

ENVIRONMENTAL NOTES

LEGISLATURE SUBSTANTIALLY AMENDS LOUISIANA TOXIC AIR POLLUTANT REQUIREMENTS

During the 2010 Session, the Louisiana Legislature enacted Act 103 to amend La. R.S. 30:2060, the state law regulating toxic air pollutant ("TAP") emissions, in three important respects. The legislation began as House Bill 1169, authored by Rep. Bodie White, and was signed by the Governor on June 1, 2010, as Act 103. The Act will become effective on August 15, 2010; however, some features of the new legislation must be implemented through regulations to be developed by the Louisiana Department of Environmental Quality ("LDEQ") as a consequence of the legislation.

The first area of change was to specify that where a facility complies with federal National Emissions Standards for Hazardous Air Pollutants ("NESHAPs") under either 40 C.F.R. Part 61 or Part 63, then LDEQ cannot require additional state "Maximum Achievable Control Technology" or "MACT" requirements under La. R.S. 30:2060. LDEQ can require "state MACT" only where a facility is not required to comply with the federal NESHAPs standards. The sole exception is for asbestos requirements, where LDEQ can require additional asbestos standards. It is uncertain how LDEQ will handle the revision of permits where LDEQ has already established standards based on La. R.S.

30:2060 that are more stringent than the federal NESHAP standards. Any relaxation of these standards is likely to require a permit revision.

Secondly, Act 103 provides that the ambient air standards for TAPs that are authorized under La. R.S. 30:2060 are generally to apply at a regulated source's property boundary, but are not to apply to off-site "roads, railroads, or water bodies where activities are transient in nature and long-term exposure to emissions is not reasonably anticipated." The terms "transient" and "long-term exposure" are not defined. However, LDEQ is directed to enact rules to implement the legislation, so it is anticipated that these terms will be addressed in the rules. Current LDEQ rules have established ambient air standards for ninety-nine TAPs. LAC 33:III.5112, Table 51.2. Of these, 36 are annual average standards, 62 are 8-hour average standards, and asbestos has special rules.

Finally, Act 103 provides that the ambient air standards for TAPs are not to apply to "industrial properties" that are "adjacent to or impacted by" a regulated source of TAPs. This exemption applies only if the regulated source can "demonstrate" that OSHA permissible exposure limits ("PELs") are not being exceeded

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at the adjacent industrial property “because of” the TAP emissions from the regulated source. OSHA PELs are regulatory limits on the amount or concentration of a substance in the air or, in some cases, what concentration is safe for skin contact. Generally, OSHA PELs are based on an 8-hour time weighted average exposure. OSHA has established PELs for approximately 500 substances under 29 C.F.R. 1900.100, Table Z-1 and Table Z-2.

Because Act 103 did not define the terms “industrial properties” or “adjacent,” these terms are likely to be fleshed out in the rules to be developed by LDEQ. Further, the type of “demonstration” that will be required for a regulated source to avail itself of this provision is not specified in the legislation. However, as current regulations provide that LDEQ may require a permit application to include

“a dispersion modeling report demonstrating compliance with the ambient air standards” and “such other pertinent information as may be necessary for a complete understanding of the application,” it is believed that current rules already contain the tools likely to be required for the demonstration. See LAC 33:III.5111.B. 5. and 6.

For further information contact Maureen N. Harbourt (maureen.harbourt@keanmiller.com) or Kyle B. Beall (kyle.beall@keanmiller.com).



Maureen N. Harbourt, Partner
225.382.3412



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