


Volume 2 

**LOUISIANA
COASTAL NONPOINT POLLUTION CONTROL
PROGRAM**

**Coastal Management Division
Louisiana Department of Natural Resources**

prepared in cooperation and coordination with

**Office of Water Resources
Louisiana Department of Environmental Quality**

October 1995

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Louisiana's Coastal Nonpoint Pollution Control Program

**VOLUME 2
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SECTION A

**LISTING OF LOUISIANA STATUTES, REGULATIONS,
AND OTHER GUIDANCE**

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The following is a list of Louisiana statutes, regulations, and other guidance that has been drawn up by LSU Sea Grant Legal. It is made up of laws that have been cited as being either effective as enforceable mechanisms or as being legislation that could be amended in order to serve as enforceable mechanisms to ensure implementation of the management measures included in the Federal 6217 Nonpoint Source Pollution Program.

Louisiana Statutes

Soil Conservation, LA. R.S. 3:1201-1255

Louisiana Litter Reduction and Public Action Commission, LA R.S. 25:1101-1120

Natural and Scenic Rivers System, LA R.S. 56:1841-1856

Fertilizers, LA R.S. 3:1311-1373

Louisiana Pesticide Law, LA R.S. 3:3201-3377

Hazardous Waste Control Law, LA R.S. 30:2171-2207

Louisiana Solid Waste Management and Resource Recovery Law,
LA R.S. 30:2151-2161

Louisiana Coastal Wetlands Conservation and Restoration Program,
LA R.S. 214.1-214.5

Louisiana State and Local Coastal Resources Management Act,
LA R.S. 49:214.21-214.41

Louisiana Water Control Law, LA R.S. 30:2071-2088

Oil Spill Prevention and Response Act, LA R.S. 30:2451-2496

State Division of Health, Part I, LA R.S. 40:1-5.10

Forests and Forestry, Protection and Reforestation, LA R.S. 3:4271-4296

Garages and Oil Stations, LA R.S. 32:531-532

Motor Boats and Vessels-Restricted Areas and Penalties, LA R.S. 34:851.14 and
LA R.S. 34:851.31

Dams and Related Matters-Rules and Regulations, LA R.S. 38:24

Dept of Public Works-coordination with Wildlife and Fisheries Commission,
LA R.S. 38.18

Dept of Public Works-Functions of Dept, LA R.S. 38:2

Fish Ladders, LA R.S. 56:315.1

Louisiana Regulations

LAC Title 7, Agricultural and Animals, Part XI, Fertilizers, Chapter 79,
Regulations for the Sale of Fertilizers

LAC Title 7, Agricultural and Animals, Part XXIII, Pesticide, Chapter 131,
Louisiana Advisory Commission on Pesticides

LAC Title 7, Agricultural and Animals, Part XXV, Structural Pest Control, Chapter 141,
Structural Pest Control Commission

LAC Title 43, Natural Resources, Part I, Office of the Secretary, Chapter 7, Coastal
Management

LAC Title 48, Public Health-General, Part V, Preventive Health Services, Chapter 75, Sewage Program

Sanitary Code, State of Louisiana

LAC Title 33, Environmental Quality, Part IX, Water Quality Regulations, Chapter 1, General Provisions

LAC Title 33, Environmental Quality, Part IX, Water Quality Regulations, Chapter 3, Water Quality Permits

LAC Title 33, Part IX, Water Quality Regulations, Chapter 3, Appendices, Concentrated Animal Feeding Operation; defined

LAC Title 33, Environmental Quality, Part IX, Water Quality Regulations, Chapter 9, Water Quality Spill Prevention and Control

LAC Title 33, Environmental Quality, Part IX, Water Quality Regulations, Chapter 11, Water Quality Standards

LAC Title 33, Environmental Quality, Part IX, Water Quality Regulations, Chapter 15, Water Quality Certification Procedures

LAC Title 33, Environmental Quality, Part 1, Office of the Secretary, Subpart 2, Notification Regulations, Chapter 39, Notification Regulations and Procedures for Unauthorized Discharges

LAC Title 33, Environmental Quality, Part V, Hazardous Waste and Hazardous Material, Chapter 11, Generators

Federal Statutes

Certification (CWA), 33 U.S.C.A.:1341

Federal-Aid-Highways, 23 U.S.C.A.:109

Oil Pollution, 33 U.S.C.A.:2701-61

Federal Consistency, 16 U.S.C.A.:1456

Other Guidance

Jefferson Parish-Proposed Management Plan

AASHTO-Erosion and Sediment Control Guidelines

EPA-Storm Water Management for Construction Activities

Forestry-Best Management Practices

SECTION B

**PROCESS FOR FORMULATION OF
ENFORCEABLE POLICY MECHANISM(S)**

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PROCESS FOR FORMULATION OF ENFORCEABLE POLICY MECHANISM(S)

An analysis prepared by the LDNR/CMD staff and the LSU Sea Grant Legal consultant identified 30 of the 56 management measures within the (g) Guidance as not having enforceable policies specific to that management measure within the existing framework of Louisiana law, rules, or regulations. As a means of addressing this shortcoming the LSU Sea Grant consultant was requested to prepare, with input from the committees, a mechanism to achieve enforceable policies for those management measures. The mechanism chosen was a legislative remedy whereby enforceable policies mandated implementation of management measures, after all other remedies had failed. Assistance would be provided at every opportunity to bring practices into compliance with those mandatory management measures by the users and producers within the 6217 area. If after continued attempts to bring about compliance, through the use of incentives and assistance, compliance was still not forthcoming, enforcement would be sought.

During the review period for the state's proposed CNPCP document it became apparent the existing authorities could very well serve as effective enforceable mechanism's when viewed in the context of the overall implementation plan for the program. More specifically, having further discussed this concept with LDEQ, the existing Louisiana Water Control Law (LWCL), Louisiana Revised Statute 30:2071-2078 seems to provide the basis for a comprehensive enforceable mechanism. If, as we expect, this is a valid interpretation, the need to develop new legislative remedies would be obviated. The LWCL would afford the authority and associated powers necessary to assure enforcement.

Because the public input concerning the originally proposed remedy was overwhelmingly negative, from all commenting groups, the LDNR/CMD and LDEQ have chosen to remove the original proposal from this submission. In order to address those management measures in the (g) Guidance for which there are no currently available, clearly identified, enforceable mechanisms specific to the management measure, the following procedures will be followed:

- 1) The LDEQ and the LDNR/CMD will request legal opinions from the Attorney Generals Office regarding possible portions of extant, specifically the LWCL statutes and regulations which were originally deemed to exempt certain categories of activities in the context of the overall CNPCP implementation strategy.
- 2) If current LWCL authority still does not cover any management measure, the LDEQ and the LDNR/CMD will review all current regulations with the intent of strengthening them through the elimination of "loopholes" or exemptions for categories for which it is finally determined there are no other enforceable policies. This will be accomplished through a.) rule changes to appropriate regulations or, if necessary, b.) statutory changes to existing legislation, or c.) new legislation, as a final solution.
- 3) The LDEQ and the LDNR/CMD will continue to make efforts to determine whether or not the legislative remedy would be the most effective for those remaining management measures which still escape the test of enforceability and what form that remedy should take to be most effective.

SECTION C

**PROCESS FOR FORMULATION OF
MEMORANDA OF UNDERSTANDING (MOUS) AND MEMORANDA OF
AGREEMENT (MOAS) BETWEEN THE LOUISIANA DEPARTMENT OF
NATURAL RESOURCES, COASTAL MANAGEMENT DIVISION, AND OTHER
STATE AND FEDERAL AGENCIES**

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Process for Formulation of Memoranda of Understanding (MOUs) and Memoranda of Agreement (MOAs) Between Louisiana Department of Natural Resources, Coastal Management Division (CMD), and Other State and Federal Agencies

The Louisiana Department of Natural Resources, Coastal Management Division (CMD) looks forward to the development of memoranda of understanding (MOUs) or memoranda of agreement (MOAs) between state and federal agencies which have existing responsibilities applicable to the Louisiana Coastal Nonpoint Pollution Control Program (CNPCP). These memoranda would recognize authorities or duties of each agency with regard to enforcement, monitoring, or other pertinent responsibilities, as determined under existing Louisiana statutes and regulations. It is not the intention of the LDNR/CMD to usurp any agency's authorities or jurisdictions, nor is it the intention of the LDNR/CMD to impose upon a partner agency substantial additional responsibilities not presently undertaken by that agency. To the maximum extent possible the CNPCP will utilize existing authorities, monitoring schemes, data sets, report forms, and operating procedures. To the extent that new resource allocations may be required, the state expects the federal agencies sponsoring the program to supply the funds necessary to carry out the mandate. Memoranda to spell out these interagency partnerships are being conceptualized and are expected to be negotiated to completion as soon as possible.

A summary of the Louisiana statutes and regulations regarding the authority of state agencies involved with the Louisiana CNPCP is presented below. The proposed memoranda, to be negotiated, would allow each of the listed agencies to apply their existing authority under these Louisiana statutes and regulations to assist in the implementation of the Louisiana Coastal Nonpoint Pollution Control Program. The LDNR/CMD is presently examining the limits of partner agency mandates, in order to match existing responsibilities with tasks that will need to be carried out by the

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appropriate entity in the CNPCP. The proposed "bad actor" enforcement mechanism is intended **only** to span gaps in enforceable policies in order to implement Louisiana's CNPCP, and will not supersede any existing governmental authorities. The following list of statutes and regulations may **not** be an all inclusive list of applicable Louisiana regulations.

LOUISIANA DEPARTMENT OF AGRICULTURE AND FORESTRY

Louisiana Pesticide Law

LA R.S. 3: 3201-3377

PURPOSE: A comprehensive law covering: the use of pesticides; the formulation of rules and regulations; regulation of pesticide manufacture, sale, and distribution; application: establishment of pesticide waste plan and; restriction of use of pesticides. The application of pesticides is addressed in the areas of pesticide waste and water pollution which allows the commissioner of agriculture to take mitigation actions when the pesticide concentration in any area is a threat to humans or the environment.

AUTHORITY: Louisiana Department of Agriculture and Forestry (LDAF)

ENFORCEMENT: The sale, counseling, and application is restricted through a competency examination. The statewide pesticide waste plan delegates authority to the commissioner of agriculture to take mitigation actions in the case of threat to human health or the environment in the form of limiting or prohibiting application in effected areas.

Forests And Forestry, Protection And Reforestation

LA R.S. 3: 4271-4296

PURPOSE: To protect, conserve, and replenish the forests of the state and to promote the growing of suitable and useful timber trees within the state.

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AUTHORITY: The Louisiana Forestry Commission

ENFORCEMENT: No enforceable regulations are contained within this law except for some fire prevention, and gathering of certain fruits.

**LAC Title 7, Agricultural And Animals, Part XI, Fertilizers, Chapter 79
Regulations For The Sale Of Fertilizers**

PURPOSE: To set requirements for the registration of manufacturing and/or sale, labeling, sampling, and chemical analysis of fertilizers within the state.

AUTHORITY: Fertilizer Commission and Commissioner of Agriculture

ENFORCEMENT: Cancellation of Registration and/or levying of fines

**LAC Title 7, Agricultural And Animals, Part XXIII, Pesticide, Chapter 131,
Louisiana Advisory Commission On Pesticides**

PURPOSE: To set the rules and regulations on the registration of manufacturing, shipment, sale, ingredients, labeling, and certification for application of pesticides. This includes uses for agricultural, forestry, nurseries, public health, industrial, and aquatic pest control.

Particular emphasis is on protection of waters.

AUTHORITY: Louisiana Advisory Commission On Pesticides and the Commissioner of Agriculture, Department of Agriculture and Forestry

ENFORCEMENT: Certification and licensing, with cancellation of certifications and fines by the commissioner.

**LAC Title 7, Agricultural And Animals, Part XXV, Structural Pest Control,
Chapter 141, Structural Pest Control Commission**

PURPOSE: To set the rules and regulations for permitting, certification, licensing, and application of structural pest controls.

AUTHORITY: Structural Pest Control Commission And The Commissioner Of Agriculture

ENFORCEMENT: Cancellation of certification and license

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Louisiana Hazardous Waste Control Law

LA R.S. 30: 2171-2207

PURPOSE: The Hazardous Waste Control Law regulates hazardous substances and mandates strict compliance with the standards set for the generation, storage, transportation, and disposal of such waste. The law sets a framework for the regulation, monitoring, and control of the above factors and authorizes the development, implementation, and enforcement of the program. Disposal includes discharge onto land or into waters of the state, including groundwater.

AUTHORITY: The Hazardous Waste Advisory Board within the Louisiana Department of Environmental Quality (LDEQ)

ENFORCEMENT: Violations of regulations are subject to fines and/or imprisonment as set forth in the law to cover pollution of lands and waters.

Louisiana Solid Waste Management And Resource Recovery Law

LA R.S. 30: 2151-2161

PURPOSE: A law designed to develop a solid waste management plan to encourage the maximum use of resource recovery procedures, to regulate pollution caused by solid waste disposal practices. including the transportation, processing, and resource recovery. The location, construction, operation, and maintenance of solid waste disposal facilities is regulated. The law also adopts and promulgates rules, regulations, and standards for the processing, resource recovery, and use for agricultural, silvicultural, and horticultural

solid wastes and sewage sludges.

AUTHORITY: Office of Solid and Hazardous Waste of the Louisiana Department of Environmental Quality (LDEQ)

ENFORCEMENT: No enforceable regulations are set forth in this law, but the law directs the secretary of LDEQ to prepare of rules and regulations to carry out the purpose and intent of the law.

Louisiana Water Control Law

LA R.S. 30: 2071-2088

PURPOSE: To insure the protection and maintenance of the state's waters by adopting a system to control and regulate the discharge of waste materials, pollutants, and other substances into the waters of the state. The wastes include that from water vessels and waste from oil production activities.

AUTHORITY: Office of Water Resources, Louisiana Department of Environmental Quality (LDEQ)

ENFORCEMENT: The LDEQ is required to issue permits, and adopt rules and regulations to enforce the law, but the law itself does not provide any enforcement procedures.

**LAC Title 33, Environmental Quality, Part IX, Water Quality Regulations,
Chapter 1, General Provisions**

PURPOSE: To set regulations and procedures for permitting, enforcement, monitoring and surveillance, and spill control activities the Louisiana Water Pollution Control Division.

AUTHORITY: Louisiana Water Pollution Control Division, Office of Water Resources, Louisiana Department of Environmental Quality.

ENFORCEMENT: Enforced under individual chapters as stated below.

**LAC Title 33, Environmental Quality, Part IX, Water Quality Regulations,
Chapter 3, Water Quality Permits**

PURPOSE: To prescribe the procedures and guidelines for implementation and operation of the Louisiana Water Discharge Permit System (LWDPS). This includes the prohibiting of discharges of sewage waste or any physical, chemical, or biological pollutants into any water body of the state. This includes leachate or runoff to surface waters from facilities under jurisdiction of solid or hazardous waste laws.

Permits are required for other facilities including animal feeding operations, aquacultural activities, silvicultural point sources, and commercial dredging. Certain activities are exempt from the permit requirement. These include human sewage from vessels with inboard toilet facilities, disposal of water derived from oil and gas production, any

introduction of pollutants from nonpoint sources resulting from normal agricultural and silvicultural activities. Effluent limitations and standards are established for permitted activities.

AUTHORITY: Office of Water Resources, Louisiana Department of Environmental Quality (LDEQ)

ENFORCEMENT: Enforceable by revocation or termination of permit(s), with provisions for monitoring and sample collection.

**LAC Title 33, Environmental Quality, Part IX, Water Quality Regulations,
Chapter 9, Water Quality Spill Prevention And Control**

PURPOSE: To establish requirements for contingency planning, and implementation of operating procedures and best management practices to prevent and control the discharge of pollutants resulting from spill events. This includes oil and other substances listed as hazardous. This regulation requires the preparation and submittal of the contingency plan by the operators of facilities as outlined in this chapter.

AUTHORITY: Office of Water Resources, Louisiana Department of Environmental Quality

ENFORCEMENT: No enforcement policy is set forth in this section, other than requirement of a plan.

**LAC Title 33, Environmental Quality, Part IX, Water Quality Regulations,
Chapter 11, Water Quality Standards**

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PURPOSE: To establish water quality standards that provide for protection the waters, public health, and serve the objectives of the Louisiana Water Control Law and the Federal Clean Water Act. These standards consist of stated policies, designated uses, limitations of parameters, criteria for toxic substances, effluent limitations for point source discharges. These standards can form the basis for implementing the best management practices for control of nonpoint sources of water pollution.

AUTHORITY: Office of Water Resources, Louisiana Department of Environmental Quality

ENFORCEMENT: Subject to the enforcement procedures of the state, LA R.S. 30:2025

LAC Title 33, Environmental Quality, Part IX, Water Quality Regulations, Chapter 15, Water Quality Certification Procedures

PURPOSE: To establish the procedures for water quality certification including application requirements, fees, And land management plan requirements.

AUTHORITY: Office of Water Resources, Louisiana Department of Environmental Quality

ENFORCEMENT: Denial of permit only.

LAC Title 33, Environmental Quality, Part I, Office Of The Secretary, Subpart 2, Notification Regulations, Chapter 39, Notification Regulations And Procedures For Unauthorized Discharges

PURPOSE: To provide a uniform notification and reporting procedure for unauthorized discharges and enable emergency response to such discharges. This section lists requirements for determination and use of reportable quantities.

AUTHORITY: Office of Water Resources, Louisiana Department of Environmental Quality

ENFORCEMENT: Enforceable under the Louisiana Environmental Quality Act (LA R.S. 30: 2001)

LAC Title 33, Environmental Quality, Part V, Hazardous Waste And Hazardous Material, Chapter 11, Generators

PURPOSE: To establish the applicability of the section and set hazardous waste determination standards. In addition the establishment of standards for manifest, pre-transport, and transport requirements, are established.

AUTHORITY: Office of Solid and Hazardous Waste, Louisiana Department of Environmental Quality

ENFORCEMENT: Enforceable by ability to prohibit transport.

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LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS

State Division Of Health

LA R.S. 40: 1-5.10

PURPOSE: To execute the sanitary laws of the state and abate menace to the public health. This includes protection of the public health against disease or infection from infectious waste, improper disposal of sewage, and unsanitary water for drinking or recreation. The pollution of streams or rivers from such wastes is particularly prohibited.

AUTHORITY: State Health Officer, Office of Public Health, Louisiana Department of Health and Hospitals (LDHH)

ENFORCEMENT: The state health officer has the authority to suspend or revoke health permits, impose fines for violation of any of the sanitary code violations.

LAC Title 48, Public Health-General, Part V, Preventive Health Services, Chapter 75, Sewage Program

PURPOSE: To set regulations for sewage treatment, sanitary sewage disposal, and other water and wastewater matters for the safeguard of public health. The responsibilities covered include plan review, permitting, inspection, sampling, monitoring, and testing of facilities to insure code compliance and to conduct related enforcement.

AUTHORITY: Office of Preventive and Public Health Services (OPPHS) of the Department of Health and Hospitals (LDHH).

ENFORCEMENT: Enforceable under R.S. 40: 1-5.10

Sanitary Code, State Of Louisiana

PURPOSE: To set regulations for the planning, design, construction, modification, record keeping, installation and connection of sewage facilities and/or treatment plants. This includes regulations as to the quality and final discharge of effluent. Particularly prohibited is the discharge of untreated waste directly or indirectly into any ditch, water course, body of water, or onto the ground. This includes the limitation of the location of sewage facilities at least 50 feet from a potable water supply source. Vessels or boats which are permanently moored can not discharge untreated waste, and if not moored are required to employ proper Coast Guard approved marine sanitation devices.

AUTHORITY: Sate Health Officer, Louisiana Department of Health and Hospitals

ENFORCEMENT: The review of plans, issuance of permits and licenses with violations subject to revocation of such permits and/or licenses.

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LOUISIANA DEPARTMENT OF CULTURE, RECREATION, AND TOURISM

Louisiana Litter Control And Recycling Commission

LA R.S. 25: 1101-1120

PURPOSE: To control and reduce litter, and create and coordinate separation and recycling programs. The Louisiana Litter Control and Recycling Commission is responsible for public education, coordination between agencies and local governments, voluntary campaigns, abatement programs, awarding of grants, plan development, and enforcement of laws regarding litter control and recycling efforts.

AUTHORITY: The Louisiana Litter Control and Recycling Commission within the Louisiana Department of Culture, Recreation, and Tourism (LDCRT)

ENFORCEMENT: Enforced by the LDCRT with fines and/or imprisonment for littering from motor vehicles OR water craft on roads and beaches.

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

Dams And Related Matters - Rules And Regulations

LA R.S. 38: 24

PURPOSE: To establish standards, rules, and regulations for the construction, operation, modification, and maintenance of dams on waterbodies within the state except for those which are used for impoundment of liquid substances or hazardous waste, which is permitted by the Louisiana Department of Natural resources.

AUTHORITY: Office of Public Works, Louisiana Department of Transportation and Development (LDOTD)

ENFORCEMENT: Enforceable by permit and/or inspection only

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LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES

Louisiana Natural And Scenic Rivers System

LA R.S. 56: 1841-1856

PURPOSE: To preserve, protect, develop, reclaim, and enhance the wilderness qualities, scenic beauties, and ecological regime of certain free flowing streams. This law protects the scenic rivers and prohibits the activities of channelization, clearing and snagging, channel realignment and reservoir construction of the rivers and streams included in the system, including the riparian areas along such streams.

AUTHORITY: Louisiana Department of Wildlife and Fisheries (LDWF)

ENFORCEMENT: Enforced by LDWF with violations punishable by fines (Louisiana class 6 violation)

LOUISIANA COOPERATIVE EXTENSION SERVICE

No specific statues or regulations

**LOUISIANA DEPARTMENT OF NATURAL RESOURCES, OFFICE OF
CONSERVATION**

No specific statues or regulations

In addition it is envisioned that the following *federal* agencies and programs will have memoranda of agreement negotiated during the same time period.

The Barataria-Terrebonne National Estuary Program

U.S. Department of Agriculture, Consolidated Farm Services Agency

U.S. Department of Commerce, National Marine Fisheries Service

U.S. Army Corps of Engineers, New Orleans District

U.S. Army Corps of Engineers, Galveston District

U.S. Army Corps of Engineers, Vicksburg District

U.S. Department of Transportation, Federal Aviation Administration

U.S. Department of Transportation, Federal Highway Administration

U.S. Department of Interior, Fish and Wildlife Service