

# Regulatory Update: Louisiana

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## Regulatory Agencies – General Overview

- Louisiana Department of Environmental Quality (DEQ)
  - Permitting and regulation of facilities that handle solid and hazardous waste, the discharge or emission of pollutants to the environment, etc.
- Louisiana Department of Natural Resources (DNR)
  - Permitting and regulation of oil and gas operations and exploration and production (E&P) wastes, injection and groundwater wells, management of groundwater resources, activities in the Coastal Zone, protection of coastal wetlands, surface water use, etc.
- Louisiana Department of Health and Hospitals (DHH)
  - Permitting and regulation of public drinking water systems, sanitary sewerage systems, the packaging, transportation, and treatment of potentially infectious biomedical waste, etc.

## DNR - “Legacy” Site Litigation

- E&P sites with alleged contamination
- *Corbello v. Iowa Production*, 2002-C-0826 (La. 2/25/03), 850 So.2d 686. – Lease obligation to restore property to original condition strictly enforced, even though restoration cost (\$33 million) far exceeded value of property in fully restored condition (\$108,000), and no requirement that landowner use damages awarded to clean up property
- Act 312 of 2006 (La. R.S. 30:29 and 30:29.1) – Requires notice to DNR upon filing of suit, submittal of cleanup plan and cost estimate to DNR for review and comment, public hearing and approval of cleanup plan by DNR (to be adopted by court, unless a party proves another plan is more feasible and protective), deposit of cleanup funds into registry of court and use for cleanup, submittal of proposed settlements to DNR for review and comment to court, etc.
  - Exceptions: damages for “private claims” resulting from environmental damage; damages for additional remediation required by contract; court discretion to waive requirement for DNR review of settlements that are “for a minimal amount and not dispositive of the entire litigation”
- DNR is continuing its administration of Act 312; has reviewed and commented on more than 50 settlements to date

## DNR – Review of Drilling and Completion Regulations

- In light of Deepwater Horizon incident, Office of Conservation began new review of its operational and safety requirements for drilling of oil and gas wells at water locations within the State
- Emergency rules put into effect pending completion of comprehensive rule amendments (See Fourth Amendment to Statewide Orders 29-B and 29-B-a (Emergency Rule), effective May 12, 2011)
- Ad hoc committee created in fall of 2010 to review and propose changes to regulation of drilling and completion of such wells (found in LAC 43:XIX.Chapter 1 and 2)
- Committee currently reviewing regulations and meeting regularly to consider changes to existing requirements

## DNR – Surface Water Use

- Increasing demands for water due to hydraulic fracturing operations to produce shale gas, etc.
- DNR encouragement of use of surface water rather than groundwater
- AG opinions in 2010 concluding that State owns running surface waters and constitutional prohibition of donations by State
- Act 955 of 2010 (La. R.S. 30:961-963) – Provides for cooperative endeavor agreements with the State for use of running surface waters; requires payment to State; all CEAs to be approved by DNR
- Statutes effective only until end of 2012

## DNR – Coastal Resource Program

Public Notice issued May 10, 2011 to incorporate the following documents into the Louisiana Coastal Management Program (LCRP):

- “Integrated Ecosystem Restoration: Louisiana’s Comprehensive Master Plan for a Sustainable Coast” (April 2007) (Master Plan)
  - Broad statement of guiding principles, goals, and strategies to be used in effort to protect and restore the coastal ecosystem to a sustainable level
- Senate Concurrent Resolution 11 of 2007 Regular Session
  - Approves the Master Plan
- Executive Order BJ-08-07 (January 23, 2008)
  - Directs all state agencies to carry out their regulatory responsibilities and administer all programs consistent with the Master Plan
- “Guidance for Permit Consistency with Louisiana’s Master Plan for a Sustainable Coast” (July 2008)
  - Developed by Office of Coastal Management to provide consistent methodology for staff to apply the enforceable policies and mechanisms of the LCRP so as to comply with Executive Order BJ-08-07

## DEQ – New Regional Enforcement Policy

- In November 2010, new policy announced to enable DEQ regional offices to manage enforcement actions without requirement to consult with headquarters in Baton Rouge in all cases; greater autonomy to regional offices
- Intended to enhance, streamline, and eliminate lag time in the enforcement process
- Focus on violations that are an immediate or potential threat to human health or the environment; immediate action is required; gravity of the violation exceeds minor in nature; or enforcement action can be processed and delivered to the respondent within 20 days

## DEQ – Air

- Revision of air regulations to incorporate greenhouse gas permitting requirements, consistent with EPA regulations – Finalized April 20, 2011
  - As of July 1, 2011, “major source” definition includes GHG thresholds
  - Regulations to be limited or rendered ineffective to same extent as any change in federal law or an order issued by DC Circuit Court of Appeal or U.S. Supreme Court
- Permit issued to Nucor Corp. for proposed iron and steel mill in St. James Parish
  - Reportedly the first permit to include GHG emissions limits under EPA’s climate change regulations
  - Permit establishes limits on natural gas usage per metric ton of iron produced as best available control technology (BACT) for GHG emissions
  - Being challenged by opponents of facility; petitions filed with EPA
- Incorporation of EPA regulations on particulate matter less than 2.5 micrometers (PM<sub>2.5</sub>) into Louisiana regulations – Proposed February 2011



## DEQ – Solid Waste

- Substantial revision/update of solid waste regulations – Proposed on March 20, 2011
  - Changes the application process and the way permits are issued; includes definitional changes and additional exemptions; establishes a new annual compliance certificate requirement.
- Revision/update of regulations to require submittal of emergency response plan to the State Fire Marshall for review and approval before new or renewal permit application is submitted to DEQ – Expected to become effective June 20, 2011
- Pilot program to allow disposal of E&P waste in three Type I (industrial) solid waste landfills – Announced in January 2010

## DEQ – Water

- New general LPDES permit for pesticide applications to or around water
  - Prepared in response to decision in *National Cotton Council of America v. EPA*, 533 F.3d 927 (6th Cir. 2009), *cert. denied* 78 U.S.L.W. 3479 (2/2/2010), which held that a permit is required for such applications
  - Regulatory exemption of such activities from permit requirements repealed effective February 20, 2011; new general permit was to become effective on April 9, 2011
  - On March 28, 2011, court extended the date as of which permits will be required for such activities from April 9 to October 31, 2011
  - Implementation date of new general permit extended by DEQ on March 30, 2011; “if necessitated by a court ruling, [DEQ] will mandate the requirement for an LPDES permit”
- Development of Total Maximum Daily Loads (TMDLs)
  - Establish maximum amount of pollutants that can be released into a water body without causing it to be impaired or violate state water quality standards
  - 31 TMDLs public noticed by DEQ since 2010
  - 22 TMDL packages approved by EPA Region 6 in early 2011
  - DEQ on pace to complete more than 43 TMDLs in 2011

## DEQ - Brownfields

- Active program in place
  - DEQ Voluntary Remediation Program
  - Target Brownfield Assessments by DEQ
  - Low interest loans from DEQ under the Brownfields Cleanup Revolving Loan Fund
- Completion of brownfields project involving assessment, remediation, and redevelopment of building in Baton Rouge announced by DEQ, EPA Region 6, and Baton Rouge City-Parish Planning Commission on September 30, 2010
- Proposed bill to reinstate the Brownfield Investor Tax Credit, from July 1, 2011 through December 31, 2013 (Senate Bill No. 40, 2011 Regular Session)
  - If enacted, will create transferable income tax credits in the amount of 15% of the total investment made for the investigation and 50% of the total investment made in the remediation of brownfield sites