

POTPOURRI
Department of Environmental Quality
Office of the Secretary
Legal Affairs and Criminal Investigations Division

Notice of Public Hearing
Substantive Changes to Proposed Rule WQ097
Water Quality Standards Triennial Revision
(LAC 33:IX.1105, 1109, and 1113)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that the department is seeking to incorporate substantive changes to proposed regulation (LAC 33:IX.1105, 1109, and 1113) (Log # WQ097S), which was originally noticed as WQ097 in the December 20, 2019, issue of the *Louisiana Register*. (2008Pot1)

The department has proposed substantive changes to address comments received during the public comment period of proposed rule WQ097. The changes clarify the proposed rule language. In the interest of clarity and transparency, the department is providing public notice and opportunity to comment on the proposed changes to the amendments of the regulation in question. The department is also providing an interim response to comments received on the initial regulation proposal.

A strikeout/underline/shaded version of the proposed rule that distinguishes original proposed language from language changed by this proposal and the interim response to comments are available on the department's website under Rules and Regulations at <http://deq.louisiana.gov/page/rules-regulations>.

The following changes are to be incorporated into the Notice of Intent:

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water

Subpart 1. Water Pollution Control

Subchapter B.

Chapter 11. Surface Water Quality Standards

§1105. Definitions

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Pollutant Minimization Program—a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings in the context of LAC 33:IX.1109.E.

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

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

§1109. Policy

Water quality standards policies concerned with the protection and enhancement of water quality in the state are discussed in this Section. Policy statements on antidegradation, water use, water body exception categories, compliance schedules and variances, short-term activity authorization, errors, severability, revisions to standards, and sample collection and analytical procedures are described.

A. — A.2. ...

a. Waters may be identified for the protections described in Paragraph 2 of this Subsection on a parameter-by-parameter basis or on a water body-by-water body basis. Where the state identifies waters for antidegradation protection ~~on a water body-by-water body basis~~, the state shall provide an opportunity for public involvement in any decisions about whether the protections described in Paragraph 2 of this Subsection will be given to a water body, and the factors considered when making those decisions. A water body shall not be excluded from the protections described in Paragraph 2 of this Subsection solely because water quality does not exceed levels necessary to support all of the uses specified in section 101(a)(2) of the Clean Water Act.

A.2.b. — B.5. ...

C. Water Body Exception Classification. Some water bodies may qualify for a water body exception classification. This classification will be made on a case-by-case basis. Whenever data indicate that a water body exception classification is warranted, the department will recommend the exception to the administrative authority for approval. In all cases where exceptions are proposed, the concurrence of EPA must be obtained and the opportunity for public participation must be provided during the exceptions review process. The general criteria of these standards shall apply to all water bodies classified as a water body exception except where a particular water body is specifically exempted. A use attainability analysis shall be conducted to justify a water body exception classification if an accompanying downgrade of a

101(a)(2) use ~~or revision of~~ and application of less stringent criteria is being proposed. Exceptions are allowed for the following three classifications of water bodies.

C.1. — C.3. ...

a. Naturally dystrophic waters are ~~defined as~~ include waters that receive large amounts of natural organic material largely of terrestrial plant origin, are commonly stained by the decomposition of such organic material, and are low in dissolved oxygen because of natural conditions. Only those water bodies primarily affected by nonanthropogenic sources of oxygen-demanding substances or naturally occurring cycles of oxygen depletion will be considered for classification as naturally dystrophic waters. These water bodies typically include or are surrounded by wetlands (e.g., bottomland hardwood forests, freshwater swamps and marshes, or intermediate, brackish, or saline marshes) and have sluggish, low-gradient flows most of the year. Naturally dystrophic water bodies, though seasonally deficient in dissolved oxygen, may fully support fish and wildlife propagation and other water uses. Low dissolved oxygen concentrations (less than 5 mg/l) may occur seasonally during the warmer months of the year in naturally dystrophic water bodies.

C.3.b. — C.3.c. ...

d. A wastewater discharge may be proposed for an approved, designated naturally dystrophic water body in a wetland only if the discharge will not by itself, or in conjunction with other discharges, cause inundation of the receiving area such that regeneration of characteristic vegetative species would be significantly reduced, will not significantly modify species composition of the receiving area, and will not increase biological succession of the receiving area above naturally occurring levels. Natural background conditions and proposed significant changes will be determined through use attainability analyses prior to the addition of any discharge.

C.3.d.i. — E. ...

1. The state may adopt a WQS variance, as defined in Section 1105 of this Chapter. The WQS variance is subject to the provisions of this Subsection and public participation requirements at 40 CFR 131.14 and is a water quality standard subject to EPA review and approval; or disapproval under section 303(c) of the Clean Water Act.

E.1.a. — E.1.a.ii. ...

iii. Once the WQS variance is adopted by the state and approved by EPA, it shall be the applicable standard for purposes of the Clean Water Act under 40 CFR 131.21(d)-(e), for the following limited purposes of developing LPDES permit limits and requirements under federal regulations, where appropriate, consistent with Clause E.1.a.i of this Subsection.

E.1.a.iv. — K.6. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:966 (October 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2546 (November 2000), LR 29:557 (April 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 33:457 (March 2007), LR 33:828 (May 2007), amended by the Office of the Secretary, Legal Division, LR 40:2243 (November 2014), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1113. Criteria

A. — C.6.f. ...

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⁶ Total refers to the sum of the Aroclor analyses: PCB-1016 (CAS 12674-11-2), PCB-1221 (CAS 11104-28-2), PCB-1232 (CAS 11141-16-5), PCB-1242 (CAS 53469-21-9), PCB-1248 (CAS 12672-29-6), PCB-1254 (CAS 11097-69-1), and PCB-1260 (CAS 11096-82-5) as stated in 40 CFR 136.3.

⁷ Endosulfan is the sum of Endosulfan α (959-98-8) and Endosulfan β (33213-65-9).

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:967 (October 1991), repromulgated LR 17:1083 (November 1991), amended LR 20:883 (August 1994), LR 24:688 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2402 (December 1999), LR 26:2547 (November 2000), LR 27:289 (March 2001), LR 30:1474 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:457 (March 2007), LR 33:829 (May 2007), LR 35:446 (March 2009), amended by the Office of the Secretary, Legal Division, LR 42:736 (May 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1188 (September 2019), LR 46:

A public hearing on the substantive changes will be held on September 25, 2020, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the substantive changes. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are also invited to submit written comments on the substantive changes. Persons commenting should reference this proposed regulation as WQ097S. Such comments must be received no later than September 25, 2020, at 4:30 p.m., and should be sent to

Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302, by fax (225) 219-4068, or emailed to DEQ.Reg.Dev.Comments@la.gov. The comment period for the substantive changes ends on the same date as the public hearing. Copies of these substantive changes can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ097S. These proposed regulations are available on the internet at <http://deq.louisiana.gov/page/rules-regulations>.

These substantive changes to WQ097 are available for inspection at the following LDEQ office locations from 8:00 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; and 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel