Applicants have voluntarily applied severe area thresholds and offset ratios to time sensitive, high profile projects.
- Affected sources may choose to reduce potential emissions of NO_x and VOC below 25 TPY.



Regulatory Permits

Proposed rulemaking was published in the *Louisiana Register* on April 20, 2008 (AQ274) to establish LDEQ's first 4 regulatory permits:

- Oil and Gas Well Testing (LAC 33:III.307)
- Release of Natural Gas from Pipelines and Associated Equipment (LAC 33:III.309)
- Emergency Engines (LAC 33:III.311)
- Portable Air Curtain Destructors (LAC 33:III.313)

A unique, abbreviated application (i.e., notification form) will be associated with each regulatory permit.



Regulatory Permits

Affected sources will not be immediately authorized (e.g., like some of TCEQ's Permits By Rule. However, approval is contingent only on:

1. payment of the appropriate fee; and
2. LDEQ notifying the applicant that the application (i.e., notification form) has been determined to be complete.

LDEQ is not precluded from using a regulatory permit to authorize air emissions from an activity at a source operating under a site-specific air permit issued pursuant to LAC 33:III.Chapter 5 provided all eligibility requirements of the regulatory permit are satisfied.



Regulatory Permits

Regulatory permits cannot be used to authorize construction of a “major source” or a “major modification”; however, neither statutory nor regulatory language prohibit such permits from being used to authorize equipment or activities at a major source, provided that equipment or activity does not constitute a “major modification.”

Status

LDEQ has finalized the Comment Summary Response & Concise Statement and only has to evaluate Legal’s comments on the technical amendments before finalizing the rules.



General Condition Rulemaking (AQ286)

LDEQ has proposed to incorporate the Part 70 and Louisiana General Conditions into the Air Quality Regulations.

- Because the most current version of the General Conditions is incorporated into permits as they are finalized, the universe of effective permits includes differing versions of these conditions.
- Once codified, all permittees will be subject to the same General Conditions.
- Further, future revisions to the General Conditions must be effected by the rulemaking process in accordance with the Administrative Procedures Act, ensuring transparency and opportunity for public review.



General Condition Rulemaking (AQ286)

Notable changes:

- Reduces the frequency of certain General Condition R and General Condition XI reports from quarterly to semiannually.
- Adds Part 70 GC W.
 - In the event of a discrepancy between an applicable federal or state regulation and the corresponding permit Specific Requirement, the federal or state regulation shall prevail. If an applicable federal or state regulation is modified during the term of this permit such that it conflicts with the corresponding permit Specific Requirement, the modified regulation shall prevail, and the permittee shall comply with the modified regulation by any compliance dates established in the modified regulation.

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General Condition Rulemaking (AQ286)

Status

LDEQ is working on the Comment Summary Response & Concise Statement.



2007 Title V Audit

On May 27, 2008, LDEQ received EPA's "pre-decisional" draft Audit Report summarizing the agency's 2007 review and evaluation of the LDEQ's Title V Operating Permit Program.

The following four areas of "serious" concern were identified:

- The Part 70 General Permit Program does not pertain to "similar sources." The proposed GP can potentially be used by many different source categories having various SIC codes, which is not what is meant by "similar sources."
- Some Part 70 General Conditions are missing.
- EPA does not receive for review the proposed permits and the Statement of Basis for all minor permit modifications.
- LDEQ does not develop a separate and discrete budget specific to the Title V program to ensure that adequate funds are available.



2007 Title V Audit

EPA's correspondence also identified several other areas of concern related to:

- insignificant activities and General Condition XVII activities; LDEQ's merged Title V and NSR permits;
- Statement of Basis content;
- incorporation of startup and shutdown emissions into Title V permits; and
- issuance rates of minor modifications and administrative amendments.

LDEQ responded to EPA's report by letter dated October 15, 2008.



NSR Reform Response

By letter dated January 24, 2008, EPA submitted comments on Louisiana's NSR rules promulgated on December 20, 2005.

LDEQ's NNSR and PSD rules differ slightly from the federal versions of these rules (67 FR 80186, December 31, 2002; amended at 68 FR 63021, November 7, 2003).

EPA identified 2 primary areas of concern, which are discussed on the following slides.

LDEQ responded to EPA's concerns by letter dated October 6, 2008.



NSR Reform Response

Concern 1:

LDEQ's intent regarding the NSR "malfunction" definition and the current inconsistencies between the proposed NSR definition of "malfunctions," the current SIP-approved definition of "malfunction," and EPA policy.

LDEQ's Response:

LDEQ's intent was to clarify, not provide a **substitute** for, the definition of "malfunctions" set forth in LAC 33:III.504 and LAC 33:III.509 with the SIP-approved definition established by LAC 33:III.111.

Because "malfunction" is not defined in 40 CFR 51.165, 51.166, or 52.21, the definition of "malfunctions" will be deleted from LAC 33:III.504 and 509.



NSR Reform Response

Concern 2:

LDEQ's use of variances to authorize emissions from startups, shutdowns, and malfunctions when calculating the "baseline actual emissions" and "projected actual emissions."

1. Transparently and explicitly address routine SU/SD emissions in air permits. In addition, submit to EPA a plan on how LDEQ will implement a formal process for updating its permits to explicitly address "routine" SU/SD emissions.
2. In accordance with EPA's excess emissions guidance, appropriately address excess emissions through enforcement, enforcement discretion, and/or (under certain circumstances) an affirmative defense, and revise LDEQ's rules and Louisiana's SIP to reflect this approach, rather than addressing excess emissions through variances.
3. Revise LAC 33.III.917 and other variance provisions to be consistent with 40 CFR 51.104 and 51.102(a)(3).



NSR Reform Response

Concern 2

LDEQ's Response (paraphrased):

- EPA's comments extend well beyond the context of NSR Reform rules and focus on LDEQ's treatment of startup and shutdown emissions in air permits.
- EPA cites correspondence dated January 18, 2005, in which the agency provided comments on LDEQ's startup and shutdown guidance. Responses to this correspondence were provided.



NSR Reform Response

- Per 40 CFR 51.100(y), a variance is “the temporary deferral of a final compliance date for an individual source subject to an approved regulation, or a temporary change to an approved regulation as it applies to an individual source.”
- As such, the majority of variances issued by LDEQ would not conform to this definition, as they neither temporarily defer a final compliance date nor temporarily change an approved regulation.
- As discussed with EPA on several occasions, most variances address temporary equipment or activities not included in a source’s permit or activities occurring at a facility or location that is not otherwise required to obtain an air permit (e.g., emergency generators, well tests, pipeline maintenance). In such situations, the variance would be from the provisions of LAC 33:III.501.C.2, but would require compliance with all other applicable federal and state provisions.



NSR Reform Response

- Further, it should be noted that LDEQ does not have the authority to suspend or modify federal regulations via variance procedures. Federal regulations remain independently applicable and enforceable by EPA.
- The matters of incorporating startup and shutdown emissions into air permits and the use of variances to authorize “excess emissions” should be addressed separately. LDEQ is willing to discuss these issues in more detail at EPA’s convenience; however, they should not impede EPA’s approval of LDEQ’s NSR Reform rules.



Minor Source Oil & Gas General Permit

LDEQ is developing a minor source oil & gas general permit to replace the Standard Oil & Gas Air (SOGA) permit.

This general permit will be issued in accordance with LAC 33:III.513.A. Applicants will apply for coverage to operate under the general permit.

The permit will address all recently promulgated regulations impacting the oil & gas production industry, including:

- NSPS JJJJ
- NSPS IIII
- HH (area source requirements)

It will also address allow equipment subject to regulations that would have disqualified a facility from coverage under a SOGA permit.



Minor Source Oil & Gas General Permit

Control Requirements – Internal Combustion Engines

NO_x emissions from the non-emergency engines described below installed ***after the effective date of this general permit*** shall be limited to the following amounts:

Emission Factors for Natural Gas-Fired Engines		
Category	Maximum Rated Capacity	NO _x Emission Factor
Lean-burn	>/= 1500 hp	4.0 g/hp-hour
Rich-burn	>/= 300 hp	2.0 g/hp-hour

Note, however, that more restrictive limits may be applicable if the engine is subject to 40 CFR 60 Subpart JJJJ.



Minor Source Oil & Gas General Permit

Control Requirements – Flash Gas Emissions

For any facility that commenced construction ***after the effective date of this general permit*** and that has a potential to emit 25 tons or more per year of flash gas (uncontrolled), aggregated facility flash gas emissions shall be reduced by a minimum of 95% by means of vapor recovery equipment.

If the applicant demonstrates to the satisfaction of the Department that vapor recovery is not technically feasible, then flash gas emissions may be controlled by routing such emissions to a flare or other combustion device.



Minor Source Oil & Gas General Permit

Equipment Specifications

Amine Units

Amine units eligible to be covered under this permit must have a design capacity less than 2 long tons per day (LT/D) of H₂S expressed as sulfur.

TEG Dehydration Units

- Must be exempt from control requirements per 40 CFR 63.764(e)(1).
 - The actual annual average flowrate of natural gas to the unit shall be less than 85,000 standard cubic meters per day; **or**
 - the actual average emissions of benzene shall be less than 0.90 megagram per year.



Minor Source Oil & Gas General Permit

Equipment Specifications

Joule-Thomson (J-T) Valves and Fugitive Emissions

Facilities using J-T valves as part of a “forced” process are eligible for coverage under this general permit, provided:

- the operation is a non-fractionating plant that does not have the design capacity to process 10 million standard cubic feet per day;
- if the facility commenced construction, reconstruction, or modification after January 20, 1984, the owner or operator complies with all applicable requirements of 40 CFR 60 Subpart KKK; and
- where Subpart KKK is applicable, the owner does not comply by routing emissions to a control device.



PM_{2.5}

EPA's final rule entitled "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})," was promulgated on May 16, 2008.

EPA is requiring states with SIP-approved PSD programs (like Louisiana) to submit revised PSD programs and revised NNSR programs for PM_{2.5} within 3 years from the date of this action (i.e., May 16, 2011).



PM_{2.5}

According to the final rule, to ensure consistent administration during the transition period, EPA has elected to maintain its existing PM₁₀ surrogate policy which only recommends as an interim measure that sources and reviewing authorities conduct the modeling necessary to show that PM₁₀ emissions will not cause a violation of the PM₁₀ NAAQS as a surrogate for demonstrating compliance with the PM_{2.5} NAAQS.

Further, the final action does not require regulation of SO₂ or NO_x as precursors to PM_{2.5} under PSD until the SIP development period ends.



PM_{2.5}

Since adoption of this rule will likely trigger speciation of PM_{2.5} in air permits, LDEQ will likely undertake this rulemaking effort in 2010.

Also, on September 21, 2007, EPA proposed (72 FR 54112) additional elements for the PSD program for PM_{2.5}, including:

- PM_{2.5} “increments,”
- significant impact levels (SILs), and
- significant monitoring concentrations (SMCs).

This rule has not yet been finalized.



New Ozone Standard

March 12, 2008 – EPA announced that the 8-hour NAAQS for ozone would be lowered from 80 parts per billion (ppb) to 75 ppb.

Currently, up to 26 parishes fail to meet this standard (based upon 2005-2007 data).

If the 2006-2008 data is QA/QC'd early enough, it will be used to make LDEQ's recommendations to EPA in March 2009.

Based upon the 2006-2008 data, Lake Charles will remain in attainment.



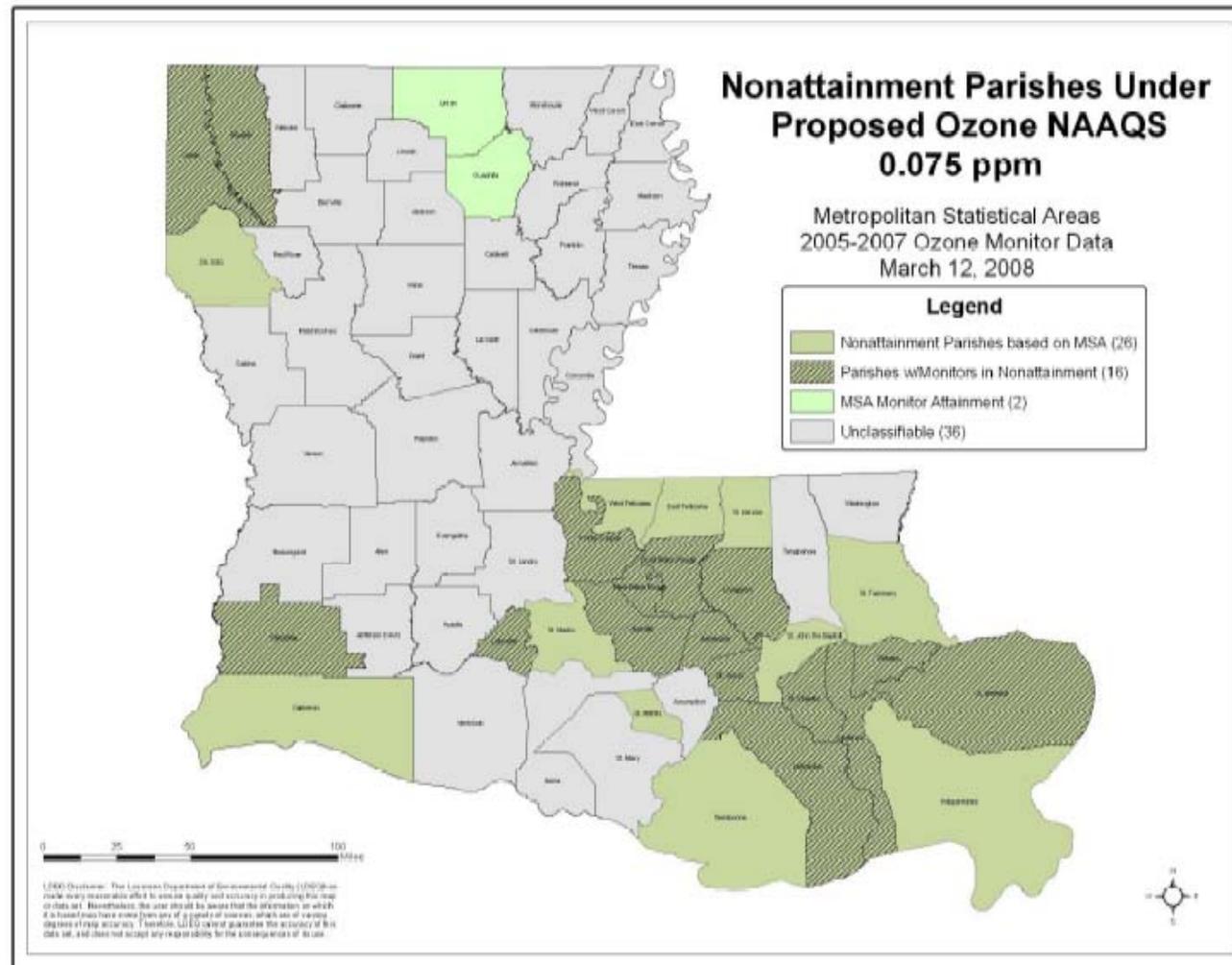
New Ozone Standard

Implementation schedule:

- May 27, 2008 - Effective date of the new ozone standard
- March 12, 2009 - State designation recommendations due to EPA
- March 12, 2010 - Final designations made by EPA
- 2013 - Attainment Demonstration SIPs Due
- Attainment Dates: 2013 – 2030 (depending on nonattainment classification)



New Ozone Standard





Justification for Variances

The **Miscellaneous Permitting Actions Application** should be used to request a variance.

Explain the need for the variance.

Identify the affected sources, as well as the applicable regulations from which the sources need a variance.

Include relevant details as necessary (e.g., a description of the how the process normally functions and how it is operating now).

Describe any measures undertaken or that will be undertaken to remedy the situation prompting the variance request.



Justification for Variances

Identify the exceptional circumstances.

Explain how strict conformity with such regulations would

- 1) cause undue hardship;
- 2) be unreasonable;
- 3) be impractical; or
- 4) not be feasible under the circumstances; or
- 5) would otherwise result in the practical closing and elimination of any lawful business, occupation, or activity without sufficient corresponding benefit or advantage to the people of the state.



Coastal Use Permits

Executive Order No. BJ 2008-7 directs **all** state agencies to administer their regulatory practices, programs, contracts, grants, and all other functions vested in them in a manner consistent with Louisiana's Comprehensive Master Plan for a Sustainable Coast and public interest to the maximum extent possible.

The plan, entitled "Integrated Ecosystem Restoration and Hurricane Protection: Louisiana's Comprehensive Master Plan for a Sustainable Coast," is available at <http://www.lacpra.org>.



Coastal Use Permits

The concern would be whether the activities being authorized by a state agency would be inconsistent with the Master Plan; would the activity interfere or hinder a project envisioned by the Master Plan.

For example if there is a known alignment for a levee for a hurricane protection project, permitting a facility to construct a source within property of that alignment would be inconsistent with the Master Plan.



Coastal Use Permits

If a facility is located in the Coastal Zone, permit writers will ask the applicant the following question(s).

Do you have a Coastal Use Permit for the proposed facility/project? If “yes,” he/she will request the CUP number. If “no,” he/she will then ask:

Do you need a Coastal Use Permit for the proposed facility/project? If “no,” he/she will ask the applicant to document that for the record.

It is **not** necessary for the applicant to provide documentation *from LDNR* that a CUP is not needed.



Act 547

Senate Bill 384 was signed by Governor Jindal on June 30, 2008, and became effective on August 15, 2008.

Recall Act 918 exempted sources from the requirement to obtain a permit if the following criteria were met:

1. Facility-wide potential emissions are less than five tons per year of any regulated air pollutant;
2. Facility-wide potential emissions are less than fifteen tons per year emitted of all such defined pollutants combined; and
3. Facility-wide potential emissions are less than the minimum emission rate (MER) for each toxic air pollutant .



Act 547

The revisions to R.S. 30:2054(B)(2)(b)(ix) clarify that LDEQ can promulgate standards, limitations, and recordkeeping requirements applicable to sources which are not required to have a permit.

It also allows LDEQ to consider control devices and historical practices, including hours of operation and number of employees, when determining “potential emissions.”



Act 547

Rulemaking is underway; it will likely be accomplished in two phases.

Phase 1

Will incorporate the statutory exemption into the air quality regulations and clarify that notwithstanding the definition of “potential to emit” in LAC 33:III.502, control devices may be accounted for in determining potential emissions.

Phase 2

Will expand on how historical practices may be used in determining potential emissions.

AQ270 – Statutory Exemption for Small Sources



CAIR

October 21, 2008 –

Court issued order hinting at willingness to rehear CAIR case

Court directed petitioners to address

- 1) whether any party is seeking vacatur of CAIR, and
- 2) whether the court should stay its mandate until EPA promulgates a revised rule.

The Court says EPA may also submit a brief on whether a stay of the Court's mandate in lieu of immediate vacatur "would suffice."

If the Court were to stay its mandate until EPA revised CAIR to comply with the Court decision, then CAIR as it currently exists would be in effect until it is revised by EPA.



CAIR

LDEQ will continue to issue CAIR permits and include CAIR requirements in Title V permits until such time as the decision is effective.

If CAIR is ultimately abolished, LDEQ will rescind CAIR permits and remove CAIR requirements from Title V permits via administrative amendments.



Max Lb/Hr Guidance

Maximum pound per hour limits are necessary when:

- potential emissions are based on the maximum design capacity or operating rate of the emissions unit (e.g., combustion units such as boilers, turbines, and engines);
- a definitive potential to emit can be calculated and verified via test methods;
- an applicable regulation establishes allowable emission rates in terms of pounds per hour (e.g., LAC 33:III.1311.B);



Max Lb/Hr Guidance

Maximum pound per hour limits are necessary when:

- a maximum pound per hour limit has been established by an effective Nonattainment New Source Review (NNSR) or Prevention of Significant Deterioration (PSD) permit;
- the permit purposefully restricts the hourly operating rate of a given piece of equipment below its maximum design; or
- hourly limitations are necessary to ensure compliance with NAAQS or AAS with 1-hour, 3-hour, or 8-hour averaging periods (i.e., if the modeled ambient concentration of a given pollutant is 90% or more of its corresponding NAAQS or AAS).



Max Lb/Hr Guidance

Maximum pound per hour limits may **not** be necessary when:

- emissions are not dependent on process variables and the emissions unit cannot be operated at varying rates (e.g., certain fugitive emissions); or
- there are no underlying federal or state standards, or applicable regulations specify compliance in terms other than an emissions rate; **and**
- inclusion of such a limit is not necessary to ensure compliance with NAAQS or AAS.



Max Lb/Hr Guidance

Permit applicants should estimate maximum pound per hour rates from all emissions units, except where inclusion of a maximum pound per hour rate will not be incorporated into a permit.

Examples of emissions units that generally do **not** require maximum pound per hour limits:

- Storage vessels;
- Fugitive emissions associated with LDAR program components (e.g., valves, connectors, etc.);
- Heat exchange systems (such as in a cooling tower) subject to periodic monitoring requirements (e.g., 40 CFR 63.104);
- Wastewater ponds and other open-air wastewater treatment systems; and
- Maintenance wastewater.



Emission Reduction Tax Credit Program

LDEQ is currently developing a program whereby regulated facilities can qualify for tax credits for voluntary pollution control projects.



Initial Feasibility

- DEQ met initially with external stakeholders to determine feasibility of this program. The department determined that this program would be widely accepted.



Develop The Program

- Developing objective criteria to qualify for the program;
- Determining baseline emission values (i.e., average of the last 5 years with the option to drop one year);
- Developing a process to verify the reduction in emissions (e.g., will it be tied to production, changes in calculations, CEMS, etc.);
- Determining the mechanism for the tax credit; and
- Developing an audit loop.



Stakeholder Identification And Involvement

- LDEQ
- Louisiana Chemical Association
- Louisiana Pulp and Paper Association
- Utility Industry
- Louisiana Environmental Action Network
- Louisiana Mid-Continent Oil and Gas Association
- EPA



Scope

DEQ will focus its initial efforts for this program on facilities that have existing air permits. These facilities are ideal because:

- There is an existing system for reporting emission data to the department; and
- The data is readily available for analysis.



Scope

Initial focus will be on criteria pollutants including:
NO_x, SO_x, VOC, and PM₁₀

The financial incentive will include a direct tax credit commensurate to the verifiable permanent reduction in emissions.

The department will leverage the success from this initial phase to implement financial incentives for pollution reduction in other programs.



IMPACT

- Reduced emissions
 - Cleaner Air
 - Reduced Health Costs
- Job Creation
 - Construction
 - Engineering
 - Consulting

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Develop Enabling Legislation

- This program will require legislative approval. As such, DEQ will need to develop enabling legislation for this program.