

May 21, 2008

The Louisiana Legislature opened its 2008 Regular Session on March 31, immediately on the heels of two Extraordinary Sessions called by Gov. Jindal to address ethics and tax revisions. The session must end no later than June 23, 2008

Among the bills filed to date is a major business sponsored package addressing asbestos litigation reform, an administrative package on workforce development, various bills addressing the credentialing of personnel for access to evacuated parishes after emergency events and a number of bills limiting contingency fee contracts in the collection of taxes due the state or local governments.

There do not seem to be any significant environmental regulatory proposals filed at this time however. Only relatively small packages of administrative bills have been filed by the Departments of Environmental Quality, Natural Resources, and Wildlife and Fisheries. These bills are strictly non-controversial administrative or "housekeeping" measures and there appears to be little, if any, industry opposition at this time.

### **Recent Regulatory Developments/News**

The following items have appeared or will soon appear in the Louisiana Register relating to various environmental quality and natural resources matters:

- 1) The following items were submitted to the Office of the State Register for publication in the January 20, 2008, issue of the Louisiana Register.

#### **DEQ\***

##### **Proposed Rules:**

SW047 - Additional Supplementary Information for Permit Applications (LAC 33:VII.523)

##### **Final Rules (effective 1/20/2008):**

HW101 - Evidentiary Hearings on Hazardous Waste Permit Applications (LAC 33:V.709)

MM005 - Amendments and Corrections (LAC 33:I.3931; III.111, 2121, 2125, 2145, 2147, and 2201; V.109, 1113, 1127, 1315, 1319, 1517, 4397, and 4999; IX.2707, 4905, and 6125; and XI.707)

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URL: <http://www.deq.louisiana.gov/portal/tabid/2823/Default.aspx>

#### **DNR**

##### **Proposed Rules:**

Office of the Secretaryô Certification of Land Conservation Organizations (LAC 43:I.Chapter 41)

To view and/or print the Internet version of these documents go to this URL: <http://doa.louisiana.gov/osr/reg/0801/0801.doc>

- 2) The following items were submitted to the Office of the State Register for publication in the February 20, 2008, issue of the Louisiana Register.

**DEQ\***

**Proposed Rules:**

HW095ft - RCRA XVI Authorization Package (LAC 33:V.105, 109, 199, 303, 305, 311, 321, 322, 513, 529, 530, 535, 536, 537, 1107, 1109, 1113, 1501, 1516, 1529, 1799, 1802, 1907, 2001, 2299, 2603, 2805, 2903, 3001, 3005, 3007, 3105, 3115, 3315, 3319, 3517, 3523, 3719, 4001, 4003, 4005, 4045, 4067, 4301, 4357, 4367, 4379, 4381, 4401, 4439, 4457, 4497, 4507, 4512, 4513, 4701, 4703, 4901, 4903, 4909, 4911, 4913, and 4915)

**Final Rules (effective 2/20/2008):**

RP047ft - National Source Tracking System Reporting Dates (LAC 33:XV.493)

To view and/or print the Internet version of these documents go to this URL: <http://www.deq.louisiana.gov/portal/tabid/1669/Default.aspx>

- 3) The following items were submitted to the Office of the State Register for publication in the March 20, 2008, issue of the Louisiana Register.

**DEQ\***

**Proposed Rules:**

AQ292 - Clean Air Interstate Rule (LAC 33:III.506)

MM007ft - Incorporation by Reference-2007 (LAC 33:I.3931; V.3099; IX.2301, 4901, and 4903; and XV.1517)

**Final Rules (effective 3/20/2008):**

AQ288 - Ambient Air Standards for Particulate Matter (LAC 33:III.701, 703, and 711)

**Potpourri:**

0803Pot1 - Annual Emissions Inventory Data Submittals (Air Quality Assessment Division)

**Emergency Rules:**

MM004E3 - Expedited Penalty Agreement (LAC 33:I.801 and 807, and VII.115 and 315) effective March 15, 2008

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<http://www.deq.louisiana.gov/portal/tabid/1669/Default.aspx>

**DNR**

**Proposed Rules**

Office of Conservationô Statewide Order No. 29-B Commercial Exploration and Production Waste Facilities (LAC 43:XIX.501, 511, 547, 549, and 565)

Statewide Order No. 29-B Waste Type 04 Disposal Requirements (LAC 43:XIX.503, 505, 547, and 549)

To view and/or print the Internet version of these documents go to this URL:  
<http://doa.louisiana.gov/osr/reg/0803/0803.doc>

- 4) The following items were submitted to the Office of the State Register for publication in the April 20, 2008, issue of the Louisiana Register.

**DEQ\***

**Proposed Rules:**

AQ274 - Regulatory Permits for Oil and Gas Well Testing, Release of Natural Gas from Pipelines, Emergency Engines, and Air Curtain Incinerators (LAC 33:III.301, 303, 305, 307, 309, 311, 313, and 501)

HW100ft - RCRA Burden Reduction Initiative (LAC 33:V.322, 519, 523, 532, 1509, 1513, 1515, 1529, 1737, 1739, 1903, 1905, 1907, 1911, 1913, 2109, 2245, 2246, 2247, 2303, 2515, 2605, 2719, 2803, 2805, 2807, 3007, 3023, 3111, 3119, 3317, 3319, 3517, 3527, 3707, 3711, 3715, 4365, 4367, 4373, 4387, 4395, 4403, 4407, 4411, 4433, 4435, 4437, 4438, 4440, 4441, 4451, 4452, 4462, 4472, 4489, 4498, 4507, 4512, 4701, and 4703)

MM004 - Expedited Penalty Agreement (LAC 33:I.801 and 807; VII.115 and 315; and XI.703)

MM006ft - RCRA XVI Management, Testing, and Methods Innovation (LAC 33:V.105, 109, 110, 529, 535, 537, 1127, 1516, 1703, 1711, 1741, 1901, 2223, 2299, 2603, 3001, 3005, 3013, 3025, 3115, 3325, 3807, 3823, 3845, 4003, 4033, 4047, 4067, 4357, 4431, 4727, 4901, 4903, 4909, and 4999; and LAC 33:VII.115 and 3005)

RP045ft - Medical Use of Byproduct Material-Recognition of Specialty Boards (LAC 33:XV.102, 725, 729, 731, and 763)

RP049ft - Terms and Conditions of Licenses (LAC 33:XV.326)

**Final Rules (effective 4/20/2008):**

HW095ft - RCRA XVI Authorization Package (LAC 33:V.105, 109, 199, 303, 305, 311, 321, 322, 513, 529, 530, 535, 536, 537, 1107, 1109, 1113, 1501, 1516, 1529, 1799, 1802, 1907, 2001, 2299, 2603, 2805, 2903, 3001, 3005, 3007, 3105, 3115, 3315, 3319, 3517, 3523, 3719, 4001, 4003, 4005, 4045, 4067, 4301, 4357, 4367, 4379, 4381, 4401, 4439, 4457, 4497, 4507, 4512, 4513, 4701, 4703, 4901, 4903, 4909, 4911, 4913, and 4915)

SW046 - Solid Waste Exemptions, Containers, and Buffer Zones (LAC 33:VII.301, 503, 508, 709, 717, and 719)

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<http://www.deq.louisiana.gov/portal/tabid/1669/Default.aspx>

- 5) The following items were submitted to the Office of the State Register for publication in the May 20, 2008, issue of the Louisiana Register.

**DEQ\***

**Proposed Rules:**

AQ293ft - 2007 Incorporation by Reference for Air Quality (LAC 33:III.507, 2160, 3003, 5116, 5122, 5311, and 5901)

HW099P - Lyondell Delisting Petition (LAC 33:V.4999.Appendix E)

OS079 - Electronic Documents and Signatures (LAC 33:I.2101, 2103, 2105, and 2107)

**Final Rules (effective 5/20/2008):**

MM007ft - Incorporation by Reference-2007 (LAC 33:I.3931; V.3099; IX.2301, 4901, and 4903; and XV.1517)

UT012 - Motor Fuels UST Trust Fund Procedures (LAC 33:XI.1121)

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<http://www.deq.louisiana.gov/portal/tabid/1669/Default.aspx>

\* **DEQ Rule Key**

**Rule Log # Key**

Prefix

AQ - Air Quality  
HW - Hazardous Waste  
IA - Inactive and Abandoned Sites  
MM- Multimedia  
OS - Office of the Secretary  
RP - Radiation Protection  
SW - Solid Waste  
UT - Underground Storage Tanks  
WQ - Water Quality

Suffix

ft - Fast Track Rule: Federal regulation promulgated by expedited procedures in R.S. 49:953(F)(3)  
A - Rule that was withdrawn after initial proposal and repropose with amendments  
E# - Emergency Rule: # indicates how many times the emergency rule has been renewed  
F - Rule promulgating Federal language that has an accompanying Louisiana rule  
L - Rule with Louisiana language that supersedes the accompanying Federal rule  
P - Rule resulting from a Petition for Rulemaking  
S - Substantive Changes to the Proposed Rule

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**Act 312 - Constitutionality**

The constitutionality of Act 312 continues to be an issue. Act 312, which requires parties deemed liable for environmental damage to submit remediation plans to the Department of Natural Resources, has been challenged on constitutional grounds by various parties who argue, in general, that the provisions of the Act are an unconstitutional divestment of property rights.

The issue of Act 312's constitutionality was initially taken up by the Louisiana Supreme Court in March of 2007 in the *M.J. Farms* case. Rejecting the trial court's initial ruling that Act 312 unconstitutionally divested Plaintiff of his property rights, the Court remanded the matter on procedural grounds. *M.J. Farms* subsequently filed a

Motion to Dismiss and/or Strike and/or For Declaratory Judgment Declaring Act 312 of 2006 Unconstitutional and Inapplicable to the Instant Case. That matter was heard in August of 2007 and in an October 8, 2007 judgment, the trial court again declared Act 312 to be an unconstitutional and unenforceable divestment of individual property rights. The issue was again heard by the Louisiana Supreme Court on February 26, 2008 but a final ruling has yet to be issued.

The *M.J. Farms* case has positioned itself as the primary case on the issue of Act 312's constitutionality though, at present, there are approximately 143 different cases in various stages challenging the provisions of Act 312. As with *M.J. Farms*, most of these cases address the issue of property rights. Some cases are currently stayed pending the final outcome of *M.J. Farms* while others are simply not being actively pursued pending the Supreme Court's ruling, which is expected soon.