

## CHANGES TO LOUISIANA GROUNDWATER CERTIFICATION REQUIREMENTS

The Louisiana Department of Environmental Quality (LDEQ) issued a Construction Activities Advisory memorandum dated October 23, 2007 (see attached). According to the advisory, effective November 1, 2007, the LDEQ will no longer require Groundwater Certifications for construction activities associated with LDEQ air permits, modification, or exemptions.

However, this does not relieve regulated facilities from evaluating whether construction activities will adversely affect the existing soil and/or groundwater quality or impede any proposed or ongoing assessment and/or remedial activities in the area(s) of

construction. In addition to the October 23, 2007 advisory memorandum, the *2007 LDEQ Construction Advisory Document*, which is available on the LDEQ's website (<http://www.deq.louisiana.gov/portal/tabid/70/Default.aspx>), can be a tool for facilities to evaluate potential impacts associated with construction activities that may occur in areas of potential and/or known contamination before construction activities are begun. In addition to the elements included in this guidance document, decisions should also be made based on site history, facility knowledge of process, and best professional judgment.

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*For questions concerning these changes to the LDEQ's Groundwater Certification Program requirements, please contact Melanie Hanks or Randy Grice using the following contact information.*



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## DEPARTMENT OF ENVIRONMENTAL QUALITY

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SECRETARY

### MEMORANDUM

**To:** Regulated Facilities

**From:** Mike D. McDaniel, Ph.D. *Mike D. McDaniel*  
Secretary

**Date:** October 23, 2007; this memo will become policy effective  
on November 1, 2007

**RE:** Construction Activities Advisory

The LDEQ is issuing this advisory regarding the potential impact to the subsurface (soil and groundwater) environment resulting from intrusive ground improvement techniques. These techniques include soil excavation, pile driving, installation of footings, drilled shafts and other techniques used to construct support structures. The goal of this advisory is to ensure that construction activities involving such intrusive techniques will not adversely affect existing groundwater quality nor impede proposed or current assessment/remedial activities. Information contained herein is to be used by regulated facilities anticipating construction activities in areas known to have subsurface environmental impacts and in areas where this potential exists.

Recognizing that little research has been conducted and published in this area, and that few case studies and monitoring data exist, this advisory may be occasionally revised by the Department.

#### **Background of former Groundwater Certification Program**

To accomplish the goal of ensuring that construction activities involving such intrusive techniques will not adversely affect existing groundwater quality nor impede proposed or current assessment/remedial activities, the Department in November of 1989 issued a policy memorandum to address concerns of construction related to permit requests in areas of known or possible contamination. That Memorandum required that regulated facilities obtain Groundwater Certifications for construction activities associated with LDEQ air permits, modifications, or exemptions. Construction activities were defined as construction of foundations/slabs, excavation work, and/or installation of footings, pilings, drilled shafts or other support structures involving subsurface intrusive techniques. Procedures for obtaining Groundwater Certifications were laid out in subsequent guidance issued by the former Groundwater Protection Division within the Office of Water Resources.

The Groundwater Certification program as it was known was thought to be the only program of its kind in the United States administered by a state environmental agency. With the cooperation of the regulated community in implementing this program, many areas of subsurface impact which would have gone undiscovered were addressed.

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Notwithstanding the importance of addressing those areas of impact brought to light by the program, the vast majority of Groundwater Certifications processed/issued do not involve impacted areas and/or do not even require subsurface assessment. These projects in many cases require extensive amounts of time and resources on the part of the applicant and the Department to administer.

Most previously unknown impacted areas which were discovered by the Groundwater Certification Program are located within the larger petrochemical, chemical, and petroleum-processing facilities. These facilities are typically RCRA TSDF's (Treatment, Storage, Disposal facilities), which have been required by the USEPA to conduct an RFI as per the HSWA (Hazardous and Solid Waste Amendments to RCRA). As a result, subsurface impacts at these facilities are expected to be identified and addressed under that authority, thus eliminating the need for conducting assessments under the Groundwater Certification Program.

For sites not regulated under the RCRA, financial and liability requirements compel an awareness of groundwater issues. Most financial institutions require some type of site investigation as a condition of financing approval and many prospective purchasers are conducting investigations to qualify as a "bona fide prospective purchaser." In these situations Groundwater Certifications would be unnecessary.

Additionally, with the development of the department's Risk Evaluation Corrective Action Program (RECAP), the regulated community is aware of the specific regulatory standards necessary for groundwater protection. The regulated community, even if it has an "innocent landowner" defense is obligated to "exercise due care" which includes an investigation and if necessary the appropriate "protective measures" discussed in the advisory to insure any existing contamination does not "migrate" as a result of construction activity. If they conduct construction activity without following the advisory protocol, they may be in violation of La. R.S. 30: 2076 and E.R.C. 301.E.5., and further become subject to liability for remediation pursuant to La. R.S. 30: Chapter 12.

The Department recognizing that subsurface impacts are adequately being addressed either through standard regulatory requirements for notification and remediation, RCRA Corrective Action, and/or other requirements necessary for financing approvals, has concluded that the goal of ensuring protection of the subsurface environment can be attained without the need for formal administration in the form of the Groundwater Certification program.

### **New LDEQ Advisory**

With the issuance of this Advisory, as of November 1, 2007, the Department no longer requires Groundwater Certifications for these types of projects. However, regulated facilities are still responsible for the impacts associated with construction activities that may occur in areas of potential and/or known contamination prior to implementing the construction. Regulated facilities are also responsible for compliance with any and all notification regulations which are or may become applicable to these activities.

The Department believes that the goals established by the former Groundwater Certification Program will still be attained by adherence to the protocols provided herein without the necessity of formal submittals regarding these projects. Therefore, beginning November 1, 2007 the LDEQ will not require nor review submittals from facilities or consultants, or other documentation regarding the former Groundwater Certification Program.

Questions regarding this policy should be directed to the assigned Team Leader for the respective site or in the event that the site is not assigned a Team Leader, the Administrator of the Waste Permits Division within the Office of Environmental Services.

This advisory is posted on the Department's public web site with links to other sites which may be helpful to facilities pursuing projects subject to this advisory.