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Department of Environmental Quality
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To Whom It May Concern,

The Alliance for Affordable Energy is a consumer protection and advocacy nonprofit organization dedicated to securing equitable, affordable, and environmentally responsible energy policy for all Louisianans. In that spirit, we write regarding the proposed regulation for Voluntary Environmental Self-Audit Regulations (OS101).

While we had significant concerns with Act 481 (2021) at the time of its passage, we recognize that the intent of the law – and these regulations – was to incentivize business and industry in Louisiana to proactively report and address violations before they could cause significant harm. By offering "safe harbor" from penalties, which the author of the Act and its supporters argued incentivizes hiding problems within industrial sites, the Department of Environmental Quality (the Department) could instead work with industry to resolve problems rather than punishing them for coming forward with concerns.

This is an admirable goal. But however well-intended this policy may be, we remain concerned that the policy could lead to a dramatic reduction in transparency. While the Department and other agencies have made important strides in recent years to repair trust, there is a long history of the State and private sector ignoring concerns of, and harms to, the residents and communities – many of which are lower income and majority Black or Indigenous – that live alongside industrial sites, including polluting power plants.

Every Louisianan should feel secure, wherever they live and no matter their background, in the knowledge that state agencies are doing everything in their power to ensure their safety and to preserve public health. As the Department proceeds with implementation of R.S. 30:2044, we believe it is essential that whatever regulations and rules are established for the Self-Audit program should increase public confidence in the Department while also accounting for racial and economic inequities that may be exacerbated due to the structure of this program.

Unfortunately, the very nature of self-reporting and auditing of environmental and public health violations – particularly when state law requires that those disclosures be made confidential, even if only for a few years – creates more barriers to building trust, particularly for communities and residents in closest proximity to industrial sites and who have borne, and continue to bear, the greatest risks from exposures from those violations.

The provisions required by R.S. 30:2044 in determining whether or not a violation is eligible for the self-audit program are, in our view, seemingly reasonable but insufficiently specific.

While recognizing that §7007.C.1 would help to preserve discretion and flexibility for the Department to enforce violations above and beyond what is listed in law, we would encourage that the Department provide greater clarity with regard to what constitutes “serious actual harm to the environment” (§7007.A.1) and “may present an imminent or substantial endangerment to the environment or public health” (§7007.A.2).

Whether this is clarified within these regulations or in future promulgations of departmental rules pertaining to the self-audit program, an example of more specific language that would strengthen the regulation in accordance with aims of the law would be to establish particular floors or minimum standards. For instance, the Self-Audit program should ensure that any self-reported violations in Census tracts that are identified as overburdened and underserved using the federal Climate and Economic Justice Screening Tool provide some form of notification to residents within a set proximity of the site that a problem has been identified, was self-reported, and is being or has been resolved.

Such a notification could provide these Louisianans with information on state or local emergency and health services, and allow residents to report any health or environmental problems that could be related to the self-reported violation. This requirement, in addition to potentially increasing trust between the Department and residents of these Census tracts, could also help the Department more accurately assess and verify whether or not a self-reported violation is truly not causing “serious harm to the environment” or “imminent or substantial endangerment to the environment or public health.”

Another area of concern is that under proposed provision §7009.D.1, “full environmental audit report should not be submitted to the department unless specifically requested by the department in writing.”

We strongly urge the Department to revise this entirely, and instead require that all full environmental audit reports be submitted to the department. Additionally, we recommend that the Department require that all environmental audit reports received as part of the Self-Audit program be made publicly available after the two-year period or after final action has been taken, pursuant to §7009.F.1 and §7009.F.2.

These changes, in addition to enhancing transparency and building trust, are a critical necessity for ensuring that the Self-Audit program can be independently evaluated. While the Department may see this proposed language as a reasonable provision to protect the reputations of business and industry, it will sow significant mistrust and foster concerns that the Self-Audit program could be used to conceal wrongdoing rather than incentivizing problem-solving.

We appreciate the Department's thoroughness in developing these regulations, and hope you will take our recommendations into serious consideration. If you have any questions, please contact Jackson Voss at jackson@all4energy.org and we will be happy to provide clarification or further information.

Thank you,

Logan Atkinson Burke, Executive Director
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