

LDEQ Issues Emergency Orders in the Wake of Hurricane Gustav

As it did after Hurricanes Katrina and Rita, the Louisiana Department of Environmental Quality (LDEQ) has issued orders to assist the regulated community in the aftermath of Hurricane Gustav (the “Hurricane”). LDEQ issued a Declaration of Emergency and Administrative Order on August 31, 2008 and a First Amended Declaration of Emergency and Administrative Order on September 6, 2008 (collectively the “Orders”). A copy of the Orders may be found at www.BSWResponds.com.

The Orders apply only in parishes in which the local government has declared an emergency and/or which were included in Governor Jindal’s emergency declaration (No. 51 BJ 2008). The provisions of the Orders are designed to provide specific direction to abate potential problems or lessen the possibility of environmental harm related to the Hurricane and to provide some regulatory flexibility as the regulated community struggles to respond to the Hurricane’s devastation.

A summary of the Order’s relevant provisions are as follows:

1. Wastewater Treatment Systems
 - A. Those with Louisiana Pollution Discharge Elimination System (“LPDES”) permits should review and consider activating the “upset provisions” of their permits. The Orders extend upset provisions to include water quality-based effluent limitations.
 - B. LDEQ has temporarily waived the requirement that LDEQ be provided with a Notice of Intent (“NOI”) to discharge wastewaters associated with potable water treatment systems in Emergency Areas prior to the discharge. This was done to alleviate potential shortages of potable water. To take advantage of this waiver, compliance with LDEQ’s General Permit LAG380000 is required, and LDEQ must still be notified within five (5) days of commencement of the discharge.
 - C. Electrical and Communication utility companies are temporarily allowed to discharge storm water runoff from construction activities related to hurricane responses in Emergency Areas. Best Management Practices (“BMPs”), however, are to be implemented to the greatest extent possible.
 - D. Wastewater treatment facilities who are not authorized to accept hauled sewage sludge may now do so provided that such acceptance: 1) is necessary to facilitate hurricane recovery, 2) the facility can handle the extra influx of material, and 3) the facility immediately notifies LDEQ orally of the acceptance of the material, followed by written notice within thirty (30) days. This authorization does not cover routine pumpings from septic tanks, portable toilets, or Marine Sanitation Devices (“MSDs”).
 - E. For all discharges of wastewater covered by the Orders, the discharger must notify LDEQ, keep records of the details of the discharge (such as time, duration,

location, etc.), minimize the discharge amount and its detrimental effects (such as erosion and impacts on any receiving water body) to the greatest extent possible.

2. Solid Waste Management

- A. The expanded definition of Construction and Demolition debris (“C&D”) is NOT applicable under the Orders. LDEQ made clear in the Orders that the expanded definition, which includes items such as furniture, carpet, and stained or painted lumber from demolished buildings, was NOT applicable. As such, these items should NOT be disposed of in a Type III (C&D) landfill.
- B. Temporary staging areas must be requested by the local government and approved by the LDEQ. Under the Debris Management Plan, sites previously approved under the orders issued after Hurricanes Katrina and Rita will be “automatically approved” for the same type of activities “provided there have been no significant changes in surrounding land use and potential receptors, and the site’s authorization to operate was not rescinded or revoked by LDEQ as a result of non-compliant activity during its previous use.” Certain criteria set forth in the Orders must continue to be met, and local governments must submit the appropriate request and receive LDEQ’s approval prior to a site’s use.
- C. Vegetative debris must be handled in accordance with the Debris Management Plan. Essentially, LDEQ favors the reduction in volume of this material through chipping and grinding, followed by use of the reduced material in an appropriate manner. Such use may include “a component of the cover system for a landfill or a means for providing erosion control.” Here too, prior approval of these sites by LDEQ is required.
- D. Uncontaminated C&D debris may be disposed of in a permitted Type III landfill or managed at a temporary staging area authorized by the LDEQ. Uncontaminated C&D debris mixed with other uncontaminated hurricane-generated debris, such as white goods or household hazardous waste, should be segregated from other solid waste prior to disposal in a permitted landfill or authorized disposal site, except in cases where segregation is not practicable.
- E. LDEQ may authorize, on a case-by-case basis, the disposal of C&D debris containing incidental, *de minimus*, or trace amounts of contamination in a Type I/II landfill.
- F. White goods (i.e., air conditioners, stoves and range tops, refrigerators, etc.) must both be stored in an area separate from other solid wastes and in a manner that prevents vector and odor problems. No white goods may be stored at a site without a permit or other written authorization from the LDEQ. Additionally, all white goods must be removed from the storage facility or staging area and sent offsite for recycling, or recycled onsite, within ninety (90) days of their initial receipt at the site.

3. Hazardous Waste

- A. No significant rules related to Hazardous Waste are waived by the Orders. In short, hurricane-related hazardous waste must be separated and disposed of at a permitted hazardous waste facility only.
- B. Generators of hazardous waste who accumulate hazardous waste for more than ninety (90) days are deemed under LDEQ's regulations to be an operator of a storage facility. Under the Orders, hazardous waste generators and small quantity generators within Emergency Areas whose ninety (90) day accumulation period expires within the time period covered by the Orders are given an extension of thirty (30) days from the expiration of the Orders to properly ship these materials offsite.

4. Open Burning

- A. Blanket prohibitions on open burning by private individuals and companies, found in both LDEQ regulations and local ordinances, have not been waived by the Orders.
- B. Open burning of vegetative debris and/or solid waste may only be conducted by local governments and then only after prior notice to and approval from LDEQ.
- C. LDEQ will consider, on a case-by-case basis, individual requests for approval of open burning of vegetative matter by non-governmental entities and/or persons.

5. Air Pollution

- A. Minor repairs to a previously-permitted source to restore it to its previous condition are approved by the Orders without prior notice. However, notification to LDEQ within thirty (30) days of commencing the repairs must still be provided. Minor repairs are those that do not amount to reconstruction.
- B. Temporary pollution control devices, such as portable flares and portable storage tanks used for interim storage while damaged equipment is being repaired, will be considered by LDEQ on an individual basis. Approval from LDEQ, though, is still required.
- C. In the Orders, LDEQ authorized the use of "temporary portable emergency internal combustion engines, including, but not limited to, electrical power generators, until such time as normal operations are restored or until the expiration of this Order, whichever is earlier," if (among other things) the owner/operator notifies LDEQ by September 8, complies with applicable federal requirements, includes emissions from all such emergency engines in its annual emissions statement, and keeps detailed records of the date the unit is delivered, its make, model, and manufacturer's rated horsepower, the fuel type, total

operating time, and the date the unit was removed from the site and reports all such information to LDEQ no later than thirty (30) days after the expiration of the Orders.

6. Asbestos

- A. Any asbestos clean-up must be done in accordance with LDEQ's published Debris Management Plan, a copy of which can be located at www.BSWResponds.com.
- B. LDEQ has waived the prior notification requirement for emergency demolition or emergency cleanup of asbestos-containing things that are structurally unsound and in danger of imminent collapse as a result of the Hurricane. However, written notice to LDEQ of the commencement of such activities must be provided within one (1) business day of the beginning of such activities. The normal handling, transportation, and disposal requirements typically associated with asbestos work still apply.

7. Underground Storage Tanks

- A. Any hurricane-impacted Underground Storage Tank ("UST") system must be evaluated by the owner/operator prior to placing the UST system back into service. The evaluation must consist of a general inspection and the performance of the 18-point start-up protocol set forth in Appendix F of the LDEQ Orders. A copy of this protocol can be found at www.BSWResponds.com.
- B. In any UST system that has been damaged or sustained a release, the owner/operator must replace or repair the system, perform a precision tank and line tightness tests, perform leak detection tests, and provide a fully-functional corrosion control system prior to placing any fuel into the UST system. There is no elaboration on the type of damage, the dollar amount of the damage, or the amount of the release that triggers coverage of the Orders' provisions in this regard. They merely state that "any UST system that has been damaged or has sustained a release," must comply with these requirements.

8. Procedural Provisions

- A. Public comment periods ending before September 15, 2008 are extended until September 26, 2008 under the Orders.
- B. Any changes needed in regard to public hearings in Emergency Areas will be evaluated on a case-by-case basis.
- C. The First Amended Order is effective until 60 days from September 6, 2008.

- D. The Orders deal only with LDEQ regulations and have no effect on applicable local or federal requirements.