

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Bark Beetles

(LAC 33:III.1109 and LAC 33:VII.1505) (MM023E1)

In accordance with R.S. 49:962 of the Administrative Procedure Act, which allows the Department of Environmental Quality to use emergency procedures to establish rules, and R.S. 30:2011 and 2054, which authorize the department to promulgate rules and regulations, the secretary of the department hereby declares that an emergency action is necessary to prevent imminent peril to the public health, safety, or welfare.

Executive Order JML 24-161 was issued on October 21, 2024, directing the secretary of the Department of Environmental Quality to issue an Emergency Rule to address the forest devastation caused by bark beetles in which the severe drought and subsequent wildfires have caused extensive tree loss, and the loss of between 312 and 325 million dollars to Louisiana's forestry industry that covers 15 million acres with pine trees being the main species, of which 10.8 million acres are nonindustrial-privately owned forests.

Proclamation 141 JBE 2023 declared a State of Emergency on August 11, 2023, due to the excessive heat, drought conditions, and saltwater intrusion and has been renewed and extended every 30 days through Executive Order Number JML 24-159, which expires November 17, 2024.

R.S. 30:2057 prohibits a person from discharging air contaminants into the air of this state in violation of regulations of the Department of Environmental Quality without a variance, unless statutorily exempted.

R.S. 30:2057(5)(a) already exempts the burning of trees, brush, grass, or other vegetable matter in parishes with a population of 90,000 or less when the location is outside the city limits and not adjacent to a city in such proximity that the ambient air of the city or town will be affected by smoke from the burning.

The Department of Environmental Quality is issuing an Emergency Rule providing for the application and issuance of a variance to parishes with populations greater than 90,000 and prospectively waiving the \$500 fee for all qualifying variance applications with the issuance of this Emergency Rule and also prospectively waiving the \$250 annual fee for transporters of wood waste generated by land and right-of-way clearing operations, wood chips, bark, wood refuse, wood ash, and vegetative matter resulting from land clearing operations including trees and shrubbery, leaves, limbs, stumps, and grass clippings regardless of the number of vehicles in the service of the transporter.

This Emergency Rule is effective on April 22, 2025, and shall remain in effect for the maximum period allowed under the Act. For more information concerning MM023E1, you may contact Kyle Prestenbach with the Air Permits Division at Kyle.Prestenbach@la.gov or (225) 219-3457 or Karla Vidrine with the Waste Permits Division at Karla.Vidrine@la.gov or (225) 219-3047.

Adopted this 8th day of April 2025.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 11. Control of Emissions of Smoke

§1109. Control of Air Pollution from Outdoor Burning

A. - C.7. ...

D. Exceptions to Prohibition against Outdoor Burning. Outdoor burning of waste material or other combustible material may be conducted in the situations enumerated below if no public nuisance is or will be created and if the burning is not prohibited by and is conducted in compliance with other applicable laws and with regulations and orders of governmental entities having jurisdiction, including air control regulations and orders. The authority to conduct outdoor burning under this regulation does not exempt or excuse the person responsible from the consequences of or the damages or injuries resulting from the burning:

1. - 5. ...

6. outdoor burning, in other than rural park or rural recreation area, of trees, brush, grass, and other vegetable matter from such area in land clearing and right-of-way maintenance operations if the following conditions are met:

a. prevailing winds at the time of the burning must be away from any city or town, the ambient air of which may be affected by smoke from the burning;

b. the location of the burning must be at least 1,000 feet (305 meters) from any dwelling other than a dwelling or structure located on the property on which the burning is conducted;

c. care must be used to minimize the amount of dirt on the material being burned;

d. heavy oils, asphaltic materials, items containing natural or synthetic rubber, or any materials other than plant growth which produce unreasonable amounts of smoke may not be burned; nor may these substances be used to start a fire;

e. the burning may be conducted only between the hours of 8 a.m. and 5 p.m. Piles of combustible material should be of such size to allow complete reduction in this time interval; and

f. the burning must be controlled so that a traffic hazard as prohibited by Subsection E of this Section is not created;

7. - 9.c. ...

10. in accordance with MM023E and Paragraph F of this Section, outdoor burning of trees, brush, grass, and other vegetable matter generated from 2023 drought conditions and/or insect pests in parishes having a population greater than 90,000 provided that a variance pursuant to LAC 33:III.917 is applied for and obtained from the administrative authority prior to the burning, and the burning is conducted in accordance with the limitations set forth in LAC 33:III.1109.D.6 at the location(s) specified in the variance application, and in accordance with the following:

a. burn site activities shall occur at least 100 feet from surrounding tree lines, fire prevention measures shall be maintained, and personnel shall remain onsite until burning activities, including smoldering, are completed for the day. The local fire marshal shall be made aware of proposed burning activities prior to site activation. If a burn ban is in effect at the local and/or state level, burning of vegetative debris is prohibited;

b. ash resulting from the burning activities shall be handled or disposed of in accordance with the following limitations:

i. ash may be disposed of at a properly permitted landfill; or

ii. ash may be handled as outlined in a Best Management Practices (BMP) Plan approved through the Louisiana Department of Agriculture and in accordance with LAC 33:VII.303.A.10;

c. outdoor burning of non-listed debris streams, including painted wood, pressure-treated wood, untreated wood contaminated with petroleum-based hydrocarbons, asbestos-containing materials, and hazardous waste, is prohibited. In addition, per LAC 33:VII.315.M, open burning of solid waste is prohibited, except in accordance with R.S. 30:2001 et seq and this Section; and

d. the variance fee of \$500 pursuant to LAC 33:III.223, Table 1, Fee Number 2010 shall be waived for all qualifying variances.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1081 (October 1995), LR 24:652 (April 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 51:

Title 33

ENVIRONMENTAL QUALITY

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 15. Solid Waste Fees

§1505. Annual Fee

A. Transporters. All transporters of solid waste shall pay a fee of \$250 per year to the department. There will be only one fee regardless of the number of vehicles in the service of the transporter.

1. In accordance with MM023E, the annual fee of \$250 shall be waived for transporters of woodwaste generated by land and right-of-way clearing operations, wood chips, bark, wood refuse, wood ash and vegetative matter resulting from land-clearing operations, including trees and shrubbery, leaves, limbs, stumps, and grass clippings regardless of the number of vehicles in the service of the transporter.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2154, and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), LR 25:427 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:689 (May 2003), LR 29:2051 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 32:2241 (December 2006), repromulgated LR 33:1108 (June 2007), amended LR 35:2180 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:947 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigation Division, LR 48:1500 (June 2022), amended by the Office of the Secretary, Legal Affairs Division, LR 51: