

TULANE ENVIRONMENTAL LAW CLINIC

February 15, 2007

Ref: 158-001

U.S. MAIL and e-mail (soumaya.ghosn@la.gov)

Ms. Soumaya Ghosn
Louisiana Department of Environmental Quality
Public Participation Group
P.O. Box 4313
Baton Rouge, LA 70821-4313
Fax: (225) 219-3309

Attn: Ms. Soumaya Ghosn

**RE: Comments on Draft Water Discharge General Permit for
Construction and Demolition Debris, Woodwaste Landfill Master General
AI Number: AI86162
Permit Number: LAG780000
Activity Number: PER20060001**

Dear Ms. Ghosn,

Please consider the following comments on the Draft General Permit for water discharge associated with the operation of Construction and Demolition Debris and Woodwaste Landfills, AI No. 86162, Permit No. LAG780000, Activity No. PER20060001 (the "Draft Permit"). The Tulane Environmental Law Clinic submits these comments on behalf of the GreenZone Task Force ("GreenZone"),¹ Louisiana Environmental Action Network ("LEAN"),² and Mr. Couvillion.³ GreenZone, LEAN, and Mr. Couvillion reserve the right to rely on all public comments submitted in this matter.

¹ The GreenZone Task Force includes All Congregations Together, Citizens for a Strong New Orleans East, Holy Cross Neighborhood Association, Louisiana Environmental Action Network, Mercy Corps, Pax Christi, and Sierra Club. Its membership is composed of a number of church organizations, environmental non-profit groups, New Orleans neighborhood associations and residents of Orleans Parish.

² LEAN is a non-profit corporation organized under the laws of the State of Louisiana. LEAN serves as an umbrella organization for environmental and citizen groups. LEAN's purpose is to preserve and protect the state's land, air, water, and other natural resources, and to protect its members and other residents of the state from threats of pollution. LEAN has members statewide, including members who live, work, or recreate in the project area.

³ Mr. O'Neil Couvillion fishes in waters of the states and his enjoyment of this activity is impaired by the waters' pollution.

To assist in LDEQ's understanding of these comments, we have attached the expert testimony of Mark A. Quarles, P.G. Mr. Quarles' affidavit is incorporated by reference into these comments.

SUMMARY

The Draft Permit covers water discharges from construction/demolition debris and woodwaste landfills "discharging treated sanitary wastewater less than 5,000 GDP; landfill contact wastewater from a construction/demolition debris and woodwaste landfill; maintenance and repair shop floor washwater; and non-contact stormwater into surface waters of the state." (Draft Permit, Public Notice, Jan. 11, 2007). LDEQ asserts that these facilities receive non-hazardous waste generally considered not water-soluble, including but not limited to metal, concrete, brick, asphalt, roofing materials (shingles, sheet rock, plaster) or lumber from a construction or demolition project. (Draft Permit, pt. I, p.3.) The Draft Permit allows discharges without a specific review of the individual receiving water body, regardless of the designated use, size, flow, or other conditions of the receiving water body. Accordingly, LDEQ cannot analyze the environmental impacts that the discharge will have on the receiving waterbodies, as it must under the Louisiana Constitution. Also, because LDEQ's proposed permit does not exclude specially protected waterbodies, such as 303(d)-listed waters, it allows discharges that would violate state and federal law. Moreover, where the Draft Permit and accompanying Fact Sheet do set forth restrictions and limitations, those restrictions and limitations or the bases for those restrictions and limitations are often inadequate or unjustified.

I. LDEQ Has Not Sufficiently Analyzed the Environmental Impacts of the Proposed Permit Because It Has Not Considered The Individual Receiving Water Bodies.

The Draft Permit allows discharges into essentially any waters in the state of Louisiana, regardless the designated use or individual conditions of any receiving water body. One positive exception to this general rule excludes facilities that would discharge into water bodies designated as outstanding natural resource water bodies. (LPDES General Permit Application to Discharge Wastewater from Construction/Demolition Debris and Woodwaste Landfills, AI 86162 Sec. I pt. A, p.4.) However, without considering the specific receiving water body, LDEQ cannot sufficiently analyze the environmental impacts that the discharges will have on the receiving water bodies.

The Louisiana Constitution requires LDEQ, as public trustee, to analyze the environmental impacts of the proposed action before deciding whether to approve a permit. The Louisiana Constitution states that "[t]he natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people." La. Const. art. IX, § 9. The Louisiana Supreme Court found that this constitutional provision "requires an agency or official, *before* granting approval of proposed action affecting the environment, to determine that adverse environmental impacts have been minimized or avoided as much as possible consistently with the public welfare." *Save*

Ourselves, Inc. v. Louisiana Env'tl. Control Comm'n, 452 So. 2d 1152, 1157 (La. 1984) (emphasis added). The Louisiana Court of Appeals further clarified LDEQ's public trustee responsibilities by listing five inquiries that the public trustee must address in its environmental impacts analysis. *In re Rubicon, Inc.*, 95-0108 (La. App. 1 Cir. 2/14/96); 670 So. 2d 475, 481.⁴ These inquiries are known as the "IT Questions," and under the *Save Ourselves* and *Rubicon* decisions, LDEQ must answer them in an IT analysis before making any decision as to approving a permit.

LDEQ must support its IT analysis with evidence in the administrative record. The Louisiana Supreme Court explained LDEQ must support its "basic findings" with evidence "to assure that the agency has acted reasonably in accordance with law." *Save Ourselves*, 452 So. 2d at 1159-60. Moreover, LDEQ's "ultimate findings" must "flow rationally from the basic findings; and it must articulate a rational connection between the facts found and the order issued." *Id.* The court noted that "[t]his is particularly so . . . where the agency performs as a public trustee and is duty bound to demonstrate that it has properly exercised the discretion vested in it by the constitution and the statute." *Id.*

LDEQ cannot yet have conducted a lawful IT analysis relating to the general water discharge permit for construction/demolition debris and woodwaste landfills because the receiving waters discharges have not been specified. For example, without knowing and analyzing the specific location of discharges, LDEQ cannot draw reliable conclusions about the potential or real environmental effects of the proposed discharges, including, but not limited to, impacts on specially protected water bodies and designated uses of water bodies, effects of mixing zones, effects on endangered species, biocumulative impacts, cumulative impacts on water bodies and effectiveness of effluent limitations. (Quarles Aff. ¶¶ 7-15.) Lastly, LDEQ has not included any analysis of alternatives for the various discharge locations, discharge treatments, or its approach of not specifying or further limiting the sites of discharges. Therefore, LDEQ will not meet its public trustee duties if it approves the Draft Permit.

II. LDEQ Must Conduct Adequate Antidegradation Review to Avoid Violating Statutory and Regulatory Authorities.

The Draft Permit must include appropriate review standards to meet antidegradation requirements. The Draft Permit's public notice states that "the discharges will have no adverse impact on the existing uses of the receiving water bodies" yet LDEQ provides no support for this conclusion in the main body of the Draft Permit. (Draft Permit, Fact Sheet, p. 8; see Quarles

⁴ "First, have the potential and real adverse environmental effects of the proposed facility been avoided to the maximum extent possible? Second, does a cost benefit analysis of the environmental impact costs balanced against the social and economic benefits of the proposed facility demonstrate that the latter outweighs the former? Third, are there alternative projects which would offer more protection to the environment than the proposed facility without unduly curtailing non-environmental benefits? Fourth, are there alternative sites which would offer more protection to the environment than the proposed facility site without unduly curtailing non-environmental benefits? Fifth, are there mitigating measures which would offer more protection to the environment than the facility as proposed without unduly curtailing non-environmental benefits?" *Rubicon*, 670 So. 2d at 481 (citing *Blackett v. LDEQ*, 506 So.2d 749, 754 (La. Ct. App. 1987).

Aff. ¶ 15.) Generally, state antidegradation rules “reflect the goals for *individual* water bodies.” La. Admin. Code, tit. 33, pt. IX, § 1119(B)(2)(a) (emphasis added). Therefore, LDEQ cannot assess whether a discharge “cause[s] or contributes to a violation of state water quality standard” without a sufficient inquiry specific to the individual receiving water. (See Quarles Aff. ¶ 8.)

While the Draft Permit contemplates reviewing proposed discharges under a Notice of Intent (“NOI”) system, this approach falls short of meeting antidegradation requirements because the Draft Permit does not incorporate the appropriate review standards. For example, waters which are cleaner than minimum water quality standards must “be maintained at their existing high quality.” La. Admin. Code tit. 33, pt. IX, § 1115(A)(3); 40 C.F.R. 131.12. These “existing high quality” water bodies require more protection than an unsupported assurance that the “covered discharges [will] not cause or have the reasonable potential to cause or contribute to a violation of a state water quality standards.” (Draft Permit, Fact Sheet, p. 8). In order to legitimately lower the quality of such waters, LDEQ must show that the degradation is *necessary* to accommodate *important* economical and social development in the area in which the waters are located. 40 C.F.R. 131.12(a)(2); La. Admin. Code tit. 33, pt. IX, § 1109(A) (emphases added).⁵ LDEQ has not performed such a review nor contemplates one in the Draft Permit. Therefore, to meet antidegradation requirements, the Draft Permit must exclude or, at least, provide specific standards for water bodies that federal and state laws single out for special protection.

For the same reasons, the Draft Permit should not apply to 303(d)-listed waters. (See Quarles Aff. ¶ 7.) LDEQ's individual review process under the NOI is insufficient review of the antidegradation standards for the individual waters if LDEQ fails to include the proper antidegradation standards within the Draft Permit itself. At the least, the Draft Permit must specify that discharges must meet all Total Maximum Daily Load (“TMDL”) requirements for such waters or, if TMDL calculations are still pending exclude such receiving water bodies altogether. Because the Draft Permit does not identify specific receiving waters, LDEQ cannot conclude that it is not approving violations of state and federal law.

Lastly, LDEQ should also exclude all zero and low flow water bodies as they can not receive the same volume of pollutants as water bodies with high flow volume without degrading the water quality. (Quarles Aff. ¶ 36-37.) Using the same effluent levels for low and zero flow water bodies as higher flow waters is illogical as there will be a higher dilution rate and lower degradation effect when there is a larger volume of water being discharged into. (*Id.*) Therefore, LDEQ should exclude low and zero flow waters under the Draft Permit as they require individual review and lower effluent levels.

⁵ The federal regulation uses the language “necessary” while Louisiana's state policy uses “justifiable” as the standard for determining whether the economic and social development outweighs the degradation.

III. The Draft Permit's Effluent Limitations Are Insufficient Because They Rely On Inappropriate Standards and Inadequate Monitoring.

A. The Draft Permit's General Provisions for Monitoring and Limiting Effluents Are Unclear and Insufficient.

LDEQ must require more frequent and accurate sampling in order to allow for meaningful reporting and enforcement. (Quarles Aff. ¶ 17.) Sampling frequencies for each of the proposed effluents is insufficient. (Quarles Aff. ¶ 18, 26, 31, and 34.) Moreover, the Draft Permit contradicts its own frequency requirements when it states that the "Monthly Average [is] also known as the Daily Average." (Draft Permit, pt. II, p. 2, §A.13.) Monitoring requirements are also insufficient in form. (Quarles Aff. ¶ 37.) For example, the Draft Permit states that "provisions must be made to allow for obtaining representative samples of the discharges." (Draft Permit, pt. I, p. 10, §C.4.) However, LDEQ includes no guidance for what representative samples would encompass. Instead, the Draft Permit calls only for an "estimate" sample type that is insufficient to comply with the standards of environmental law. (Quarles Aff. ¶ 17-37)

LDEQ should also include effluent limitations for specific toxic substances. (Quarles Aff. ¶ 21.) While the Draft Permit prohibits discharges of "toxic materials in quantities such as to cause acute toxicity to aquatic organisms." (Draft Permit, pt. I, p. 6-9), it includes no reporting or effluent limitations to cover these pollutants on a regular basis.

Finally, LDEQ should clarify the dilution and flow augmentation standards within the Draft Permit. (Quarles Aff. ¶ 34-35.) Although Part I of the Draft Permit specifically prohibits dilution or flow augmentation to achieve effluent concentration limitations, other provisions of the Draft Permit circumvent this restriction. (Draft Permit, pt. I, p. 6-7, 9; Draft Permit, pt. II, p. 7, § K.) For example, the Draft Permit allows combined outfalls for wastewater types subject to differing effluent limitations and monitoring requirements if the discharges are from a single outfall point. (*Id.*) This allows dilution of contact wastewater discharges with non-contact wastewater discharges if they are both stored in the same run-off area or wastewater pond before being discharged into receiving water bodies. (*See* Quarles Aff. ¶ 34-35.) The combined outfalls is a dilution method that is in direct opposition to LDEQ's stated prohibition of the use of dilution in Pt. III, § A (13) of the Draft Permit. (*See id.*) Accordingly, LDEQ should remove contradictions within the Draft Permit to ensure achievement of its non-dilution provisions. (*See id.*)

B. The Effluent Limitations and Monitoring Requirements for Schedule A, B, C, and D are Insufficient

The effluent limitations for each Schedule are insufficient for wastewaters included in the Draft Permit to ensure de minimis impacts on water quality standards. (*Id.* ¶ 21-25, 27, 30, 32-33.) For example, LDEQ must include effluent limits for additional pollutants which are likely to be present in the wastewater sources listed in the Draft Permit. (Quarles Aff. ¶ 20-21, 23.)

Also, LDEQ must provide sufficient effluent limits for all of the pollutants currently covered in the Draft Permit. (*Id.* at 22, 32-33.)

Additionally, LDEQ should exclude Sanitary Wastewater discharges from the Draft Permit. (*Id.* ¶ 28.) Individual permits are necessary for these discharges. To the extent that the Draft Permit allows any sanitary waste discharges, LDEQ must reduce the effluent limits to create a de minimis output, use accurate flow calculations, and include effluent limits for chlorine as well as other potential pollutants. (Quarles Aff. ¶¶ 21, 29-31.) To the extent that the effluent limitations and monitoring, as well as the types of pollutants considered under Schedule A, B, C and D, are insufficient, LDEQ must establish enforceable parameters and address additional pollutants in the Draft Permit.

C. LDEQ Allows Inadequate Levee Wall Protection for All Regions of the State

LDEQ should provide provisions for levee wall standards that are appropriate for all regions of the state. The Draft Permit contains a general requirement that levee walls be able to withstand a 100-year flood event. (Draft Permit, pt. II, p. 6, § G). This ability to withstand a 100-year flood event should be premised on the highest engineering standards which are specific to the geography of a landfill in order to prevent inundation of the landfill by flood waters. (See Quarles Aff. ¶ 16.)

IV. LDEQ Does Not Provide Customary Or Sufficient Public Participation

A. LDEQ Should Require Review of Current Permittees As Part of Reissuance of the General Permit

The Draft Permit allows current permittees to enjoy “extended coverage under the reissued LPDES permit” and does not require them to submit a notice of intent to discharge under the Draft Permit. (Draft Permit, pt. I, p. 2.) LDEQ should conduct some level of review over these facilities in light of changed circumstances or additional requirements of the reissued permit.

B. LDEQ Does Not Provide Sufficient Public Notice Provisions

Admirably, LDEQ has included provisions for public notice in the Draft Permit. However additional notice requirements are necessary to insure sufficiency of the public notice for the Draft Permit. First, the Draft Permit should require the same level of notice for existing facilities as it does for proposed and new facilities. Second, the notice requirement is limited only to public notice in a local newspaper. (Draft Permit, pt. I, p. 2.) Notice under a state-wide general permit should also be included in the New Orleans Times Picayune and the Baton Rouge Advocate. In addition, the Draft Permit must require the Notice of Intent be submitted to LDEQ for publication on the public notice webpage as well as the LDEQ's notification listserv.

The public notice provisions are also inadequate because the Draft Permit has no public notice component for increased or changed discharges from a facility operating under the general

permit. (Draft Permit, pt. II, p. 6, § H.) While such facilities must submit a Notice of Intent, LDEQ excludes the public from participating in what amounts to a new permit decision. Thus LDEQ deprives the public of its right to have notice of actions and the opportunity to comment on the proposed action and on LDEQ's analysis of the proposal.

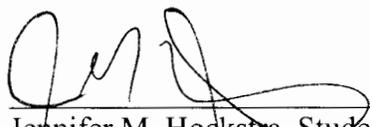
C. LDEQ Does Not Make Storm Water Pollution Prevention Plans Readily Available to the Public

Storm Water Pollution Prevention Plans ("SWPPP") should be readily available to the public. The Draft Permit requires only that a permittee keep a copy "on-site or locally available to the LDEQ for the review at the time of an in-site inspection." (Draft Permit, pt. II, p. 9.) LDEQ should maintain copies of each individual SWPPP so as to facilitate public access.

V. Conclusion

For the foregoing reasons, LDEQ cannot lawfully approve the Draft Permit without (1) sufficiently addressing antidegradation concerns and the individual receiving bodies; (2) including additional restrictions for protected water bodies; (3) tightening the effluent limitation and monitoring requirements; and (4) providing a comprehensive review with government consideration and public participation. Again, thank you for this opportunity to participate in the state's water quality protection process.

Respectfully submitted this 15th day of February, 2007,



Jennifer M. Hoekstra, Student Attorney,
As Counsel for Mr. O'Neil Couvillion



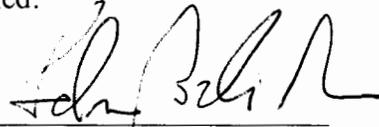
Adam Babich (La. Bar No. 27177)
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, LA 70118
Phone: (504) 862-8800
Fax: (504) 862-8721

*As Counsel for the GreenZone Task Force,
Louisiana Environmental Action Network, and Mr.
O'Neil Couvillion and also as Supervising Attorney
with respect to Jennifer M. Hoekstra's
Representation of Mr. O'Neil Couvillion*

**SUPERVISING ATTORNEY'S INTRODUCTION OF STUDENT
ATTORNEY AND NOTICE OF APPROVAL OF STUDENT APPEARANCE**

Undersigned counsel respectfully introduces student attorney Jennifer M. Hoekstra. As the student attorney's supervising attorney, I approve of the student attorney's appearance in this matter on behalf of Mr. O'Neil Couvillion only. With this document, we also submit Mr. Couvillion's written consent to an appearance by student attorneys in this matter.

Signed:



Adam Babich (La. Bar No. 27177)

AFFIDAVIT OF MARK A. QUARLES, P.G.

BEFORE ME, the undersigned authority, personally came and appeared, Mark Quarles, P.G., who, after being duly sworn, did depose and say:

Qualifications

1. My name is Mark A. Quarles. I am an expert in the field of landfill design standards, hydrogeologic investigations, water supply, stormwater and wastewater permitting under the federal Clean Water Act's National Pollutant Discharge Elimination System and related state programs.
2. I am an environmental consultant and am working on behalf of the commenting parties in this matter.
3. An accurate copy of my curriculum vitae is attached to this Statement.
4. I have reviewed and assessed the draft general Louisiana Pollution Discharge Elimination System (LPDES) permit and accompanying Fact Sheet proposed for water discharges associated with the operation of Construction and Demolition Debris and Woodwaste landfills, AI Number 86162, General Permit Number LAG780000, Activity Number PER20060001 (the "Draft Permit").
5. This Statement contains my expert opinions, which I hold to a reasonable degree of scientific certainty. My opinions are based on my application of professional judgment and expertise to sufficient facts or data, consisting specifically of a review of the regulations and documents related to the LPDES Draft Permit at issue in this matter. These are facts and data typically and reasonably relied upon by experts in my field.
6. In my expert opinion, the Draft Permit is not sufficient to protect, as required by the Clean Water Act, the waters into which the Construction and Demolition Debris and Woodwaste Landfills will be allowed to discharge, for the reasons described below.

Summary of Opinions

***LDEQ Reaches Unsupported Conclusions And
Has Not Performed Sufficient Analyses
To Determine The Environmental Impacts From The Proposed Discharges***

7. LDEQ can not conclude that the proposed discharges will not further degrade waters that the state has identified pursuant to section 303(d) of the Clean Water Act (33 U.S.C. § 1313) (the "303(d) list") without analyzing each impaired water body that will receive

discharges and the effects that the proposed discharges will have on each such water body.

8. LDEQ can not conclude that the proposed discharges will not degrade any other water body -- alone or in combination with other dischargers - without analyzing each water body that will receive discharges. For example, if a water body is unable to accept more cobalt because of its individual stream characteristics and doing so would result in increased loads that would violate water quality standards, the permit should reflect such individual stream characteristics.
9. LDEQ cannot draw conclusions about the effects of any mixing zone created by discharges under the permit without analyzing each water body that will receive discharges. This is because appropriate mixing zones must be determined for each discharge site on a case-by-case basis, and if allowed, set so as to prevent toxicities and impairment of fish and aquatic life. Mixing zones cannot be determined without specifically identifying discharge locations.
10. LDEQ can not conclude that the proposed discharges will have no cumulative impact on the environment without analyzing each water body that will receive discharges, the frequency of such discharges, and other discharges in the area.
11. LDEQ does not consider the biocumulative impacts of some of the pollutants, including but not limited to lead. Biocumulative impacts are the result of pollutants that do not degrade rapidly, and thus build up in sediments, plants, and animals, and can concentrate up the food chain. Evaluating concentration in the effluent alone is not sufficient for determining impacts from such pollutants, as one would have to also consider the total pollutant mass to the receiving stream, the receiving stream hydraulics, the configuration of each discharge location, and the biological integrity of the receiving stream.
12. LDEQ has not adequately assessed the impacts of the proposed discharges on endangered and threatened species. Only through a complete understanding of the specific nature of the discharge, the suitability of the receiving stream as critical threatened and endangered species habitat, and the location of known occurrences of protected habitat, can such a determination be made.
13. The Draft General Permit should include limitations on discharges based upon individual stream characteristics – especially for Tier II streams, low flow streams, and those on the 303(d) list. Allowing a discharge at a level equal to criteria – particularly for small or zero flow streams - could bring the level in the stream right up to the edge of impairment, using up all available assimilative capacity. This also does not account for the margin of safety required under 40 C.F.R. § 130 for water quality limited segments.
14. LDEQ does not consider the impacts of pollutants that have been and will be disposed of in Construction and Demolition Debris and Woodwaste landfills under the series of Emergency Orders issued after hurricanes Katrina and Rita, AI Nos. 130534 and 131019, respectively (the “Hurricane Orders”), including but not limited to oil and grease and

semi-volatile organic compounds (from asphalt and roofing shingles), arsenic and copper (from treated wood), lead (from painted wood), formaldehyde-based and other resins (from laminated wood products), formaldehyde and vinyl chloride (from carpet), and phthalate-based softening agents or plasticizers (from carpet backings and plastics).

15. There is no basis in the record for LDEQ's assertion that "the discharges will have no adverse impact on the existing uses of the receiving waterbodies."
16. There is no basis in the record to suggest that engineering levee walls to withstand a 100-year flood event is sufficient flood protection throughout the state. Recent history suggests that hurricanes can exceed the 100-year rainfall amount on a regular basis and such occurrences topple levees designed only to 100-year storms. This rainfall can erode the landfill cap, exposing the wastes. As a result, the 100-year standard in Section F of the Draft Permit would not be protective of water quality.

***The Draft Permit's Restrictive Criteria Are Not Sufficient
To Protect The Receiving Water Bodies***

17. The Draft Permit proposes to monitor flow of discharges and pollutants based on an "estimate" sample type that is not subject to accuracy provisions. The Draft Permit's guidelines are inconsistent and unclear, as an "estimate" could range from a guess to a rudimentary flow-measuring device. Any such estimate is insufficient to monitor, analyze, and comply with the standards of environmental laws and regulations. For example, to comply with total maximum daily load requirements for waters included on the state's 303(d) list, an accurate measurement of both discharge flow rates and pollutants are necessary.
18. A measuring frequency of one time per month for landfill wastewaters (Schedule A) is insufficient to ensure that state water quality standard will not be violated. The quality of the runoff will be a function of the highly variable nature of the waste received, the amount and type of wastes under intermediate and daily cover, and the extent and the variability of the discharge flow rates related to rainfall. Moreover, under the Draft Permit's provisions, the daily maximum limitation can substitute for the monthly maximum limitation if the permittee samples only once during that month, resulting in inflated parameters that are above the U.S. EPA's Effluent Limitation Guidelines.
19. The Draft Permit changes the definition of a "Monthly Average" from that in the previous permit to include a provision that considers the arithmetic mean of daily discharges to become the Monthly Average when the flow is not measured as a continuous record. The Monthly Average definition should be consistent with the previous permit that required a flow-weighted average to be determined.
20. Considering inspection methods, the permissibility of 5% paper or other solid waste, and the effects of the Hurricane Orders, among other things, LDEQ has not included effluent limitations for additional pollutants which will most likely appear in landfill wastewaters (Schedule A) and non-contact stormwaters (Schedule D), including, but not limited to,

oil and grease and semi-volatile organic compounds (from asphalt and roofing shingles), copper and arsenic (from treated wood), lead (from painted wood), formaldehyde-based and other resins (from laminated wood products), formaldehyde and vinyl chloride (from carpet), and phthalate-based softening agents or plasticizers (from carpet backings and plastics).

21. LDEQ's narrative limitations on toxic materials at Schedule A, B, C, and D are insufficient. The Draft Permit should include specific effluent limitations for any toxic materials likely to appear in discharges under the permit.
22. Effluent limits for Chemical Oxygen Demand (COD) in Schedule B are insufficient to protect medium-sized, small, or low flow water bodies. The proposed limits of 200 mg/L (average) and 300 mg/L (maximum) are quite high levels of oxygen demanding waste. In a relatively small receiving water body, especially with limited re-aeration, this could easily deplete the water of oxygen, violating state criteria and harming or killing aquatic life. The permit and supporting documentation do not indicate that Dissolved Oxygen (DO) modeling or other evaluation of the impact of this high level of COD has been considered.
23. LDEQ has not included effluent limitations for additional pollutants which will most likely appear in maintenance and repair shop floor wash water (Schedule B) including phosphorus, Methylene Blue Active Substances (MBAS), Volatile Organic Compounds (VOC), Semi-Volatile Organic Compounds (SVOC), and other related industrial solvents that might be expected in the waste. This is significant because some of these pollutants can be harmful to human health or fish and aquatic life in small quantities.
24. The Draft Permit is unclear concerning which test it requires to meet oil and grease effluent limitations. Total Petroleum Hydrocarbon - Diesel Range Organic and Total Petroleum Hydrocarbon / Gasoline Range Organic tests would be the most representative indicators of harm or impact to the receiving water bodies, rather than oil and grease method 413.1.
25. An inventory calculation is an insufficient and inaccurate method for monitoring soaps and detergents. Analytical testing to measure MBAS and phosphates are necessary to more accurately determine the presence of soaps and detergents.
26. A measuring frequency of one time every three months for maintenance and repair shop floor wash water (Schedule B) is insufficient to ensure that state water quality standard will not be violated. Maintenance activities vary on a daily and weekly basis, and the associated pollutants in discharges vary as such. Further, the sampling should be collected before co-mingling with other discharges because of the inherently different characteristics and to avoid dilution. Moreover, under the Draft Permit's provisions, the daily maximum limitation can substitute for the monthly maximum limitation if the permittee samples only once during that month, resulting in inflated parameters that circumvent LDEQ's stated best professional judgment. Similarly, the quarterly

measurement frequency may also allow the daily maximum average to substitute for a quarterly average if the permittee samples only one time in three months.

27. Under Schedule B, a facility is allowed to discharge daily maximum concentrations for Total Suspended Solids (TSS) and Oil and Grease as if they are monthly maximum concentrations because LDEQ has failed to impose monthly average maximums. Daily maximum limitations are based on the assumption that daily pollutant measurements represent the highest concentration above the long-term average. EPA recommends treatment capabilities designed for long-term averages because they reflect the range of concentrations that could be expected in a well operated system.
28. Sanitary waste (Schedule C) should not be discharged under a general permit. Given the public health implications of discharging sewage into public water bodies, such wastes should only be allowed on an individual permit basis.
29. To the extent that sanitary waste discharges are allowed under this general permit, the effluent limitations and monitoring criteria are insufficient, do not protect the environment, and do not meet EPA's minimum secondary treatment standards. LDEQ should impose monthly average maximums for Total Suspended Solids (TSS), Biological Oxygen Demand (BOD), and fecal coliform. Also, limitations for TSS and BOD 30-day averages should be 30 mg/L because the 30-day average more accurately reflects the abilities of a properly operated secondary wastewater treatment plant. Only imposing a weekly average for a single sample allows the permittee to operate the treatment plant at less than the typically expected removal efficiency of the system. Incidentally, the limitations on fecal coliform are insufficient to meet LDEQ's own current standards for sanitary waste discharges into water bodies where the designated use includes oyster propagation (14 colonies / 100 mL monthly average and 43 colonies per 100 mL weekly average). See LAG 530000.
30. LDEQ has not included a specific effluent limitation for chlorine under Schedule C, although the Draft Permit recognizes that chlorine may be used for disinfection. A no measurable total residual chlorine limit should be required for all permits because of its low-level toxicity.
31. A measuring frequency of one time every six months for sanitary wastewater (Schedule C) is insufficient to ensure that state water quality standard will not be violated. Monitoring the effluent only once every six (6) months with a grab sample and an estimate of flow can not determine the loadings onto the receiving stream. This concern is especially important for streams that are already impaired and/or have waste allocations assigned for stream restoration and for those that have low to medium-flow rates.
32. "Effluent limitations" established for Total Suspended Solids (TSS) and Total Recoverable Iron in non-contact stormwater (Schedule D) permit should be enforceable limitations, not benchmark parameters. Benchmark parameters do not actually limit the

amount of pollutants discharged under the Draft Permit. Both represent sources of water quality pollution to the receiving stream.

33. IDEQ should maintain the same effluent limitations for Total Suspended Solids (TSS) under Schedule D as it does for Schedule A. It is an error to conclude that non-contact discharges should be afforded a much higher total suspended solids (TSS) value. Suspended solids of any type can impair a receiving stream. Moreover, there is a significant likelihood that non-contact wastewaters will be co-mingled with contact landfill waste water because both typically flow towards the same detention pond / outfall. Section K of the Draft Permit states that when wastewaters of different types are co-mingled and discharge at a common outfall, the more stringent effluent limitation shall apply. Because non-contact discharges will likely co-mingle with landfill wastewater (Schedule A) and even with maintenance and repair shop floor washwater (Schedule B), the lower limitation should always apply.
34. The measurement frequencies for discharges of non-contact stormwater (Schedule D) are insufficient and confusing - ranging from monthly for flow, annually for TOC and Oil & Grease, and quarterly during the second year only for Total Suspended Solids and Total Recoverable Iron. Given the likelihood that non-contact water will co-mingle with landfill wastewaters, the sampling frequency should be modified consistent with the more frequent sampling procedure discussed in Comment 18.
35. Dilution of landfill wastewaters with non-contact landfill wastewater is likely because their discharges are expected to co-mingle. Dilution is not an acceptable or legal form of treatment to reduce contaminant concentrations.
36. Effluent limits for other pollutant are insufficient to protect small or low-flow water bodies. Depending on the size of receiving waters - and presumably some could have zero flow - other parameter limits would likely be excessive and violate state standards. This would depend on background conditions, existing pollution, other discharges in the area, and related considerations such as available loading capacity, anti-degradation, and margin of safety. This includes, but is not limited to, Biological Oxygen Demand (BOD), Total Suspended Solids (TSS), metals and organic chemicals.
37. IDEQ limits its effluent limitations to concentration, failing to include measurements based on mass. Concentration limitations are easily manipulated and can not, by themselves, indicate the measure or total loading of pollutants discharged into receiving water bodies. Changing the amount of water discharged will change the pollutant concentration level. Mass measurements, however, describe the actual amount of a pollutant discharged regardless of the water that it is discharged. Such a determination is required to demonstrate waste load allocations for streams with total mass daily loading limitations and to measure the true impact to a receiving stream.

Mark A. Quables
MARK A. QUABLES

SWORN TO AND ASCRIBED
BEFORE ME, THIS 14th DAY
OF February, 2007.

Kyle C. Dennis
NOTARY PUBLIC

My Commission Expires 7/24/2010

