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LDEQ Finalizes Several Rules in June

1. Notification Rules

LDEQ made some slight changes to the notification rules found in LAC 33:I:Chapter 39. MM012. For notifications of an unauthorized discharge that exceed a reportable quantity (RQ) in non-emergency situations, the change cleared up one ambiguity but may have created another.

Prior to the change, the rule stated that the discharger “shall promptly notify the department.” It went on to state that such notification “should be made to the SPOC.” Note the mandatory nature of the regulation as it relates to notifying the ‘department’ as opposed to the permissive nature of the regulation as it relates to notifying the ‘SPOC.’ Chapter 39 defines the ‘department’ differently and more broadly than the ‘SPOC.’ Some in the regulated community reasonably interpreted the rule to mean that, in non-emergency situations, while notification ‘should be made’ to the SPOC, as long as any office in the ‘department’ was notified, such as a regional office, compliance with the rule was achieved. The new rule makes it clear that the discharger “shall promptly notify DPS by telephone.” LAC 33:I.3917.A, as amended June 20, 2010. As of June 20, all non-emergency RQ exceedences notification must be made to the DPS by telephone within 24 hours after learning of the discharge.

The LDEQ went onto add a sub-section stating that in non-emergency RQ exceedence situations, the DPS Hotline will notify LDEQ. LAC 33:I.3917.C, added June 20, 2010. This seems to suggest that a discharger is relieved of responsibility of contacting the SPOC or LDEQ for a non-emergency RQ exceedences. Do not be fooled! Timely notice to the DPS does not relieve discharger of the duty to submit the written notification under Section 3925 “or any terms and conditions of any applicable permit or license.” LAC 33:I.3917.B, as amended June 20, 2010. Many permits, such as LPDES General Permits, contain language requiring notification to the SPOC. To be safe, notification of a non-emergency RQ exceedences should be made to the DPS and the SPOC.

2. Brine RQ

On a related note, LDEQ added an RQ of 5,000 pounds for brine from solution mining. OS085, June 20, 2010.

3. Batch and Continuous Flow Tanks

LDEQ also created a distinction between ‘batch’ tanks and ‘continuous-flow tanks’ for purposes of compliance with the 90-day requirement in Section 1109. HW 106. As you know, a generator may accumulate hazardous waste on-site without a permit for 90 days. These rules provide clarification as to how to comply with this requirement for these types of tanks.

A ‘batch tank’ is one that “receives a batch (or batches) of hazardous waste on a one-time or intermittent basis.” The provisions of Section 1909.D now apply to ‘batch tanks.’ The tanks must be emptied and cleaned of all residues and/or sludges at least once in each 90-day period. The rule specified that a tank is deemed emptied and cleaned if it has been emptied to the maximum extent practicable and for similar wastes (compatible), cleaning/rinsing or removal of hazardous waste to a level at which no more than 2.5 centimeters (1 inch) of waste on the bottom of the tank or 3 percent by volume of the total tank capacity remains in the tank ; or for dissimilar (incompatible) wastes, cleaning/rinsing by method(s) necessary to remove all hazardous wastes to a level which precludes any incompatibility reactions and is sufficient to allow visible inspection of all tank interior surfaces.

A ‘continuous-flow tank’ is one that “receives hazardous waste on an ongoing, continuous basis.” Compliance with 1109.E is to be demonstrated by a mass balance approach and with appropriate documentation or methodology. Key parameters are the volume of the tank, the daily throughput, and the time period the waste resides in the tank. An example is provide in the rule of a 6,000 gallon tank that receives 300 gallons per day. Using a simple formula (6,000 gallons divided by 300 gallons per day) yields a resident time of 20 days, thus meeting the terms of the rule. The rule requires that the documentation and methodology used to confirm compliance “must be reasonable and easily discernable to the department.”

Residue or sludge accumulation is also handled by the rule. A continuous-flow tank in which a significant amount of residue or sludge is accumulated may not qualify for the 90-day exclusion. Two compliance methods are provide to ensure that a ‘significant accumulation of residue or sludge’ does not occur in the tank. First, the requirements of 1909.D, detailed above for batch tanks, may be followed. Second, the owner/operator may provide documentation that ‘significant accumulation of residue or sludge’ does not occur within the tank, that is, “almost all residues or sludges in the tank at the beginning of the 90-day period have been removed (or displaced by incoming waste or newly-formed residues or sludges) by the end of the 90th day.” The rule specifies that the determination is made “on a case-by-case basis.”

However, no ‘significant accumulation of residue or sludge’ is deemed to have occurred if the amount of residues or sludges in the tank is less than 5% by volume of the total tank capacity. It is unclear whether the 5% rule is the maximum amount that can be in the tank or whether a higher amount will be deemed, on a case-by-case basis, “almost all” of the residues or sludges in the tank. However, the 5% rule does provide a ‘bright line’ for compliance purposes.



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