

NOTICE OF INTENT

Department of Natural Resources Office of Conservation

Advanced Notice of Rulemaking and Solicitation of Comments on the Expedited Permit Processing Program (LAC 43:Part XIX.Subpart 20)

The Department of Natural Resources, Office of Conservation proposes to amend LAC 43: XIX.Subpart 20 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The proposed amendment is made to implement an Expedited Permit Processing Program as authorized by Act 362 of the 2015 legislative session.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation – General Operations

Subpart 20 Expedited Permit Processing Program Chapter 47. Expedited Permit Processing Program

§4701. Scope

A. This Chapter establishes a program to expedite the processing of permits, modifications, orders, licenses, registrations, or variances for Office of Conservation applicants who request such services. Expedited processing of an application for a permit, modification, order, license, registration, or variance is an exercise of the discretion of the commissioner and is subject to the availability of resources needed in order to process the permit, modification, order, license, registration, or variance. Applications approved for expedited processing must meet all regulatory requirements, including required public comment periods and any required review by other agencies.

B. Eligibility

1. An application for a permit, modification, order, license, registration, or variance necessary for new construction or continued operations as required by La R.S. 30:4. et seq. or regulation for any matter under the jurisdiction of the Commissioner of Conservation is eligible for expedited processing.

2. Applications for permits, modifications, orders, licenses, registrations, or variances will be considered for expedited processing pursuant to the provisions of this Chapter on a case-by-case basis.

3. A request for expedited processing submitted prior to submittal of the associated application for a permit, modification, order, license, registration, or variance will not be considered.

4. Expedited processing will not be considered for partial review of an application for a permit, modification, order, license, registration, or variance except in accordance with LAC 43.XIX.4703.D.

5. Requests for waivers, exceptions, regulatory interpretations, letters of no further action, review of data and/or work plans, and other miscellaneous letters of response are not eligible for expedited processing.

C. All applications for permits, modifications, orders, licenses, registrations, or variances reviewed under the expedited process are required to meet all applicable

standards and technical requirements of permits, orders, modifications, licenses, registrations, or variances reviewed under the standard application review process.

D. Approval of a request for expedited processing in no way guarantees issuance of a decision on the application/permit by the date requested.

E. The commissioner may deny a request for expedited processing for any reason, including but not limited to the following:

1. the applicant's failure to pay outstanding fees or penalties;
2. compliance history concerns regarding the applicant;
3. an infeasible date requested for application action;
4. an insufficient maximum amount the applicant is willing to pay;
5. insufficient workforce resources available to assign to the task; or,
6. a request not in line with office priorities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(P).

HISTORICAL NOTE: Promulgated by _____.

§4703. Procedures

A. Requests for expedited processing shall be submitted using the approved form. The approved form is available on the official website of the Office of Conservation.

B. As soon as practicable after receipt of a request for expedited processing of any permit, modification, order, license, registration, or variance, the commissioner shall issue a decision to grant or deny the expedited processing request.

C. For applications reviewed under expedited processing prior to commencement of the standard review process, the expedited review by Office of Conservation employees will be performed outside of the normal business hours of the applicable Office of Conservation employee(s) performing the expedited review.

D. An applicant may request expedited processing of an application for a permit, modification, order, license, registration, or variance at any time in the application process.

1. For applications for which the expedited process has been requested after the standard review has commenced, the commissioner will make a decision whether to grant the request in accordance with §4701.

2. If the applicant is granted expedited processing for a permit, modification, order, license, registration, or variance after the standard review has commenced, the standard review will continue and expedited processing will proceed in accordance with §4705 and all other requirements of this Chapter for any work performed outside of normal business hours of the applicable Office of Conservation employee performing the expedited review.

E. Requests for Additional Information

1. If at any time during the review process of an application the commissioner determines that additional information or revisions to previously submitted information is necessary, the commissioner shall notify the applicant and require a response from the applicant within a specified time.

2. The applicant shall respond to the request for additional information or revisions within the time specified by the commissioner. Such a response shall contain all information and revisions required by the commissioner.

3. The Office of Conservation may cease expedited processing of an application for a permit, modification, order, license, registration, or variance in accordance with the provisions of this Chapter if the applicant fails to supply the requested additional information or revisions by the specified time or any extension thereof granted by the commissioner at the request of the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(P).

HISTORICAL NOTE: Promulgated by _____.

§4705. Fees

A. In addition to the fees charged pursuant to LAC 43.XIX.703 or successor regulations, a fee shall be charged for each application for a permit, modification, order, license, registration, or variance that is processed on an expedited basis in accordance with this Chapter.

1. A total estimated cost for the expedited processing shall be computed by the commissioner based upon the estimated number of expedited processing hours required to complete the administrative review and/or permitting process multiplied times the hourly overtime salary of the applicable Office of Conservation employees or the hourly rate of applicable contractors, including associated related benefits, plus an administrative fee of twenty percent of the total costs. The overtime salary of the Office of Conservation employees shall be the normal hourly wage times one and one-half.

a. Prior to commencement of the expedited application process, the applicant shall deposit with the Office of Conservation no less than fifty percent (50%) of the estimated cost provided to the applicant computed in Paragraph A.1 of this Section. All costs associated with the expedited review, including overtime wages, hourly contractor wages, associated related benefits paid, and the administrative fee, will be deducted from the credited amount as incurred.

b. The required amount to be deposited with the Office of Conservation in order to initiate the expedited application process will be determined on a case-by-case basis considering the type of application, estimated length of review, available resources, compliance history of the applicant, and any other factors considered pertinent by the commissioner.

c. When the applicant's credited deposit reaches less than ten percent (10%) of the total cost estimated in accordance with Paragraph A.1 of this Section, or when otherwise required by the commissioner, the applicant will be notified, invoiced, and shall deposit with the Office of Conservation the remaining estimated required sum to complete the expedited application process.

d. If the applicant's credited deposits are exhausted before the expedited application process is completed, additional funds will be required to continue the review on an expedited basis.

e. If it is determined after an application decision is rendered that the applicant owes funds in addition to that previously deposited in accordance with this Section, an invoice will be issued, and the applicant will pay the

balance due to the Office of Conservation within 20 days.
f. Any funds remaining to the credit of the applicant upon completion of the expedited application process will be refunded within 30 days.

2. In the event that the Office of Conservation ceases processing an application for a permit, modification, order, license, registration, or variance at the request of the applicant or in accordance with LAC 47.XIX.4703.C.3 of this Section, any unused funds on deposit credited to the applicant for expedited processing of the subject application for a permit, modification, order, license, registration, or variance shall be refunded to the applicant within 30 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(P).

HISTORICAL NOTE: Promulgated by _____.

§4707. Invoicing and Failure to Pay

A. An invoice for no less than fifty (50%) percent of the estimated expedited processing fee shall be transmitted to the applicant after the Office of Conservation has made a decision to grant expedited application processing.

1. An invoice for continued expedited application processing shall be transmitted to the applicant when it is determined by the commissioner that additional funds are needed to complete the review and application process.

2. If it is determined that the applicant owes additional funds after a decision on the application has been rendered, an invoice shall be transmitted to the applicant for the outstanding balance owed.

3. Each invoice shall be accompanied by the Office of Conservation's detailed calculation of the amount owed and, if the invoice is for additional funds, by the Office of Conservation's detailed calculation of the expedited processing funds previously spent.

B. If the Office of Conservation has ceased processing the application in accordance with LAC 43:XIX.4703.C.3 or 4705.A.2, and it is found that the applicant owes additional funds in accordance with this Chapter, an invoice for the appropriate expedited processing fee shall be transmitted to the applicant.

C. Failure to pay the expedited processing fee by the due date specified on the invoice constitutes a violation of these regulations and shall subject the applicant to relevant enforcement action under La. R.S. 30:18. including, but not limited to civil penalty, denial, revocation, or suspension of the permit, modification, order, license, registration, or variance.

D. A permit appeal, whether by the applicant or a third party, shall not stay the requirement to timely pay any fees owed to the Office of Conservation for the expedited application processing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(P).

HISTORICAL NOTE: Promulgated by _____.

§4709. Public Notice and Availability of Records

A. Requirement to Provide Public Notice. The Office of Conservation shall provide notice of each request for

expedited processing of an application for a permit, modification, order, license, registration, or variance that is processed pursuant to the provisions of this Chapter.

1. Separate notice of expedited processing shall be provided in the same form and manner of public notice as required by other statute or rule for each application type, or if no public notice is required, on the official website of the Office of Conservation.

2. For draft or proposed application actions subject to public notice requirements under other regulations or program requirements, such public notice shall indicate that the draft or proposed permit, modification, order, license, registration, or variance was processed under the expedited processing provisions of this Chapter.

3. The expedited review process shall not shorten any existing time delays for public notice, comment period, hearing, or in any way shorten or impinge upon the public participation process required by statute, regulation, or rule for any application for a permit, modification, order, license, registration, or variance.

B. Content of the Notice

1. For draft or proposed application actions subject to public notice requirements under other regulations or program requirements, in addition to such requirements, the public notice shall contain a statement that the draft or proposed permit, modification, order, license, registration, or variance was processed under the expedited processing provisions of this Chapter.

2. Any notice placed on the official website of the Office of Conservation shall contain the name of the applicant/permittee, the application number, or when applicable, the well serial number, the parish in which the facility is physically located, the application/permit type, the date the request for expedited processing was received, and the date of the decision to approve or deny the request for expedited processing.

C. Availability of Records. All recorded information concerning a request for expedited processing (completed permit application form, attachments, draft and proposed permits, or any other public document) not classified as confidential by statute or designated confidential in accordance with applicable regulations shall be made available to the public for inspection and copying in accordance with the Public Records Act, La. R.S. 44:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(P).

HISTORICAL NOTE: Promulgated by _____.

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Small Business Statement

This Rule has no known impact on small businesses as described in R.S. 49:965.6.

Public Comments

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 by hand delivery or USPS only, until 4:30 p.m., October 5, 2015, at Office of Conservation, Executive Division, P.O. Box 94275, Baton Rouge, LA, 70804-9275; or Office of Conservation, Executive Division, 617 North Third Street, Room 931, Baton Rouge, LA 70802. Reference Docket No. CON RULE AMD 2015-09 on all correspondence. All inquiries should be directed to John Adams at the above addresses or by phone to (225) 342-7889. No preamble was prepared.

Public Hearing

The commissioner of conservation will conduct a public hearing at on Monday, September 28, 2015 at 9 a.m., in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

Fiscal and Economic Impact Statement

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will likely be an increase in salary expenditures and administrative costs as a result of the proposed rule change. The expedited permit process may increase costs up to \$488,000 according to projections by the Department of Natural Resources. The increased expenditures required by the rule change will be paid by the companies applying for the permits. There are 6 companies that have expressed interest in the expedited permit program. These companies focus on salt cavern injection wells which require an average of approximately 1,000 work hours to be approved. Should a company elect to apply for an expedited permit pursuant to the proposed rule, the company will be required to pay for the overtime hours DNR employees work to process the permit, and administrative costs not exceeding 20% of overtime salary expenditures. Currently, DNR approves approximately 3 to 4 of these permits per year and the overtime hours would allow for 4 additional salt cavern permits to be approved per year, effectively doubling current output.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will likely be an increase in revenue collection as a result of the proposed rule change. Should a company elect to apply for an expedited permit pursuant to the proposed rule, the company will be required to pay for the overtime hours DNR employees work to process the permit, and administrative costs not exceeding 20% of overtime salary expenditures. With each permit requiring approximately 1,000 hours to complete, the proposed rule change will likely result in an additional \$488,000 in revenue generated for DNR annually. The revenue from the proposed rule change will be placed into the Oil and Gas Regulatory Fund..

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

The group directly affected by these rules changes will be Exploration and Production (E&P) companies. For those who desire to voluntarily apply for the expedited permit process, applicants would only pay the actual overtime or

contracted costs incurred by DNR to process applications for an expedited permit plus administrative costs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

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