AIR & WASTE MANAGEMENT ASSOCIATION
SOUTHEAST LOUISIANA CHAPTER,
LOUISIANA SECTION

FIXED FACILITY RELEASE/INCIDENT REPORTING --
NRC, LDEQ, and STATE POLICE

September 19, 2019

Dwayne Johnson
INTRODUCTION/PURPOSE

• Address release/incident reporting at fixed facilities (e.g., chemical manufacturing facilities, refineries, etc.)

• Do not address:
  • permitted releases, regular permit exceedances, and special LPDES and RCRA reporting requirements
  • transportation releases/incidents
  • pipeline and oil releases/incidents
  • groundwater contamination
FEDERAL REQUIREMENTS-GENERAL

• CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act)¹
  • 40 CFR Part 302 (See, also 40 CFR Part 117)

• EPCRA (Emergency Planning & Community Right-to-Know Act)²
  • 40 CFR Part 355 (State Police and Local Emergency Planning Committee (Parish))

¹ 42 U.S.C. 9601, et seq.
² 42 U.S.C. 11001, et seq.
STATE REQUIREMENTS-GENERAL

• Louisiana Environmental Quality Act\(^1\)
  • LAC 33:I.Chapter 39

• Right-to-Know Law\(^2\)
  • LAC 33:V.Chapter 101

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2  La. R.S. 30:2361, et seq.
What do I have to report?

Release (other than a permitted release) into the environment of a hazardous substance in a quantity ≥ the reportable quantity (RQ) in any 24-hour period\(^1\)

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1 40 CFR 302.6(a).
FEDERAL (CONT.)

• Who do I have to report it to?
  • National Response Center (NRC)\(^1\)

• How do I report it?
  • Phone NRC at 800-424-8802\(^2\)

\(^1\) 40 CFR 302.6(a).
\(^2\) Id.
• When do I have to report it?¹
  • Immediately after obtaining knowledge of the release

• Do I have to provide a follow-up written report?
  • Generally, no.
  • Written reports required for “continuous releases.”²

¹ 40 CFR 302.6(a).
² See, 40 CFR 302.8.
• What happens if I don’t report it?\textsuperscript{1}
  • Civil penalties, criminal fines, and imprisonment for ≤ 3-5 years

• What happens if I submit false or misleading information in my report?\textsuperscript{2}
  • Civil penalties, criminal fines, and imprisonment for ≤ 3-5 years

\textsuperscript{1} 40 CFR 302.7; 42 U.S.C. 9603(b); 42 U.S.C. 9609; and 18 U.S.C. 3571.
\textsuperscript{2} Id.
• What do I have to report?
  • Unauthorized discharge of a pollutant on or into the air, waters of the state, or the ground that causes an emergency condition\(^1\)

  • Unauthorized discharge of a pollutant on or into the air, waters of the state, or the ground ≥ the RQ in any continuous 24-hour period that does not cause an emergency condition\(^2\)

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1 LAC 33:I.3915 and definitions in LAC 33:I.3905.
2 LAC 33:I.3917; LAC 33:I.3927(B); and definitions in LAC 33:I.3905.
STATE – LDEQ (CONT.)

• Who do I have to report it to?
  • Emergency condition--contact State Police¹
  • ≥ the RQ but no emergency condition--contact State Police²

• How do I initially report it?
  • Emergency condition--contact State Police at 225-925-6595 (Hotline)³
  • ≥ the RQ but no emergency condition--contact State Police Hotline⁴

¹ LAC 33:1.3915.
² LAC 33:1.3917.
³ LAC 33:1.3915.
⁴ LAC 33:1.3917.A.
• When do I have to initially report it?
  – Emergency condition--immediately but in no case later than one hour after learning of the discharge\(^1\)
  – $\geq$ the RQ but no emergency condition--within 24 hours after learning of the discharge\(^2\)

• Do I have to provide a follow-up written report?
  – Yes. Follow-up written report to LDEQ to be submitted within 7 calendar days after initial notification.\(^3\)

1 LAC 33:I.3915.A.1.
3 LAC 33:I.3925.A.
• What happens if I don’t report it?
  – Civil penalties of up to $32,500/day and, if intentionally fail to report, an additional penalty of up to $1 million\(^1\)

• What happens if I willfully or knowingly submit false information in my report?

• Criminal penalties of $25,000/violation and imprisonment for ≤ 1 year\(^2\)

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\(^1\) La. R.S. 30:2025(E)(1)(a).
• What do I have to report?
  • Any release/incident involving a regulated hazardous material that meets one or more of the following criteria:¹
    • Release (other than a permitted release) \( \geq \) RQ within any continuous 24-hour period when that RQ could be reasonably expected to escape beyond the site of the facility
    • Release (regardless of RQ) that directly causes any injury requiring hospitalization or any fatality

• What do I have to report?
  • Any release/incident involving a regulated hazardous material that meets one or more of the following criteria:¹
    • Release (regardless of RQ) that results in a fire or explosion which could reasonably be expected to affect the public safety beyond the boundaries of the facility
    • The incident, accident, or cleanup within the facility could reasonably be expected to affect the public safety beyond the boundaries of the facility
    • A known protective action beyond the facility has been initiated

STATE – STATE POLICE (CONT.)

• Who do I have to report it to?¹
  • Local emergency planning committee (LEPC) -- Parish sheriff’s office, office of emergency preparedness, etc.
  • State Police

• How do I initially report it?²
  • First contact LEPC
  • Then contact State Police at Hotline

¹ LAC 33:V.10111.F.1 and 2.
² LAC 33:V.10111.F.1 and 2.
• When do I have to initially report it?¹
  • Immediately after learning of the release/incident

• Do I have to provide a follow-up written report?²
  • Yes. Follow-up written report to State Police and LEPC to be submitted within 5 business days.

• What happens if I don’t report it?³
  • Civil penalty of up to $25,000/day

¹ LAC 33:V.10111.B.
² LAC 33:V.10111.H; see, also LAC 33:V.10111.G.
³ LAC 33:V.10117.F.1; La. R.S. 30:2373(C)(3).
OTHER ISSUES

RQs

FEDERAL -- CERCLA

• 40 CFR 302.4 -- list and RQs
• Mixtures\(^1\)
• Unlisted hazardous substances (characteristic hazardous wastes)\(^2\)

\(^1\) 40 CFR 302.6(b).
\(^2\) 40 CFR 302.4(b) and 302.5(b).
OTHER ISSUES - RQS

STATE POLICE
• 40 CFR 302.4; 40 CFR 355; and 49 CFR 171.101, Appendix A
• OSHA material requiring maintenance of MSDS [SDS] under 29 CFR 1910.1200, et seq. (RQ = generally, 5000 lbs; compressed or refrigerated flammable gases = 100 lbs; flammable liquids = 100 lbs; all other liquids = 1,000 lbs)

LDEQ
• Generally, same as State Police
• But absent an emergency condition, offsite release, release to an area open to the general public, generally only hazardous substances listed under 40 CFR 302.4 reportable
• Brine; produced water; sweet pipeline gas; oil.

1 LAC 33:V.10111.C, D, and E (exceptions).
2 LAC 33:1.3931.
3 LAC 33:1.3917.D.
Reasonably expected to “escape beyond the facility”\textsuperscript{1}

If hazardous material is released into the air or into any surface water (river, creek, bayou, etc.), it is reasonably expected to escape beyond the facility.

\textsuperscript{1} LAC 33:V.10105.A and LAC 33:V.10111.B.3.
Hospitalization

• Three separate situations constitutes a hospitalization:
  – admission into hospital as a patient for an overnight stay;
  – emergency treatment at a hospital to the extent that the owner or operator requested such treatment; or
  – emergency treatment at a hospital to the extent that the owner or operator becomes aware of such treatment within twenty four hours of the initiation of the relevant release.

• But there must be a release of a hazardous material that directly causes an injury requiring that hospitalization. Each of these elements must be met.

“Reasonably expected to affect the public safety beyond the boundaries of the facility”\(^1\)

- If offsite emergency responders are required to deal with an onsite incident/release, the incident/release is reportable.

- But the mere presence of offsite emergency responders onsite following an incident/release does make the incident/release reportable.

- To be reportable, the offsite emergency responders must actually perform some emergency response action to address the onsite incident/release (e.g., offsite fire trucks put out a small fire, offsite EMT personnel provide emergency medical assistance, etc.)

STATE POLICE - CLOSING COURTESY NOTIFICATIONS

• State police -- call the Hotline, provide the previously assigned incident number, and confirm that ≤ RQ of hazardous material released and no other criteria requiring an immediate report were triggered/met, and thus prior report should be considered a courtesy notification. No additional action or follow-up written report required to close this matter with the State Police or LEPC.¹

¹ State police incident reporting frequently asked questions no. 21.
LDEQ – CLOSING COURTESY NOTIFICATIONS

• If the reporting entity initially called the Hotline to report, provide an on-line SPOC incident report and therein:
  • Provide the incident number provided by the State Police.
  • Identify the material discharged.
  • Provide an estimate of the amount of material discharged.
  • Describe the actions taken, or to be taken, to stop the unauthorized discharge and recover the material discharged.
  • Describe how any recovered material was properly managed and disposed of.

Unless otherwise notified by LDEQ, no additional action or follow-up written report under LAC 33:I.3925 is required to close this matter. The submittal of the on-line report shall be deemed a certification that the release did not exceed an RQ and did not cause an emergency condition as provided in LAC 33:I.3915.¹

¹ See, https://www.deq.louisiana.gov/page/single-point-of-contact; If, instead, the reporting entity initially reported to SPOC via LDEQ’s online form, to close out the courtesy notification, see https://www.deq.louisiana.gov/subhome/emergency-response
WEBSITE, GUIDANCE, AND CONTACTS

FEDERAL

• Questions and Answers on Release Notification Requirements and Reportable Quantity Adjustments, EPA/540/4-94/005 (January 1995)

• CERCLA and EPCRA Continuous Release Reporting https://www.epa.gov/epcra/cercla-and-epcra-continuous-release-reporting

• Frequent questions on CERCLA Section 103/EPCRA Section 304 https://emergencymanagement.zendesk.com/hc/en-us
WEBSITES, GUIDANCE, AND CONTACTS (CONT.)

STATE POLICE

• Emergency Services Unit website: [http://www.lsp.org/esu.html](http://www.lsp.org/esu.html)
  Includes:
  • Fixed site facility release and incident reporting criteria
  • Incident reporting frequently asked questions
  • List of Louisiana local emergency planning committees (LEPCs)
  • List of LEPC emergency release notification phone numbers

Contact: Gene Dunegan
Emergency Services Unit Program Manager
LSP/TESS/ESU
Office (225) 925-6113, ext. 253
Fax (225) 925-4048
Gene.Dunegan@LA.GOV
WEBSITES, GUIDANCE, AND CONTACTS (CONT.)

LDEQ

- SPOC website: https://www.deq.louisiana.gov/page/single-point-of-contact

Contacts:

Jeff J. Dauzat
Administrator
Emergency and Radiological Services Division
Office of Environmental Compliance
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Fax (225) 219-4044
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THANK YOU.

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TRANSPORTATION INCIDENT RELEASE REPORTING

September 19, 2019 Workshop
Southwest Louisiana Chapter Louisiana Air and Waste Management Association
Lake Charles, La.

Lauren Rucinski, Kean Miller LLP
New Orleans. Shreveport. Woodlands
TRANSPORTATION INCIDENT
RELEASE REPORTING

• Statistics
• Federal Authority and Requirements
  – Rolling Stock (cars, truck, railcars)
  – Vessels
  – Pipelines
• Louisiana Statutory Authority and Requirements
  – Rolling Stock (cars, truck, railcars)
  – Vessels
  – Pipelines
• Preemption
• Enforcement
TRANSPORTATION INCIDENT REPORTING STATISTICS

From the US Dept. of Transportation Pipeline and Hazardous Materials Safety Administration (Office of Hazardous Material Safety)

• 2019, ytd the following highway incidents have been reported:

<table>
<thead>
<tr>
<th>Transportation Phase</th>
<th>Incidents</th>
<th>Hospitalized</th>
<th>Non-Hospitalized</th>
<th>Fatalities</th>
<th>Damages</th>
</tr>
</thead>
<tbody>
<tr>
<td>IN TRANSIT</td>
<td>2,339</td>
<td>2</td>
<td>17</td>
<td>2</td>
<td>$26,266,545</td>
</tr>
<tr>
<td>IN TRANSIT STORAGE</td>
<td>285</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>$773,511</td>
</tr>
<tr>
<td>LOADING</td>
<td>3,797</td>
<td>3</td>
<td>21</td>
<td>0</td>
<td>$13,238,255</td>
</tr>
<tr>
<td>UNLOADING</td>
<td>5,769</td>
<td>5</td>
<td>47</td>
<td>0</td>
<td>$2,762,514</td>
</tr>
</tbody>
</table>
TRANSPORTATION INCIDENT REPORTING STATISTICS

- 2019, ytd the top five causes of highway incidents are:

<table>
<thead>
<tr>
<th>Cause</th>
<th>Incidents</th>
<th>Hospitalized</th>
<th>Non-Hospitalized</th>
<th>Fatalities</th>
<th>Damages</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAUSE NOT REPORTED</td>
<td>2,829</td>
<td>4</td>
<td>33</td>
<td>1</td>
<td>$11,669,167</td>
</tr>
<tr>
<td>HUMAN ERROR</td>
<td>1,483</td>
<td>1</td>
<td>6</td>
<td>0</td>
<td>$5,223,343</td>
</tr>
<tr>
<td>DROPPED</td>
<td>1,328</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>$122,672</td>
</tr>
<tr>
<td>LOOSE CLOSURE, COMPONENT, OR DEVICE</td>
<td>1,303</td>
<td>1</td>
<td>11</td>
<td>0</td>
<td>$147,020</td>
</tr>
<tr>
<td>IMPROPER PREPARATION FOR TRANSPORTATION</td>
<td>1,052</td>
<td>1</td>
<td>5</td>
<td>0</td>
<td>$546,412</td>
</tr>
</tbody>
</table>
FEDERAL
FEDERAL TRANSPORTATION INCIDENT REPORTING

• Hazardous Materials Regulations (49 CFR Parts 171-180) require certain types of hazmat incidents be reported.
• Pipeline operators have regulatory reporting requirements under Part 191 and Part 195 of PHMSA's pipeline safety regulations.
• Section 304 of EPCRA and Section 103 of CERCLA require release reporting for CERCLA and extremely hazardous substances.
HAZARDOUS MATERIALS REGULATIONS

REQUIREMENTS: APPLICABILITY

• Requirements in the HMR apply to transportation of a hazardous material in commerce and to each person who transports a hazardous material in commerce.

• Movement of a hazardous material by rail car, aircraft, motor vehicle, or vessel.

• Loading/Unloading/Storage incidental to movement of a hazardous material.

49 C.F.R. § 171.1
HAZARDOUS MATERIALS REGULATIONS
REQUIREMENTS: WHAT

• As a direct result of a hazardous material—
  ➢ A person is **killed**;
  ➢ A person receives an injury requiring admittance to **a hospital**;
  ➢ The **general public is evacuated** for one hour or more;
  ➢ A **major transportation artery or facility is closed** or shut down for one hour or more; or
  ➢ The **operational flight pattern or routine of an aircraft** is altered;

• Fire, breakage, spillage, or suspected radioactive contamination occurs involving a **radioactive material** (see also § 176.48 of this subchapter);

• Fire, breakage, spillage, or suspected contamination occurs involving an **infectious substance** other than a regulated medical waste;

49 C.F.R. § 171.15
HAZARDOUS MATERIALS REGULATIONS

REQUIREMENTS: WHAT (CONTIN.)

- A release of a **marine pollutant** occurs in a quantity exceeding 450 L (119 gallons) for a liquid or 400 kg (882 pounds) for a solid;
- A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that, in the judgment of the person in possession of the hazardous material, it should be reported to the NRC even though it does not meet the criteria of paragraphs (b)(1), (2), (3) or (4) of this section; or
- During transportation by **aircraft**, a fire, violent rupture, explosion or dangerous evolution of heat (i.e., an amount of heat sufficient to be dangerous to packaging or personal safety to include charring of packaging, melting of packaging, scorching of packaging, or other evidence) occurs as a direct result of a **battery or battery-powered device**.

49 C.F.R. § 171.15
HAZARDOUS MATERIALS REGULATIONS

REQUIREMENTS: WHO

- Any person in physical possession of a hazardous material during transportation, including loading, unloading and storage incidental to transportation, must report to the Department of Transportation (DOT) if certain conditions are met. [49 C.F.R. § 171.15]
HAZARDOUS MATERIALS REGULATIONS
REQUIREMENTS: HOW/WHEN

• Section 171.15 of the HMR requires an immediate telephonic report (within 12 hours) of certain types of hazardous materials incidents and a follow-up written report.

• Section 171.16 requires a written report for certain types of hazardous materials incidents within 30 days.

The National Response Center (NRC) on 800–424–8802 (toll free) or 202–267–2675 (toll call) or online at http://www.nrc.uscg.mil

DOT Form F 5800.1

HAZARDOUS MATERIALS REGULATIONS
REQUIREMENTS: EXCEPTIONS

Unless a telephone report is required, the written report requirements do not apply to:

✓ A minimal release from a vent; routine operation of a seal, pump, compressor or valve; connecting or disconnecting from a loading/unloading line that does not result in property damage. [49 C.F.R. § 171.16(d)(1)]

✓ Minimal unintentional releases of ORM-D or PG III material in Class 3, 4, 5, 6.1, 8 or 9, if each package < 5.2 gals (20 L) for liquids or < 66 lbs. (30 kg) for solids & the aggregate release is < 5.2 gals (liquid) or < 66 lbs (solid). The exception does not apply to a hazardous waste, undeclared HM or shipments by air. [49 C.F.R. § 171.16(d)(2)]
HAZARDOUS MATERIALS REGULATIONS: GUIDANCE DOCUMENT

• Pipeline operators have regulatory reporting requirements under Part 191 and Part 195 of PHMSA's pipeline safety regulations
  – Within one hour of a release of hazardous materials meeting reporting threshold operators must call the NRC at 1-800-424-8802;
  – Within 48-hours operators must submit an update to the NRC; and
  – Within 30-days operators must submit a report on the relevant PHMSA form below. Operators submit the reports online via the PHMSA Portal.
Section 327 of EPCRA exempts from any reporting requirement, other than the Section 304 notification requirements, substances or chemicals in transportation or being stored incident to transportation.

Even hazardous chemical shipments that are exempt under Section 327 are not exempt from EPCRA Section 304 and Environmental Response, Compensation, and Liability Act (CERCLA) Section 103, which cover release notification for CERCLA and extremely hazardous substances (EHSs).
EPCRA SECTION 304

• Section 304 covers all releases of listed hazardous or extremely hazardous substances, including those involved in transportation in excess of the reportable quantity (RQ).

• Owners or operators of transportation facilities may call 911 or the local telephone operator, in order to satisfy Section 304 notification requirements when a release occurs during transportation.

See also 40 CFR §355.42
LOUISIANA
LOUISIANA TRANSPORTATION INCIDENT REPORTING

• La. Revised Statutes 32:1501 – 1525 (Hazardous Materials Transportation and Motor Carrier Safety) require reporting by each person involved in an incident.

• La. Administrative Code Title 33 Part V Subpart 2, are DEQ’s regulation of Motor Carrier Safety and Hazardous Materials (under Haz. Waste/Haz. Materials Part)

• There are specific reporting requirements for Cat. 3 or higher hurricanes. See http://www.lsp.org/pdf/ReportingRequirementsFAQ.pdf.
LSP STATUTES: APPLICABILITY

• The statute applies to: a motor vehicle, rail freight car, freight container, cargo tank, portable tank, aircraft, or vessel used to transport hazardous materials, freight, or passengers.

• “Hazardous waste” shall be defined as provided under Louisiana’s Hazardous Waste laws.

La. R.S. § 32:1502
LSP STATUTE: WHAT

• If that incident, accident, or cleanup of an incident or accident involves:

    A fatality due to fire, explosion, or exposure to any hazardous material.

    The hospitalization of any person due to fire, explosion, or exposure to any hazardous material.

    An estimated property damage of more than ten thousand dollars.

La. R.S. § 32:1510
A continuing danger to life, health, or property at the place of the incident or accident under any of the following circumstances:

(i) The incident or accident results in the release of a hazardous material, as defined in Title 49 of the Code of Federal Regulations.
(ii) As a result of the incident or accident, a bulk package of a regulated hazardous material as defined in Title 49 of the Code of Federal Regulations, comes to rest at an angle forty-five degrees or more from the upright position.
(iii) It is deemed necessary to transfer a hazardous material, as defined in Title 49 of the Code of Federal Regulations, from one bulk package to another bulk package on a public highway or within five hundred feet of an inhabited building.

Vehicles suffering mechanical failures completely unrelated to the transportation container or the material contained therein, shall not be required to notify under this Paragraph.

La. R.S. § 32:1510
Each person involved in an incident, accident, or the cleanup of an incident or accident during the transportation, loading, unloading, or related storage in any place of a hazardous material

(La. R.S. 32:1510(a))
LSP STATUTES: WHEN/HOW

• Subsections A and B of La. R.S. 32:1510 require “[e]ach person involved” in a hazardous materials incident, accident, or the clean up of an incident or accident that has certain consequences to:

• (1) Make an immediate telephone report to the Louisiana Department of Public Safety and Corrections (DPSC), and

• (2) submit a follow-up written report “on an approved form” to DPSC

HazMat Hotline: 877-925-6595 or 225-925-6595
LSP STATUTES: EXCEPTION

- Notwithstanding any other provision of law to the contrary, the provisions of this Section shall not apply to any incidents, accidents, or cleanup of incidents or accidents that occur within a facility that is subject to the release reporting requirements of R.S. 30:2373(B) and is engaged in activities defined or classified under one or more of the [listed] subsectors, industry groups, or industries of the 1997 North American Industry Classification System (NAICS).

- Notwithstanding the provisions of Paragraph 1 of this Subsection, this Section shall apply to any carrier involved in any incident, accident, or cleanup of an incident or accident which occurs outside the perimeter of any facility exempted from this Section pursuant to Paragraph 1 of this Subsection.
### COMPARISON OF FEDERAL DOT REGS. TO LOUISIANA DPS STATUTE

<table>
<thead>
<tr>
<th>APPLICABLE REGULATIONS</th>
<th>ENFORCING AGENCY</th>
<th>RELEASE CONDITION REQUIRING NOTIFICATION</th>
<th>TIMING OF NOTIFICATION AND AGENCY TO BE NOTIFIED</th>
<th>TYPE OF NOTIFICATION REQUIRED</th>
</tr>
</thead>
<tbody>
<tr>
<td>49 C.F.R. § 171.15 and 171.16 (see also LAC 33.V.10303)</td>
<td>USDOT</td>
<td>Incident during transportation (including loading, unloading and temporary storage) where person is killed, hospitalized; &gt;$50K property damage; and others</td>
<td>At the earliest practical moment to National Response Center at 800-424-8802</td>
<td>Verbal: Immediate Written: &lt;30 days on DOT form (see Sec. 171.16)</td>
</tr>
<tr>
<td>La Rev Stat Ann § 32:1510</td>
<td>LDPS</td>
<td>Incident during transportation if person is killed, hospitalized due to fire, explosion or exposure; continuing danger to life, property, health; or $10K property damage (This requirement does not apply to incidents occurring within a facility subject to reporting requirements of R.S. § 30:2373 AND classified under the following SIC codes: 211, 22111, 3221, 324-326, 331, 4953, 4212 &amp; 4789)</td>
<td>Immediate notification to LDPS at 225-925-6595 (Hotline)</td>
<td>Verbal: Immediate Written: no time limit specified; must be on an “approved form”</td>
</tr>
</tbody>
</table>
STATE EXAMPLES

• Less than a reportable quantity of a regulated hazardous material is released from a railcar that is being loaded at a loading rack within the perimeter of your chemical manufacturing facility.
  – **Must you report the release under the Right-to-Know Law** No, because less than a reportable quantity of the hazardous material was released.
  – **Must you immediately report the release under the Hazardous Materials Transportation and Motor Carrier Safety Law (Hazardous Materials Transportation Law)?** No, because the incident occurred within your facility, your facility is subject to the release reporting requirements of La. R.S. 30:2373(B), and your facility is engaged in chemical manufacturing (NAICS Subsector 325), La R.S. 32:1510 does not apply.

STATE EXAMPLES

- Less than a reportable quantity of a regulated hazardous material is released from a facility hose being used to load a railcar at your chemical manufacturing facility. The regulated hazardous material comes into contact with the railroad engineer. Facility personnel provide the railroad engineer on-site first aid and then transport him to the hospital where he is admitted and stays overnight.
  - **Must you report the release under the Right-to-Know Law?**  **Yes.** Because the release caused an injury to the railroad engineer requiring “hospitalization” (he was admitted to the hospital and stayed overnight), you must report even though less than a reportable quantity of the hazardous material was released.
  - **Must you immediately report the release under the Hazardous Materials Transportation Law?**  **No.** Because the incident occurred within your facility, your facility is subject to the release reporting requirements of La. R.S. 30:2373(B), and your facility is engaged in chemical manufacturing (NAICS Subsector 325), La R.S. 32:1510 does not apply.
STATE EXAMPLES

• Less than a reportable quantity of a regulated hazardous material is released from your railcar located at a rail spur outside the perimeter of your chemical manufacturing facility.
  – **Must you report the release under the Right-to-Know Law?** No, because less than a reportable quantity of the hazardous material was released.
  – **Must you immediately report the release under the Hazardous Materials Transportation Law?** Yes, if the incident, accident, or cleanup of the incident or accident involved a continuing danger to life, health or property at the place of the incident or accident. Because it is your railcar, you are deemed to have been involved in the incident, accident, or the cleanup of the incident or accident. Because the incident occurred outside of your facility, the exemption in La. R.S. 32:1510(E) (1) does not apply.
ATOFINA CHEMICALS

- ATOFINA Chemicals, Inc. (ATOFINA) applied for an administrative determination whether Federal hazardous material transportation law preempts the incident reporting requirements in La. R.S. 32:1510.

- ATOFINA had received a notice of violation from the Louisiana State Police for failing to provide immediate notification of an incident when it “believed that the carrier would make any necessary notification since it was directly present on the scene.”
ATOFINA CHEMICALS

• Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects is preempted—unless authorized by another Federal law or DOT grants a waiver of preemption—when the non-Federal requirement is not “substantively the same as” a provision of Federal hazardous material transportation law, a regulation prescribed under that law, or a hazardous materials security regulation or directive issued by the Secretary of Homeland Security: . . . . (D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.
ATOFINA CHEMICALS

Not So Fast:

• Federal hazardous material transportation law: (1) Does not preempt Louisiana’s immediate telephone notification requirement in La. R.S. 32:1510A, and (2) preempts Louisiana’s written incident reporting requirements in La. R.S. 32:1510B & C.

• This means that no written report is due to the LSP when 30 day reporting is required under federal law.

• US DOTD amended its rules in 2005 to expand reporting requirements beyond the carrier to include: “person in physical control of the hazardous material at the time of the incident” who must do the reports per 49 CFR 171.15 and 171.16. (http://www.gpo.gov/fdsys/pkg/FR-2003-12-03/pdf/03-29597.pdf)

• If you are the person in physical control at the time of the incident – then 49 CFR 171.15 requires verbal report within 12 hours, if the conditions in that rule are triggered and 49 CFR 171.16 requires written report within 30 days, if the conditions in that rule are triggered.
ENFORCEMENT
FEDERAL ENFORCEMENT

Notice of Violation

• 49 C.F.R. § 107.307: DOT may—
  (1) Issue a warning letter, as provided in § 107.309
  (2) Initiate proceedings to assess a civil penalty, as provided in either § 107.310 or § 107.311;
  (3) Issue an order directing compliance, regardless of whether a warning letter has been issued or a civil penalty assessed; and
  (4) Seek any other remedy available under the Federal hazardous material transportation law.
Civil - La. R.S. § 32:1512

- subject to a civil penalty of not more than twenty-five thousand dollars
- take into account the nature, circumstances, extent, and gravity of the violation; the degree of culpability of the person charged; the person's history of previous offenses and ability to pay; the effect of the penalty on the person's ability to continue to operate; and any other matters

Criminal - La. R.S. § 32:1514

- upon conviction, be guilty of a misdemeanor and be fined not more than one thousand dollars per day of violation or imprisoned for not more than one year, or both.
- willful: upon conviction, be guilty of a felony and be fined not less than five thousand dollars nor more than ten thousand dollars per day of violation, or be imprisoned with or without hard labor for not less than five years nor more than ten years, or both.
OVERVIEW OF OIL SPILL REPORTING

Pam Mascari
LOUISIANA’S PROMINENT ROLE

- NRC (National Response Center) receives approximately 1500 spill notifications in Louisiana each year (~20% of U.S. reported spills)

- Average annual volume of spills in Louisiana = 330,000 gallons (~20% of total volume of spills in U.S.)
FEDERAL PROHIBITION ON DISCHARGE OF OIL

• Section 311 of the Federal Water Pollution Control Act (a/k/a Clean Water Act), 33 U.S.C. 1321(a)(2) prohibits the discharge of oil or hazardous substances in a 'harmful quantity'.
FEDERAL PROHIBITION ON DISCHARGE OF OIL

• Oil Pollution Act (33 USC 2701, et seq.) (1990) (amendment to Clean Water Act)
  – After Valdez spill, keenly aware that U.S. lacked adequate resources, particularly federal funds, to respond to spills and that the scope of damages available was narrow
  – Streamlined and strengthened EPA’s ability to prevent and respond to catastrophic oil spills

  • Requires oil storage facilities and vessels to submit to Fed Govt plans on how they will respond to large discharges (contingency planning)
    – EPA regulations for above-ground storage
    – US Coast Guard regulations for oil tankers
    – Developed plans on regional scale
Clean Water Act

• “oil” means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil…

33 USC §1321(1)
Clean Water Act

- “discharges of oil in such quantities that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States include discharges of oil that:

  a) violate applicable water quality standards

  b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.”

40 CFR §110.3
EXEMPTIONS UNDER CLEAN WATER ACT RULES: “NOT HARMFUL”

- Discharges of oil not determined "as may be harmful" pursuant to section 311(b)(3) of the Act.

- Notwithstanding any other provisions of this part, the Administrator has not determined the following discharges of oil "as may be harmful" for purposes of section 311(b) of the Act:
  a) Discharges of oil from a properly functioning vessel engine (including an engine on a public vessel) and any discharges of such oil accumulated in the bilges of a vessel discharged in compliance with MARPOL 73/78, Annex I, as provided in 33 CFR part 151, subpart A;
  b) Other discharges of oil permitted under MARPOL 73/78, Annex I, as provided in 33 CFR part 151, subpart A; and
  c) Any discharge of oil explicitly permitted by the Administrator in connection with research, demonstration projects, or studies relating to the prevention, control, or abatement of oil pollution. [61 FR 7421, Feb. 28, 1996]

40 CFR §110.5
Notice

- Any person in charge of a vessel or of an onshore or offshore facility shall, as soon as he or she has knowledge of any discharge of oil from such vessel or facility in violation of section 311(b)(3) of the Act (i.e. in harmful quantities), immediately notify the National Response Center (NRC) (800-424-8802)

  - NRC is centralized reporting center staffed 24/7 by USCG: NRC relays info to EPA or USCG on-scene coordinator

  - The procedures for such notice are set forth in U.S. Coast Guard regulations, 33 CFR § 153, subpart B and in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR § 300, subpart E.

40 CFR §110.6
CONTENT OF NRC REPORT

• Your name, location, organization, and telephone number
• Name and address of the party responsible for the incident; or name of the carrier or vessel, the railcar/truck number, or other identifying information
• Date and time of the incident
• Location of the incident
• Source and cause of the release or spill
• Types of material(s) released or spilled
• Quantity of materials released or spilled
• Medium (e.g. land, water) affected by release or spill
• Danger or threat posed by the release or spill
• Number and types of injuries or fatalities (if any)
• Weather conditions at the incident location
• Whether an evacuation has occurred
• Other agencies notified or about to be notified
• Any other information that may help emergency personnel respond to the incident

• If reporting directly to the NRC is not possible, reports also can be made to the EPA Regional Office or the U.S. Coast Guard Marine Safety Office in the area where the incident occurred. In general,
  • EPA should be contacted if the incident involves a release to inland areas or inland waters.
  • The U.S. Coast Guard should be contacted for releases to coastal waters, the Great Lakes, ports and harbors, or the Mississippi River.

EPA or the U.S. Coast Guard will relay release and spill reports to the NRC promptly.
REMINDER - ALSO REPORT SPILLS TO EPA IF SPCC FACILITY

• Any facility subject to Spill Prevention Control and Countermeasure (SPCC) rule must also report to EPA
  – Who subject to SPCC?
    • Facility that stores, processes, refines, uses or consumes oil and is non-transportation-related
    • Amount of oil storage?
      – Above-ground storage greater than 1,320 U.S. gallons
      – Buried storage of greater than 42,000 U.S. gallons

40 CFR §112

• Spill size for report to EPA (amendments to SPCC)
  – More than 1,000 U.S. gallons in a single discharge to navigable waters/shorelines
  – More than 42 U.S. gallons of oil in each of 2 discharges to navigable waters/shorelines within 12 month period

40 CFR §112.4
LOUISIANA AUTHORITIES


  – Louisiana Oil Spill Prevention and Response Act enacted as complement to federal Oilfield Pollution Act
  – serves as “umbrella” charged with coordinating state response
    • Lies within La. Department of Public Safety and Corrections
    • Charged with:
      1) developing statewide oil spill prevention and response plan
      2) coordinated response effort from all appropriate state agencies in event of discharge
      3) coordinate implementation and maintenance of oil spill prevention program
      4) administer fund
      5) provide clear delineation for state coordinated response efforts

  – Louisiana part of Federal Region 6 – plays major role in shaping response policy

  – LOSCO, as SOSC, coordinates with the FOSC
ADDITIONAL LOUISIANA AUTHORITIES

– **Louisiana State Police, Emergency Services Unit** – receives initial notification via Hazardous Materials Hotline 1-877-925-6595

– **Louisiana Department of Natural Resources** has jurisdiction under the Louisiana Oil Spill Prevention and Response Act
  - Oil Spill Section responsible for planning, response and NRDA (Natural Resource Damage Assessment)

– **Louisiana Department of Environmental Quality** has authority under the Louisiana Environmental Quality Act (requires follow-up written reporting)

– **Coastal Protection and Restoration Authority of Louisiana (CPRA)**
  - wetlands restoration projects – ex. involvement in Deepwater Horizon restoration planning

– **Louisiana Department of Wildlife & Fisheries** – generally determines closure/re-openings of commercial and recreational fishing in affected waters (last oil spill news release by LDWF was in 2015)
• LOSCO works with Interagency Council:
  – Semi-annual meetings
  – Interagency group includes: secretaries of DWF, DNR, DEQ; AG; exec assistant for coastal activities of Office of Governor; exec assistant for environmental affairs in office of Governor; assistant director of Governor’s Office of Homeland Security; LOSCO coordinator; 4 non-legislators appointed by chairman of house and senate committees on Natural Resources, Environment and Appropriations.
  – Created State Contingency Plan in 1995
WHAT IS “HARMFUL QUANTITY” IN LA?

• “that quantity of oil the discharge of which is determined by the coordinator to be harmful to the environment or public health or welfare or may reasonably be anticipated to present an imminent danger to the public health or welfare.” La. R.S. 30:2454 (13)

• “discharge of oil” limited geographically to “coastal waters of the state” or if not controlled will enter coastal waters. La. R.S. 30:2452 (7)
# LOUISIANA OIL SPILL REPORTING REQUIREMENTS

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<td>LOUISIANA - STATE POLICE</td>
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<td>The “one drop” rule</td>
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<td>(877) 925-6595</td>
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<td>FEDERAL - NATIONAL RESPONSE CENTER</td>
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<td>(800)424-8802</td>
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THANK YOU.

Pam Mascari
pam.mascari@keanmiller.com
OVERVIEW

• Federal and State “Permitted” Releases

• Special Considerations – Water Discharges
  – Parameters Not Limited in an LPDES Permit
  – 24-Hour Reporting Requirements

• Special Considerations – Wastes
  – Groundwater Contamination

• Special Considerations – Air
  – Intersection of Deviation Reporting and Release Reporting
  – Upsets
  – Affect of Variances or Other Authorization
  – Louisiana Toxic Air Pollutant Program
  – Annual Emissions Inventory and Toxic Inventory Reporting

• Continuous Releases
"FEDERALLY PERMITTED" RELEASE

• If a release is “federally permitted” it is not subject to reporting under CERCLA, EPCRA

• The definition of release under La. State Police rules, LAC 33:V.Ch. 101 exclude “federal and state permitted releases”

• LDEQ Rules LAC 33:I.Ch. 39 do not use this term – but a release is reportable only if “unauthorized” – so if “federally permitted” should generally be “authorized”
CERCLA DEFINITION OF A FEDERALLY PERMITTED RELEASE - 42 USC SEC. 9601(10) (PARAPHRASED)

- Discharges in compliance with an LPDES/NPDES permit or resulting from circumstances identified and reviewed and made part of the public record with respect to the LPDES/NPDES permit and subject to a condition of such permit

- “Continuous or anticipated intermittent discharges from a point source,” identified in an LPDES/NPDES permit or permit application “which are caused by events occurring within the scope of relevant operating or treatment systems”

- Discharges in compliance with a legally enforceable permit Clean Water Act section 404 dredge/fill permit

- Releases in compliance with a legally enforceable final permit RCRA from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases

- Any release in compliance with a legally enforceable ocean dumping permit issued 33 U.S.C. section 1412

- Any injection of fluids under a federally authorized UIC program under Part C of the Safe Drinking Water Act, Energy Act
CERCLA DEFINITION OF A FEDERALLY PERMITTED RELEASE - 42 USC SEC. 9601(10) (CONTINUED)

- Any emission into the air **subject to a permit or control regulation** under Clean Air Act sections 111 (NSPS), section 112 (NESHAP and RMP), title I part C (PSD program), title I part D (nonattainment programs), or State implementation plans (and not disapproved by the EPA), “including any schedule or waiver granted, promulgated, or approved under these sections,”

- UIC permits authorized under applicable State law (i) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected

- The introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of CWA section 307(b) or (c) and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under the CWA, and

- Any release of source, special nuclear, or byproduct material, in compliance with a license, regulation or order under the Atomic Energy Act
KEY REQUIREMENTS OF “FEDERALLY PERMITTED RELEASE”

• Whether a release is “federally permitted” under the statutory definition depends on the type of release and the statutory scheme that regulates it (e.g., the definitions are different for air releases versus water)

• Compliance with the permit or control regulation is necessary or the release is not federally permitted
STATE PERMITTED RELEASES

• LDEQ rules in Ch. 39 apply to “unauthorized discharges”.
  – The term “discharge” is defined in LAC 33:I.3905 as; *Discharge - the placing, releasing, spilling, percolating, draining, pumping, leaking, mixing, leaching, migrating, seeping, emitting, disposing, by-passing, or other escaping of pollutants on or into the air, waters of the state, or the ground. A release shall not include a federal or state permitted release.* [Note: the definition of release has the same last sentence.]

• State Police Reporting under LAC 33:V.Ch.101 does not extend to federal or state permitted releases as such are excluded from the definition of release in LAC 33:V.10105:

  *Release - any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous material or substance. However, the term release shall not include federal or state permitted releases.*
• Neither LDEQ Ch. 39 nor LSP Ch. 101 rules define federal or state permitted release. Because purpose of the LSP rules is to implement the SERC requirements of EPCRA, it is reasonable to assume that “federally permitted release” means the same as under federal law. And, because LDEQ incorporates the CERCLA RQ’s in Ch. 39, it is also reasonable to assume that term has the same meaning under Ch. 39 as it has under CERCLA.

• But, what is a “state permitted release”? Does this exclude additional releases from reporting beyond those reportable under CERCLA/EPCRA?
SPECIAL CONSIDERATIONS – WATER DISCHARGES

- Federally permitted includes in compliance with the LPDES permit as well as “discharges…resulting from circumstances identified and reviewed and made part of the public record with respect to the LPDES/NPDES permit and subject to a condition of such permit.

- However, the following reporting requirements apply regardless of the federally permitted release exemption under the release reporting programs (CERCLA, EPCRA, Ch. 39, Ch. 101)(This is a boilerplate condition of standard LPDES permit):

**LAC 33:IX.2703.A.** Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. In addition to the reporting requirements under LAC 33:IX.2701.L, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Office of Environmental Services as soon as they know or have reason to believe:

1. that any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant [as defined in Sec.3701(A) of CWA] which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:
   
   a. 100 micrograms per liter
   b. 200 micrograms per liter for acrolein and acrylonitrile; 500 micrograms per liter for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and 1 milligram per liter (1 mg/L) for antimony;
   c. five times the maximum concentration value reported for that pollutant in the permit application…;
   or
   d. the level established by the state administrative authority in accordance with LAC 33:IX.2707.F...
2703.A. (cont.)

2. that any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:
   a. 500 micrograms per liter;
   b. 1 milligram per liter (1 mg/L) for antimony;
   c. 10 times the maximum concentration value reported for that pollutant in the permit application;
   d. the level established by the state administrative authority in accordance with LAC 33:IX.2707.F.

- Arkansas Wildlife Federation v. Bekaert Corp., 791 F.Supp. 769, 783 (W.D. Ark. 1992)(“As the … permit did not set limits for discharges of zinc and lead the applicable limitations are those set forth in the regulations quoted above.”)(addressing 40 CFR 122.42, which is identical to LAC 33:IX.2703.A.)
SPECIAL CONSIDERATIONS – WATER DISCHARGES
(CONTINUED)

  - EPA would also like to clarify the meaning of routine or frequent discharges. The lower threshold levels apply to any discharge that is either routine or frequent, not necessarily both. **Routine discharges are those that occur on some regular basis (whether once a week or four times a year).** This does not mean that routine discharges are only those that occur with clockwork regularity. Any discharge that the permittee expects will occur as a result of normal plant operation is likely to be routine. Thus, a facility that has a large holding pond from which it discharges several times a year would be subject to the routine discharge standard. **Discharges that occur more than twice a year are frequent, whether or not they are routine.** One-time spills are an example of infrequent discharges.
• The following shall be included as information which must be reported within 24 hours under this Paragraph:
  – i. any unanticipated bypass which exceeds any effluent limitation in the permit (see Subparagraph M.3.b of this Section);
  – ii. any upset which exceeds any effluent limitation in the permit; and
  – iii. violation of a maximum daily discharge limitation for any of the pollutants listed by the state administrative authority in the permit to be reported within 24 hours (LAC 33:IX.2707.G).

• Upset and Bypass are affirmative defenses; qualifying for the upset/bypass defense does not make a discharge “federally permitted”
SPECIAL CONSIDERATIONS - WASTES

• There is a CERCLA/EPCRA federally permitted release exemption for hazardous wastes in compliance with and controlled by a RCRA TSD permit, but no such exemption for Solid Waste permitted units.

• Question: Does the “state permitted” exemption for the State Police Ch. 101 rules apply to releases subject to and in compliance with an LDEQ issued solid waste permit?

• Certainly such releases would be “authorized” rather than “unauthorized” under LDEQ Ch. 39 rules.
SPECIAL CONSIDERATIONS – WASTES/ HISTORIC GROUNDWATER CONTAMINATION

- Ch. 39, LAC 33:I.3919 requires reporting of “unauthorized” contamination with groundwater impact

- Some historic contamination of groundwater may have occurred long prior to the time when there were any rules that made discharges authorized or unauthorized

- Regulations under LAC 33:IX. did not specifically prohibit groundwater contamination until 1985

- La. R.S. 30:2204(A)(1) Whenever any owner, operator, or responsible person of any site obtains information that indicates hazardous waste or hazardous waste constituents are leaching, spilling, discharging, or otherwise moving in, into, within, or on any land, subsurface strata, water, or air, such person shall notify the department in accordance with regulations to be adopted. This notification requirement shall apply to leaching, spilling, discharging, or moving of hazardous waste or hazardous waste constituents occurring hereafter although the hazardous waste or hazardous waste constituents were heretofore present at the site.

- Recommendation: If it is not known when a discharge initially occurred, report conservatively, but state that it is not known whether the discharge was unauthorized
SPECIAL CONSIDERATIONS – AIR

• Federally Permitted Release exemption applies to “Any emission into the air subject to a permit or control regulation” under NSPS, NESHAP, RMP, PSD, NNSR, or SIP (including permit programs approved under the SIP) “including any schedule or waiver granted, promulgated, or approved under these sections.”

• The SIP is comprised of the Louisiana regulations that have been submitted and approved by EPA (see )
  – The permitting program under LAC 33:III.Ch. 5 is largely approved (but not everything – be cautious)
  – The variance provision under LAC 33:III.917 is part of the approved SIP
SPECIAL CONSIDERATIONS – AIR
EPA CERCLA GUIDANCE

• EPA Guidance Interim 1999/Final 2002 – Federally permitted release guidance for air (not a rule but widely accepted interpretation)

  – Emissions must be in compliance with the permit or control regulation (Mobil Oil Corp., EPCRA Appeal No. 94-2, 1994 WL 544260 (EPA EAB 9/29/94)

  – Does not apply to emissions that result from accidents/malfunctions that are not anticipated for and addressed in the permit or control rule, but if there is a malfunction plan specifically designed to limit HAP required by the rule or permit and it is followed and has the effect of limiting the HAP emissions, it can qualify

  – Startup/shutdown emissions in compliance with an approved SS plan can be federally permitted releases if actually controlled by an approved procedure or control system, but not if they are simply exempt from control
SPECIAL CONSIDERATIONS – EPA CERCLA GUIDANCE (CONTINUED)

• EPA Guidance (continued)
  – Limits on generic criteria pollutants such as VOC controls or PM controls that are designed to limit the emissions or impacts of HAPs can establish the federally permitted release for those HAPs even if the HAPs are not directly limited (i.e., VOC or PM control is a surrogate)
    – Limits must be designed to limit the regulated pollutant to levels that would not cause harm, generally this means they must be federally enforceable limits (discussed under other programs such as for synthetic minor sources) as short term limits or controls -limit cannot be only a ton per year of annual type of limit
    – Exemptions from controls cannot be the basis for a federally permitted release
In 2006, EPA amended the CERCLA and EPCRA rules to create a special RQ of 1000 lbs for nitrogen oxide and nitrogen dioxide released “as a result of combustion or combustion related activities”. See 40 CFR Sections 302.6(e) and 355.40.

This came after a long period of litigation concerning the NOx RQ

The RQ for Nitrogen Oxides is otherwise 10 lbs.
WHAT TYPES OF RULES CREATE A FEDERALLY PERMITTED AIR RELEASE?

• Emissions Limits
  – Maximum hourly emission limits [Note: LDEQ guidance no longer requires these for tanks, cooling towers, fugitives…but a facility may request]
  – 30 day rolling average emission limits

• Work Practice Standards
  – Leak Detection and Repair Regulations (under NSPS, NESHAP, PSD, NNSR or SIP, such as LAC 33:III.2121/2122)...
    • Federally permitted only for the components under the program, not to exempt components
    • What about those on delay of repair?
  – Cooling tower/heat exchanger limitations requiring periodic monitoring and repair within a reasonably short period

• Operating Requirements
  – Flare operating requirements (velocity, minimum Btu etc.)
  – Minimum temperature requirements for combustion devices
  – SSM Plan requirements, where sufficiently detailed

• Equipment standards
SPECIAL AIR REPORTING REQUIREMENTS

• Deviation Reporting General Condition R (Title V)
  – 7 day report due if deviation exceeds an emission limit by > RQ or if emission limit deviation will continue 7 days or longer
  – All other deviations from permit report semi-annually

• Deviation Reporting General Condition XI (State Only/Minor Source Air Permits)
  – Same as Gen. Condition R but applies only to emission limits (not MRR/work practice etc)

• LAC 33:III.5107
  – B. 1. Emergency Conditions. For any discharge of a toxic air pollutant into the atmosphere that results or threatens to result in an emergency condition as defined in LAC 33:I.3905.A, the owner or operator of the source shall notify the Department of Public Safety 24-hour Louisiana Emergency Hazardous Materials Hotline in accordance with LAC 33:I.3915.A.
RELEASE REPORTING VS. PERMIT DEVIATION REPORTING

• Release reporting and deviation reporting are distinct regulatory requirements, but there is overlap.

• A release may be in deviation of a permit requirement but not exceed an RQ – still reportable as a permit deviation under General Condition R or XI of Louisiana Air Permits.

• A release may comply with an air permit (i.e. no deviation), but still not qualify for the federally permitted release exclusion – for example if the only permit limit is a ton per year and annual average lb/hr limit (i.e. no underlying control regulation and only a long term emission limit.) [Here, consider a continuous release report and/or establish a short term limit.]

• Query: What happens if an emission does not comply with a control requirement (for example 0.6 lbs. NOx/MMBtu) but is in compliance with the maximum hourly emission limit under the permit?
USE OF VARIANCES

- Because the Louisiana variance rule is part of the federally approved SIP, it can be used to create a “federally permitted release”, but only if it has sufficient control requirements.

- Exemption from control does not help.

- Make sure to include maximum hourly emission limits or some other form of short term control measures (30 day limits?) or work practice or operating standards in a variance request if the emissions would otherwise exceed RQ.
SPECIAL CONSIDERATIONS – AIR
THE UPSET DEFENSE

- LAC 33:III.507.J creates an affirmative defense for upsets. An upset is:

  \[A\]n upset is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the source to exceed a technology-based emissions limitation under the permit due to unavoidable increases in emissions attributable to the situation. An upset shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

- Upsets do not qualify for federally or state permitted release exemption – must be reported properly per LAC 33:I.Ch. 39 to qualify for the affirmative defense [What if below RQ?]

- Upsets also need to be reported on deviation reports, where the description should be that the event was a deviation, but not a violation due to meeting the requirements of 507.J.

- The LDEQ Ch. 39 release reports require the facility to state if the event was “preventable”. If it is believed that the release is due to an upset, then this question should be answered that it is believed the event meets the definition of upset in 507.J.

- If there is not sufficient information to make the determination at the time the 7 day report is due, then indicate that pursuant to LAC 33:I.3925.A.3. the information is not yet available and the report will be updated every 60 days until the investigation has been completed and the results of the investigation have been submitted.
COUNTING TOWARDS THE RQ

• LDEQ Guidance “Reporting of Unauthorized Discharges and Reportable Quantities”
  – applies to air releases only.
  – applies only to Ch. 39 reporting, not to LSP or CERCLA/EPCRA

• Excerpt:

  If the unauthorized discharge originates from an emission point addressed in an air permit issued pursuant to LAC 33:III.Chapter 3 or Chapter 5, the permittee may use the permitted maximum pound per hour rate for the affected emission point as the “floor” for determining if an RQ has been exceeded. However, if a permittee chooses to do so, emissions attributed to the unauthorized discharge must be included in the annual emissions total for the affected emission point for purposes of determining compliance with ton per year limitations. Alternatively, the permittee may choose to use a “floor” of zero. In such case, emissions attributed to the unauthorized discharge should not be aggregated with other emissions from the emission point for purposes of determining compliance with ton per year limitations. In both cases, emissions attributed to the unauthorized discharge should be reported to LDEQ’s Emissions Reporting and Inventory Center (ERIC) per LAC 33:III.919, if applicable.
In the following examples, the permitted maximum pound per hour rate for pollutant A is 500 pounds per hour and the RQ for pollutant A is 1000 pounds. In all cases, the unauthorized discharge does not cause an emergency condition.

- An unauthorized discharge of 1400 pounds of A originates from a permitted flare. In this example, the unauthorized discharge does not have to be reported per LAC 33:I.3917.A because excess emissions of A are less than 1500 pounds (i.e., the permitted maximum pound per hour rate plus the RQ).

- An unauthorized discharge of 1400 pounds of A originates from a previously undetected and unpermitted leak in a pipeline. In this example, the unauthorized discharge has to be reported per LAC 33:I.3917.A because excess emissions of A exceed 1000 pounds (i.e., the RQ “floor” of zero plus the RQ).
• An unauthorized discharge of 1600 pounds of A originates from a permitted flare.

In this example, the unauthorized discharge has to be reported per LAC 33:I.3917.A because excess emissions of A exceed 1500 pounds (i.e., the permitted maximum pound per hour rate plus the RQ).

• An unauthorized discharge of 900 pounds of A originates from a previously undetected and unpermitted leak in a pipeline.

In this example, the unauthorized discharge does not have to be reported per LAC 33:I.3917.A because excess emissions of A are less than 1000 pounds (i.e., the RQ “floor” of zero plus the RQ).
USE OF A CH. 39 RELEASE REPORT AS AN AIR PERMIT DEVIATION REPORT

• Reporting emissions limit deviations via a written report pursuant to Louisiana’s release reporting rules in LAC 33:III.Ch. 39 may also suffice as a General Condition R and/or General Condition XI air permit deviation report if the release report is certified by a responsible official and otherwise meets the requirements for deviation reporting under General Conditions R and/or XI of the permit.

• To serve as a Title V or state minor source air permit deviation report, the report itself must clearly state that it is serving the dual purpose of a Ch. 39 release report and a General Condition R/XI report OR the later filed air permit V Deviation Report must clearly incorporate the Ch. 39 release report by reference.
CONTINUOUS RELEASE REPORTING

• Continuous release report may be a device to use if a release does not qualify as a federally permitted release, is over the RQ and is “ongoing” – especially where the facility intends to cover this by a permit or variance, but has not yet done so. This is a device available under CERCLA/EPCRA, but not explicitly addressed in state rules under LAC 33:I.Ch. 39 or LAC 33:V.Ch. 101.

• Under CERCLA (40 CFR. 302.8(a)), continuous releases that are those that are stable in quantity
  – “continuous” means “without interruption or abatement” or that is “routine, anticipated, and intermittent and incidental to normal operations or treatment processes.”
  – “stable in quantity and rate” is defined as “predictable and regular in amount and rate of emission.”

• Initial telephone notification to the NRC is required (name and location of the facility, the identity of the substance, and a notification that the release is a continuous release). If also subject to EPCRA 304, notice must also be given to the Local Emergency Planning Comm. (LEPC) and the State Emergency Response Commission (SERC).

• A written report is required within 30 days per 40 CFR 302.8(e) to the NRC, LEPC and SERC and an update to the written report is required annually, or if there is a significant change in information per 40 CFR 302.8(f).
COURTESY NOTIFICATIONS AND “UNREPORTING”

• Emergency Response FAQ's LDEQ website [guidance, not a rule]  Courtesy Notifications: These types of notifications are reserved for below Reportable Quantity (RQ) events that do not cause an emergency condition. These types of notifications can be made to the Louisiana Department of Environmental Quality (LDEQ) by phone or online via LDEQ's website utilizing the Online Incident Reporting - Spill Incident/Release form. The web address is .

• Notification to the LDEQ does not absolve the submitter of the responsibility to notify the Louisiana State Police and/or the local emergency planning committee.

• Courtesy Notification updates (where the initial notification is made via LDEQ's online form): Often initial notifications are made to ensure compliance with notification timeline requirements and often before all pertinent facts such as spill/release amount calculations are complete. To provide an opportunity for submitters to update previously submitted notifications without submitting another notification, the LDEQ has provided a mechanism to provide new/updated information via our website. The same online form can now be utilized to update the LDEQ on the status of a previously reported event. Upon filling out the initial notification utilizing the online form, the submitter will receive a confirmation email with a special link and instructions on how to return to the originally submitted form. The submitter will then have the ability to update the original form to include updated or other relevant information as appropriate.
COURTESY NOTIFICATIONS AND “UNREPORTING”

• LDEQ Guidance continued:

• In order to provide the LDEQ with enough information to complete a substantive report and close the courtesy notification, in the update, the submitter must: Identify the material discharged. Provide an estimate of the amount of material discharged. Describe the actions taken, or to be taken, to stop the unauthorized discharge and recover the material discharged. Describe how any recovered material was properly managed and disposed of. Unless otherwise notified by the LDEQ, no additional action or follow-up written report under LAC 33:I.3925 is required to close this matter with the LDEQ.

• The submittal of the updated online report shall be deemed a certification that the discharge did not exceed an RQ and did not cause an emergency condition as provided in LAC 33:I.3915
PARTING THOUGHTS

• Each regulatory program is unique

• When in doubt, report the known facts with any caveats that it may or may not be reportable or still under investigation

• Do Not Speculate if the information is not yet complete – indicate on report that information is a preliminary estimate, etc.

• Review whether addition of any permit limits/requirements may be beneficial to creating a federal or state reported release status