

## NOTICE OF INTENT

### Department of Natural Resources Office of Conservation

#### Amendment to Statewide Order No. 29-B Procedures for Hearings and the Submission and Approval of Plans for the Remediation of E&P Sites in Accordance with LSA-R.S. 30:29.

#### LAC 43:XIX. Subpart 1. Chapter 6

The Louisiana Office of Conservation proposes to amend LAC 43:XIX.Subpart 1 (Statewide Order No. 29-B) to include a new chapter, i.e. LAC 43:XIX.Chapter 6, in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq. and pursuant to power delegated under the laws of the State of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, Sections 30:4 et seq. The proposed amendment will standardize regulatory procedures for hearings for exploration and production site evaluation or remediation plans submitted for Office of Conservation approval subject to the statutory provisions of Act 312 of 2006 under LSA-R.S. 30:29.

#### Title 43

#### NATURAL RESOURCES

#### Part XIX. Office of Conservation

#### Subpart 1. Statewide Order No. 29-B

#### Chapter 6.Procedures for Hearings and the Submission and Approval of Plans for the Remediation of E&P Sites in Accordance with LSA-R.S. 30:29

#### ' 601. Authority

These rules and regulations are promulgated by the commissioner of conservation pursuant to the Administrative Procedure Act as contemplated in R.S. 30:4 and 30:29.

#### ' 603. Definitions

A. The words defined herein shall have the following meanings when used in these rules. All other words so used and not herein defined shall have their usual meanings unless specially defined in Title 30 of Louisiana Revised Statutes of 1950.

*Date* shall refer to the postmarked date of a letter or the transmittal date of a telegraphic or wireless communication.

*Environmental Damage* shall mean any actual or potential impact, damage, or injury to environmental media caused by contamination resulting from activities associated with oilfield sites or exploration and production sites.

*Environmental Media* shall include but not be limited to soil, surface water, ground water, or sediment, or as defined in R.S. 30:29.

*Evaluation or remediation* shall include but not be limited to investigation, testing, monitoring, containment, prevention, or abatement.

**Feasible Plan** shall mean the most reasonable plan which addresses environmental damage in conformity with the requirement of Louisiana Constitution Article IX, Section 1 to protect the environment, public health, safety and welfare, and is in compliance with the specific relevant and applicable standards and regulations promulgated by a state agency in accordance with the Administrative Procedure Act in effect at the time of clean-up to remediate contamination resulting from oilfield or exploration and production operations or waste.

**Affected Tract** shall mean any real property known or reasonably believed to have suffered environmental damage as defined in R.S. 30:29.

**Party** shall mean Responsible Parties and Litigation Parties as defined herein.

**Responsible Party** shall mean the party or parties admitting responsibility for environmental damage or determined by the court to be legally responsible for environmental damage pursuant to R.S. 30:29.

**Litigation Party** shall mean any party to a judicial proceeding subject to R.S. 30:29 and who is not a responsible party as defined herein.

**Oilfield site or exploration and production (E&P) site** shall mean any tract of land or any portion thereof on which oil or gas exploration, development, or production activities have occurred, including wells, equipment, tanks, flow lines or impoundments used for the purposes of the drilling, workover, production, primary separation, disposal, transportation or storage of E&P wastes, crude oil and natural gas processing, transportation or storage of a common production stream of crude oil, natural gas, coal seam natural gas, or geothermal energy prior to a custody transfer or a sales point. In general, this definition would apply to all exploration and production operations located on the same lease, unit or field.

**Represented Party** shall mean any responsible party or litigation party who is represented by an attorney in the court matter that has been referred pursuant to R.S. 30:29 or before the Office of Conservation.

**Technical Data** shall mean all basic factual information available that may be used to determine the levels of contamination and the vertical and horizontal extent of the contamination.

**Plan** means any submittal made in accordance with R.S. 30:29 and these rules for the evaluation or remediation of an affected tract as defined herein.

**Final Submission** shall mean the last day on which any litigation party may submit a plan, comment, or response to a plan as provided by the orders of the court.

#### **' 605. Applicability**

A. These rules of procedure shall be applicable to all hearings held by the commissioner of conservation pursuant to R.S. 30:29 (Act 312 of 2006). The posting and publication of a copy of the notice of hearing shall be accomplished as soon as practicable after such notice has been issued by the commissioner.

B. These rules of procedure shall in no way alter or change the right of any interested person, as provided in Paragraph F, Section 6 of Chapter 1 of Title 30 of the Louisiana Revised Statutes of 1950, to have the Commissioner of Conservation call a hearing for the purpose of taking action in respect to a matter within the jurisdiction of the commissioner, nor the requirement that the commissioner, upon receiving the

request, promptly call a hearing. In addition, these rules shall in no way alter any other rights or claims, contractual or otherwise, which any person has or may have except as provided in R.S. 30:29 (Act 312 of 2006).

#### **' 607. Commissioner=s Conference**

A. The general purpose of the Commissioner=s Conference shall be to set a hearing date and to set deadlines for the release of technical data, hearing notices, filing of all plans, witness and exhibit lists, and any other preliminary matters necessary and appropriate to the hearing not otherwise addressed by these rules.

B. As soon as practicable after the Final Submission, the commissioner shall schedule a Commissioner=s Conference and notify each party of the date and time of the conference.

C. Notice of the Commissioner=s Conference shall be mailed to each responsible party and litigation party or their representatives stating the time and place of the conference.

D. Each responsible party or their representative is required to participate in the Commissioner=s Conference.

E. Any litigation party may participate in the Commissioner=s Conference, even if such party has not requested the Commissioner=s Conference.

F. The commissioner, or hearing officer appointed by the commissioner, shall have the right to call any other pre-hearing conferences at any time prior to the hearing, if in his opinion such a conference would resolve or narrow the issues in controversy or would assist in the conduct of the hearing.

G. Conferences held pursuant to these rules are designed to promote an open exchange of views among the parties; therefore, any reference to discussions among the parties as to the bases for a party's position at said conferences shall not be admissible in evidence at any hearing. Tape recordings and transcriptions made at any such conference also shall not be admissible in evidence.

#### **' 609. General Requirements of Plans**

A. Plans shall be filed within the time limit set by the court and shall be filed with the commissioner. A copy shall be mailed or delivered to each party. Any party submitting a plan shall submit at least three (3) hard copies of the technical data and plan, as well as an acceptable electronic copy to the commissioner. In addition to outlining the purpose thereof, plans shall include the information required by ' 615 and shall include or be accompanied by the following:

1. a statement that a reasonable effort has been made to obtain a complete list of parties;
2. a statement that a Commissioner=s Conference has or has not been held, and if held, a list of the parties in attendance;
3. a plat prepared in accordance with all applicable memoranda, with any technical data labeled thereon and the other items required by statute or by the commissioner;
4. a statement that the plan is to evaluate or remediate the environmental damage in accordance with the requirements of the applicable rules and regulations of the Office of Conservation or, if the plan

seeks to apply rules and regulations of another Louisiana state agency, a citation to the specific rules and regulations of that state agency.

B. If a proposed plan is revised by any party, the revised plan shall be submitted as amended to the Commissioner of Conservation and forwarded to the parties in the same manner as the original plan with a revised plat.

#### **' 611. Specific Requirements of Plans**

A. The Commissioner of Conservation shall consider only those plans filed in a timely manner and in accordance with these rules and orders of the court.

B. Except as provided in ' 611 (F), each plan or submittal of any Responsible Party or any Litigation Party shall be evaluated in accordance with Statewide Order 29-B. Sampling and testing shall be performed in accordance with Statewide Order 29-B. Each plan shall fully delineate the vertical and horizontal extent of the environmental damage.

C. All Statewide Order 29-B sampling shall be in accordance with applicable guidelines as provided in the latest revision of the Department of Natural Resources laboratory procedures manual titled *Laboratory Procedures for Analysis of Exploration & Production Waste* and shall contain a plat showing the physical location from which such samples were obtained, provided that any sampling performed prior to the adoption of this Chapter may be considered by the commissioner in approving or structuring a plan if the commissioner determines that such sampling was conducted in accordance with a scientifically reliable methodology.

In addition, information as to the identity of the person or company taking the samples, a copy of the certification of such person or company taking such samples (if applicable), and documentation showing the method of sampling, the chain of custody and all other such relevant information shall be included.

D. All Statewide Order 29-B sample analyses shall be in accordance with applicable regulatory requirements and the latest revision of the Department of Natural Resources laboratory procedures manual titled *Laboratory Procedures for Analysis of Exploration & Production Waste* and shall be performed by a DEQ LELAP accredited laboratory holding current accreditation for each parameter and corresponding test method used, provided that any sample analyses performed prior to the adoption of this Chapter may be considered by the commissioner in approving or structuring a plan if the commissioner determines that such sample analyses was conducted in accordance with a scientifically reliable methodology.

All Statewide Order 29-B test results shall also contain a report certified by the testing laboratory including, at a minimum, a description of the testing process or methodology, by whom such testing was conducted, a copy of the laboratory's accreditation to conduct the described test, and all applicable required quality assurance / quality control data.

E. Each plan shall contain a separate section analyzing the sampling and testing as set forth in C and D above by comparison with the applicable Statewide Order 29-B criteria.

F. Any plan submitted by any party, or approved or structured by the commissioner, shall comply with the standards set forth in Statewide Order 29-B. Any party that seeks an exception under the provisions of Section 319 of Statewide Order 29-B shall submit (1) a plan that complies with all the provisions of

Statewide Order 29-B, exclusive of Section 319; and (2) a separate plan that includes: (a) sufficient proof that there is good cause to grant an exception or exceptions sought under Section 319; (b) sufficient proof showing that the exception or exceptions sought under Section 319 do not endanger USDW=s; and (c) a specific citation to the Louisiana rules, regulations or statutes sought to be applied in lieu of Statewide order 29-B.

G. All plans shall also contain:

1. A chronological work schedule or proposal for a chronological work schedule detailing all activities necessary for its implementation and an estimated cost for each item;

2. A comprehensive itemized cost basis for each item listed in G.(1);

3. A certification of review and approval by signature from an attorney licensed to practice law in Louisiana, or an attorney from another jurisdiction who has been authorized to appear before the commissioner, worded as follows:

AI, \_\_\_\_\_, have reviewed the information submitted herewith and hereby attest that to the best of my knowledge, information and belief it is true and correct and is based on scientific data that has been obtained in a manner compliant with all applicable regulations.@

### **' 613. General Requirements of Comments And Responses**

A. Comments or responses shall be filed within the time limit set by the court and shall be filed with the commissioner and the court with a copy to each party. Any party filing a comment or response shall submit to the Commissioner of Conservation at least three(3) hard copies of the comment or response and any data utilized as provided in ' 617, as well as an acceptable electronic copy to the commissioner. In addition to outlining the purpose thereof, the comments or responses shall, in addition to the information required by ' 615 include or be accompanied by the following:

1. a statement that a reasonable effort has been made to obtain a complete list of parties;

2. a plat prepared in accordance with all applicable memoranda, with any technical data labeled thereon and the other items required by statute or regulation or by the commissioner, if different from the plan on which the comments or responses are made;

3. a statement that the comment or response is to evaluate or remediate the environmental damage in accordance with the requirements of the applicable rules and regulations of the Office of Conservation or, if the comment or response seeks to apply rules and regulations of another Louisiana state agency, a citation to the specific rules and regulations of that state agency.

### **' 615. Notice of Filing a Plan, Comment or Response**

A. Any litigation party filing a plan, comment or response pursuant to R.S. 30:29 shall also mail or deliver a copy to each litigation party or their representatives. If a representative represents more than one party, only one copy need be sent, unless otherwise ordered by the court.

B. Each plan, comment or response shall include a list of all parties to whom it is being provided and their addresses and other contact information.

**' 617. Release of Technical Data**

A. Technical data regarding any plan, comment or response shall be provided to each party at the cost of the party sending such technical data at the time the plan, comment or response is filed with the commissioner and the court.

B. If the plan, comment or response utilizes data from another previously or concurrently filed plan, comment or response, a specific reference to the location of the data in those other filings will suffice to meet the requirements of this rule.

C. Reference to the source or sources, including commercial outlets, from whom such technical data can be obtained shall be included in the documentation required by these rules.

**' 619. Revisions To Plans, Comments or Responses Thereto**

A. If, after any plan, comment or response is filed, such plan, comment or response is revised, the party revising the plan, comment or response shall promptly notify the commissioner and all parties to whom the plan, comment or response was sent, of the revision. The revising party shall furnish the commissioner at least three (3) hard copies and one acceptable electronic copy of the data and revised plan, comment or response, and any technical data used to support the revision. The revising party shall also provide the court and all parties a copy of any revised plan, comment or response and any technical data used to support the revision. The revising party shall, if requested by the commissioner, participate in an additional Commissioner=s Conference to discuss the revised plan, comment or response prior to the hearing. No revised plan, comment or response may be considered at the hearing unless notice of the revision has been sent to the commissioner, the court and to all parties to whom the legal notice is required at least ten days prior to the hearing.

**' 621. Mandatory Disclosures and New Evidence**

A. All technical data available to any party filing a plan, comment or response shall be disclosed to all parties on or before the date such plan, comment or response is filed with the commissioner, regardless of whether such technical data is used or referenced in such plan, comment or response.

B. If new technical data becomes available to any party after proceedings have been initiated hereunder, such technical data shall be made available immediately to all parties by notice of its availability and by release in accordance with ' 617. Such technical data may be used by any party at the hearing and may be the basis for revision of plans, comments or responses previously made by any party. Subject to the time limitations set forth in R.S. 30:29, the commissioner in his discretion may determine that additional time should be afforded for consideration of new technical data. The commissioner in his discretion may also establish a time limit beyond which new technical data may not be considered.

**' 623. Hearing Officer**

A. The Commissioner of Conservation may designate a licensed Louisiana attorney to act as hearing officer in any hearing or at any conferences under these rules.

B. The duties of the hearing officer include, but are not limited to, conducting any Commissioner's Conference provided under these rules, ruling on evidentiary or procedural matters, maintaining order at the hearings, and generally ensuring that an accurate record is made of the proceedings under these rules.

**' 625. Costs**

At least 15 days before the scheduled hearing, the Commissioner of Conservation shall provide the court and litigation parties a schedule of its estimated costs for the review and evaluation of any plans, comments or responses, hearing costs as well as any other costs the Commissioner of Conservation is expected to incur. The responsible party shall deposit sufficient funds in the registry of the court, or, with the approval of the court, may submit such funds directly to the Commissioner of Conservation.

**' 627. Plan Approvals**

Within 60 days of the conclusion of the hearing, or within such longer time as the court allows, the Commissioner of Conservation shall either approve a submitted plan as the most feasible plan or structure a plan which, based on the evidence submitted on the record, the commissioner determines to be the most feasible plan and shall further issue written reasons for the plan he approves or structures.

**' 629. Rehearing**

Requests for rehearing by any party shall not be considered by the Commissioner of Conservation.

**' 631. Timeliness of Filings**

All notices and filings provided for herein shall be presumed to be timely when the postmark date or actual date of receipt, if hand delivered, of the copy received by the commissioner complies with appropriate delays herein provided. Copies required to be provided to the parties shall be deposited on the same date in the United States mail, properly stamped and addressed, or, if telegraphic or wireless communication is used, dispatched on that date by the transmitting party.

**' 633. Notice of Hearings And Continued Hearings**

A. In addition to the publication of the legal notice by the commissioner in the official state journal, the responsible party or parties shall provide for the posting of a copy of the legal notice of the hearing and a plat or plats in a prominent place in the area affected, and shall cause to be published at least 15 days before the hearing a copy of the legal notice in a newspaper published in the vicinity or general area of the affected tract or tracts. The responsible party or parties shall mail copies of the legal notice to all parties and a copy of the plat or plats shall be included with the legal notice, if said parties have not already been furnished same. Evidence to establish posting, publishing and mailing shall be submitted at the hearing.

B. When a hearing is opened and continued, the notice given for the original hearing shall be applicable to the continued hearing, if the hearing officer at the time of granting the continuance designates the new time, date and place of the continued hearing. In all other instances of a continued hearing, the responsible party or parties shall at least 15 days before the hearing provide notice of the continued hearing by posting such notice in a prominent place in the area affected, by publishing such notice in a newspaper published in the vicinity or general area of the affected tract or tracts and by mailing such notice to all parties.

C. In no case shall a hearing be held more than 60 days from the date of the Final Submission without the express approval of the trial court.

**' 635. Rules of Hearing Conduct and Procedure**

A. The responsible party or parties shall first present the entire scientific, technical or other bases of their plan or plan(s).

B. Any litigation party or parties who have filed a comment in support of any responsible party=s plan or plans shall then present the entire scientific, technical or other bases for their support and shall do so immediately after the responsible party or parties have completed their presentations.

C. Any litigation party who has submitted a plan or plans shall then present the entire scientific, technical or other bases thereof. If any litigation party has filed a comment in opposition to any responsible party=s plan or plans, such party shall then present their entire scientific, technical or other bases for such opposition. Any litigation party who has filed a comment in support of a Litigation Party=s plan shall then present the entire scientific, technical or other bases for such support.

D. Each responsible party shall then have the opportunity to provide rebuttal evidence in response to the opposition to its= plan or plans, or in response to any plan offered by any litigation party.

E. The litigation party filing the plan shall then have the opportunity to provide rebuttal evidence in response to the opposition to its= plan.

F. All rebuttal scientific, technical or other testimony, shall be strictly limited to a refutation of the matters covered by the opponents.

G. Any witness shall be subject to examination by the commissioner or any member of his staff and by no more than two representatives of a party. Cross-examination shall be conducted in accordance with the following guidelines:

1. Cross-examination shall be limited to questions concerning the testimony and exhibits presented by the witness, testimony and exhibits presented by any other witness and the credibility of the witness.

2. Matters peculiarly within the knowledge of the cross-examiner or his witnesses shall be presented by them on direct examination, and there shall be no attempt to establish such matters by cross-examination.

3. Cross-examination shall be conducted in a polite and courteous manner without reference to personalities of the witness or the party represented by the witness.

H. After the litigation parties have all made their presentations, any party shall be afforded an opportunity to make a statement. If such a statement includes technical data, the party shall be subject to being sworn and cross-examined, provided that attorneys representing a party or parties shall not be subject to cross examination.

I. The litigation parties and responsible parties may make opening statements. The litigation parties and responsible parties may also make closing statements concerning their positions, but such statements shall not include technical matters which have not been presented by sworn testimony. The responsible parties shall have the right to make the last closing statement. If there is more than one litigation party or responsible party, the parties may agree on the sequence in which opening or closing statements are presented, or the commissioner or hearing officer shall determine the sequence.

**' 637. Penalty for Non-Compliance**

Failure to comply with the provisions of or the spirit of these rules of procedure may prevent plan, comment or response from being advertised or heard, or may prevent a party from presenting evidence at the hearing, but any approval or structure of a plan issued by the commissioner shall not be invalid by operation of this rule.

**' 639. Time of Commencement**

A. The procedures set forth in these rules shall commence upon Final Submission date as provided in these rules.

**' 641. Coverage of Rules**

A. Nothing contained in these rules shall in any way limit the authority of the commissioner of conservation to independently initiate any civil or administrative proceeding or to initiate any civil enforcement action.

B. Nothing in these rules shall in any way limit the Office of Conservation from independently responding to an inquiry or request by a landowner or any other person for investigation of alleged environmental damage.

The Commissioner of Conservation will conduct a public hearing at 10 am, Wednesday, February 28, 2007, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until 4:30 p.m., Wednesday, March 7, 2007, at Office of Conservation, Injection and Mining Division, PO Box 94275, Baton Rouge, LA, 70804-9275; or Office of Conservation, Injection and Mining Division, 617 North Third St., Room 817, Baton Rouge, LA 70802. Reference Docket No. IMD 2007-01 on all correspondence.