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SUPPLEMENTARY INFORMATION:

Response to Public Comments

Two commentors stated that LDEQ consistently and repeatedly ignored complaints regarding violations of RCRA and other environmental laws at Bayou Steel. One supplied LDEQ with an independent environmental audit report of conditions at Bayou Steel to support both commentors' claims, and believed LDEQ's lack of enforcement response to those and other complaints demonstrated the State's inability to take on additional program revisions, and unwillingness to appropriately address complaints. Also, the commentors questioned if LDEQ had adequate resources to enforce the RCRA corrective action provisions in this program revision. The incidents the commentors listed do not specifically refer to laws and regulations that are a part of this final authorization, but refer to RCRA or HSWA laws and regulations.

EPA reviewed the commentors' assertions and LDEQ's actions regarding complaints about Bayou Steel. EPA noted LDEQ's files contained numerous complaints regarding Bayou Steel activities, including those from the commentors. The files showed LDEQ initiated investigations to address all but one complaint within seven days of receipt. and in that instance the investigation was initiated within seven days of a records review. State records further revealed that while LDEQ investigated all Bayou Steel complaints in an appropriate and timely manner, including those from the commentors, all were unfounded. LDEQ's inspection reports, the State's only written response to complaints, were in permanent files and available for public review. Copies of requested portions of these files were available to the public upon written request.

The State's records also showed the various divisions of LDEQ conducted twenty-nine inspections at Bayou Steel since 1993. Some resulted in enforcement actions, including penalties, for the facility's violations of Louisiana's hazardous waste regulations. However, all violations were found during State-initiated inspections that occurred prior to LDEQ receiving complaints about the facility.

Also, EPA remained convinced LDEQ has adequate resources to take on the additional portions of RCRA included in this program revision. As noted above, various divisions of LDEQ initiated many inspections at Bayou Steel since

1993, dedicating significant resources to them. These inspections, covering all media, were in addition to inspections and investigations performed by LDEQ at other facilities in the State. Because of the number and variety of complaints LDEQ received regarding Bayou Steel, the State requested EPA use its extensive resources and experience to perform a complete multi-media facility inspection. EPA considered this an entirely appropriate response based on the complaints and LDEQ's prior inspection findings. EPA initiated the Bayou Steel multi-media inspection in June 1994, and is compiling the results. In large measure, EPA's inspection findings at the facility agreed with LDEQ's.

Additionally, some complaints to the State alleged violations of Solid Waste Management Units (SWMU) or involved corrective action proceedings at Bayou Steel. During the time LDEQ inspected the facility, EPA had not authorized the State to regulate or address SWMUs or corrective action in lieu of the Agency. This lack of authority also triggered LDEQ's request to EPA for a Bayou Steel multi-media inspection.

The third commentor expressed concern about the appeal procedures and public participation rights of LDEQ's hazardous waste permitting program. The commentor asserted that LDEQ's Program Description (PD) for this program revision, obtained via a Freedom of Information Act request for documents, did not adequately describe the current State appellate review procedures.

EPA revisited the State's PD submitted with this program revision and determined it agreed with the commentor. As a result, EPA requested LDEQ to revise its PD so it more accurately reflected the State's current statutes regarding appeal procedures. LDEQ provided EPA with a revised PD that addressed these concerns.

The commentor also raised concerns about Louisiana's de novo review provisions of hazardous waste permitting decisions. The commentor asserted that the de novo review provisions could allow the District Court to become the permitting authority in Louisiana, and cited the case of Pardue v. Stevens, 558 So.2d 1149 (La.App.1 Cir. 1989) to support the concern. The Pardue court noted in its decision that a trial de novo in a judicial proceeding meant a trial anew, or from the beginning. Thus, in a trial de novo of an administrative proceeding, the Appellate Court could make its own factual determinations, exercise its own discretion, and substitute its judgment for that of the administrative agency.

The Appellate Court could act as the court or agency of original jurisdiction and the entire case would be open for decision.

EPA interpreted Louisiana's de novo provisions as allowing a District Court judge the right of review of the record only. EPA considered Louisiana's "de novo review" provision to not be the same as "trial de novo" (new trial), and under the de novo review the reviewing court can exercise only appellate jurisdiction (review of the record). The Louisiana legislature enacted laws that mandate the Secretary of LDEQ to grant or deny permits, not the judiciary. Louisiana Revised Statutes, (R.S.) § 30:2011(D)(2) provides: The Secretary shall have the following powers and duties: to grant or deny permits, licenses, * * * as are provided for in this Subtitle. Additionally, R.S. § 30:2014(A) provides, in part, that the Secretary shall act as the primary public trustee of the environment, and shall consider and follow the will and intent of the Louisiana Constitution and Louisiana statutory law in making any determination relative to the granting or denying of permits, * * * authorized by this Subtitle. This matter is also clarified in LDEQ's revised PD, which refers to the review as a de novo review of the record.

Another concern raised by the commentor was the right of citizens to appeal Louisiana hazardous waste permitting decisions. The commentor asserted that although LDEQ represented in the PD submitted with this program revision that any person aggrieved by a final permitting decision could appeal to the Court of Appeal for relief, it has taken contrary positions when its decisions were appealed. The commentor alleged LDEQ argued the courts only have jurisdiction to review its decisions where the decision resulted from an LDEQ mandatory adjudicatory hearing. Only commercial hazardous waste permits are issued after a mandatory adjudicatory hearing. Thus, none of LDEQ's hazardous waste permitting decisions, with the possible exception of commercial transporter, storage, or disposal facility permits, would be subject to judicial review. However, EPA considered this issue resolved by the Louisiana Supreme Court in Matter of American Waste and Pollution Control Co, where the Court ruled that LDEQ decisions are appealable whether or not they result from a mandatory adjudicatory hearing.

The commentor also expressed concern about LDEQ's being required to provide assurance that it will provide an opportunity for public notice and comment on settlements of civil