

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of the Secretary

Land Disposal Restriction Variances
(LAC 33:V.2271)(HW051)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality (department) to use emergency procedures to establish rules, and R.S. 30:2011 and R.S. 30:2193, which allow the department to provide for variances and exemptions from hazardous waste land disposal restrictions by rule, the secretary of the department hereby finds that imminent peril to the public welfare exists and accordingly adopts the following emergency rule effective August 21, 1996, for 120 days, or until promulgation of the final rule, whichever occurs first.

This Declaration of Emergency is necessary because the ability of certain underground injection well operators to continue injection of wastewater, during the time period necessary for the department to process their state petitions for exemption under LAC 33:V.2242, (now LAC 33:V.2271), has been put into question by the court's decisions in *In the Matter of Rubicon, Inc.*, Number 95-CA-0108 (1st Cir. 2/14/96), rehearing denied per curiam (3/29/96), and in *In The Matter of Cytec, Inc.*, Number 94-CA- 1693 (1st Cir. 2/23/96). These decisions vacated and remanded the department's decisions to grant land disposal exemptions on strictly procedural grounds, not on the merits of the department's actions. There are four other exemption decisions granted by the department pending at the First Circuit.

Prior to the department's decisions, these companies operated their wells under an emergency variance granted pursuant to LAC 33:V.2242.W under a Judgment and Consent Decree entered in *Louisiana Chemical Association v. Department of Environmental Quality*, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana, Suit Number 345,262, which recognized the need for interim relief during the period while the department processed state exemption petitions. This rule will confirm the legal authority of the affected companies to operate under this emergency variance during the time period necessary for the department to reissue its decisions pursuant to the court's directives.

This action is necessary because of the inability of the department to complete review, draft written reasons and reissue its decision as directed by the court in each case by the time the respective court of appeal's decisions become final. Affected companies are allowed to continue operation of their injection wells until final action on remand is taken by the department and any subsequent appeal process has been completed. This will preserve the status quo pending this action by the department and is consistent with the original intent of the emergency variance provisions of the Consent Judgment.

Without the ability to continue injection during the time

period necessary for the department to reissue its decisions, certain facilities would be forced to cease operations entirely, or to close major units. All affected facilities would incur substantial disruptions to their business operations, adversely affecting the provisions of products or services. Closures would cause severe adverse effects on the public welfare of this state, including the loss of:

1. the employment of approximately 2,600 employees and contractors at these facilities; and
2. at least \$685 million per year in payroll expenses, state and local taxes, purchase of goods and services, and environmental regulatory fees, which would otherwise have been paid to the State of Louisiana or its citizens.

All of the companies affected have received land disposal restriction exemptions from the United States Environmental Protection Agency as authorized by the Hazardous and Solid Waste Amendments of 1984 and have received authorization to operate their injection wells from the Louisiana Department of Natural Resources, Office of Conservation, pursuant to the Underground Injection Control (UIC) provisions of the federal Safe Drinking Water Act. They will be required to comply with all federal exemption conditions and State UIC permit conditions as a condition of the state emergency variance. Adopted this 21st day of August, 1996.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality - Hazardous Waste

Chapter 22. Prohibitions on Land Disposal

§2271. Exemptions To Allow Land Disposal of a Prohibited Waste By Deep Well Injections

* * *

[See Prior Text in A-V.5.j]

W. Emergency Variance

1. During the petition review process, the applicant is required to comply with all prohibitions on land disposal under this Chapter, unless a petition for an exemption has been approved by the EPA, and the administrative authority grants an emergency variance. If EPA has approved the exemption, the land disposal of the waste may continue for up to one year under an emergency variance issued by the administrative authority until the administrative authority makes a decision on the petition for exemption. The administrative authority may extend an emergency variance beyond one year; however, such approval is solely based on the agency's inability to review the petition during the first one-year variance. The administrative authority shall either grant or deny the petition within the extended emergency variance period, no later than June 1, 1995, for petitions submitted prior to June 1, 1992. After the administrative authority issues a decision on the exemption, the waste may be land disposed only in accordance with the provision of the exemption.

2. If the exemption decision is vacated and/or remanded by a court on judicial review, the emergency variance shall be automatically reinstated and shall remain in effect until final action on the remand is taken by the administrative authority and any subsequent appeal process has been completed.

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[See Prior Text in X-Z]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 22:22 (January 1996), amended by the Department of Environmental Quality, Office of the Secretary LR 22:

J. Dale Givens
Secretary

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