

JOHN BEL EDWARDS
GOVERNOR



THOMAS F. HARRIS
SECRETARY

State of Louisiana
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE SECRETARY
November 9, 2017

Senator John A. Alario, Jr., President
Senator Norbert N. "Norby" Chabert,
Chairman-Senate Natural Resources Committee
Representative Taylor F. Barras, Speaker
Representative Stuart J. Bishop, Sr.,
Chairman-House Natural Resources and Environment Committee

via statutorily required e-mail

**RE: Proposed promulgation of LAC 43:I.133
Debts owed to the Department of Natural Resources**

Dear President Alario, Chairman Chabert, Speaker Barras, and Chairman Bishop,

The Department of Natural Resources, pursuant to the power delegated under La. R.S. 36:353, proposes to promulgate a new section 133 of Title 43, Part I, Chapter 1 of the Louisiana Administrative Code. The following report regarding the proposed promulgation of LAC 43:I.133 is submitted to you in accordance with R.S. 49:968(B) & (C).

1. Copy of the rule as it is proposed for adoption.

See the attached Notice of Intent.

2. Statement of proposed action and summary of the content of the proposed rule.

DNR proposes to promulgate a new section 133 of Title 43, Part I, Chapter 1 of the Louisiana Administrative Code. This proposed rule sets forth the process by which DNR invoices certain types of debts owed to it. Further, the proposed rule establishes a due date for applicable debts and time delays in which a person may challenge such debts by requesting a public hearing before the Division of Administrative Law. Finally, the proposed rule establishes when an applicable debt owed to DNR becomes "final" for purposes of R.S. 47:1676 and can be forwarded to the Office of Debt Recovery, Department of Revenue for debt collection activities. The proposed rule does not apply to debts owed the Commissioner of Conservation, the State Mineral and Energy Board, pursuant to federal loan or grant programs, the Fisherman's Gear Compensation Fund, or debts associated with the overpayment of active or separated DNR employees.

3. Specific citation of law authorizing promulgation of the rule.

**Proposed Promulgation of LAC 43:I.133
Debts Owed to the Department of Natural Resources**

La. R.S. 36:353.

4. Circumstances which require promulgation of the proposed rule.

La. R.S. 47:1676 requires that "final" debts owed to a State agency be forwarded to the Louisiana Office of Debt Recovery for collection activities. Existing statutes and regulations are unclear when certain debts owed DNR become final when they are neither paid nor litigated. The proposed rule establishes an administrative hearing process by which persons can challenge debts they have been invoiced. The proposal further sets forth a sixty-day deadline by which these types of debts shall either be paid or challenged. The failure of a party to either challenge or pay a debt invoiced by DNR to them within this sixty-day time period, shall result in the debt being "final" and forwarded to the Louisiana Office of Debt Recovery for debt collection activities.

5. Statement of the Fiscal and Economic Impact.

See the attached Notice of Intent.

The Notice of Intent to promulgate the proposed new rule will be published in the Louisiana Register on November 20, 2017. All interested parties will be afforded the opportunity to submit data, views, or arguments orally or in writing at a public hearing held in accordance with R.S. 49:953. The Secretary or his designee will conduct a public hearing at 1:30 p.m., December 26, 2017, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana. Written comments will be accepted until noon, December 29, 2017 at the Office of the Secretary, Department of Natural Resources, P.O. Box 94396, Baton Rouge, LA 70804.

Please contact me or my executive counsel, Blake Canfield, at (225) 342-2710, if you have any questions or require additional information regarding this matter.

Yours very truly,



Thomas F. Harris
Secretary

Attachments

NOTICE OF INTENT

Department of Natural Resources

Office of the Secretary

Debts Owed to the Department of Natural Resources

(LAC 43:I.133)

The Department of Natural Resources, Office of the Secretary proposes to promulgate LAC 43:I.133 in accordance with the provisions of the Administrative Procedure Act, La. R.S. 49:950, et seq., and pursuant to the power delegated under La. R.S. 36:353 and the laws of the state of Louisiana. The proposed rule sets forth the process by which the Department of Natural Resources invoices applicable debts owed to it. Further, the proposed rule establishes a due date for applicable debts and the time delays in which a person may challenge such debts by requesting a public hearing before the Division of Administrative Law. Finally, the proposed rule establishes when an applicable debt owed to the Department of Natural Resources becomes "final" for purposes of La. R.S. 47:1676 and can be forwarded to the Louisiana Office of Debt Recovery or to the Attorney General's Office for debt collection activities. The proposed rule does not apply to debts owed the Commissioner of Conservation, the State Mineral and Energy Board, federal loan or grant programs, the Fisherman's Gear Compensation Fund, or debts associated with the overpayment of active or separated DNR employees.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Subpart 1. General

§101. - §131. ...

§133. Debts Owed to the Department of Natural Resources

A. **Applicability.** This section is applicable for all debts owed to the Department of Natural Resources (hereinafter referred to as "DNR"), with the following exceptions:

1. debts associated with mineral leases or operating agreements, or mineral production on State lands and water bottoms, or to any debts under the authority of the State Mineral and Energy Board;
2. debts associated with federal loans or grant programs, including but not limited to those issued, through the Home Energy Loan Program (HELP), Energy Fund, or the American Recovery and Reinvestment Act of 2009 (ARRA) Revolving Loan Fund;
3. debts other than those debts owed under the Oilfield Site Restoration Act (R.S. 30:80, et seq.) that are owed to the Office of Conservation or the Commissioner of Conservation,
4. debts owed the Fisherman's Gear Compensation Fund (R.S. 56:700.1, et seq.), or
5. debts associated with the overpayment of active or separated DNR employees.

B. **Due Date of Applicable Debt.**

1. When an applicable debt is owed to DNR, DNR shall create an invoice for that debt. Among other things the invoice shall identify the amount of the debt owed to DNR and the individual, company, or organization that owes the invoiced debt to DNR. In the event that the applicable statutes or rules establish the date on which the invoiced debt is due, the invoiced debt amount shall be due to DNR on that date. When the applicable statutes or rules do not establish a date on which the invoiced debt is due, then the invoiced debt shall be due sixty (60) days after the invoice is duly delivered to the party identified as owing the debt. In the event, the debt has been invoiced prior to the effective date of this regulation and there is no due date established by the applicable statute or regulation, then the debt amount shall be due sixty (60) days after the effective date of this regulation.

2. For purposes of this section, the invoice shall be deemed duly delivered upon:

- a. receipt by the party identified as owing the debt if delivered in person;

- b. if properly addressed, two (2) days after deposit in the U.S. mail;
 - c. if properly addressed, one (1) business day after it is sent by recognized commercial overnight courier service; or
 - d. if properly addressed, upon transmission if sent via email with confirmation of receipt..
3. For purposes of this section, "properly addressed" means the invoice is addressed to the physical, mailing, or e-mail address that is:
- a. registered by the party with the department or any of its offices or programs where such registration is required by applicable law or regulation;
 - b. provided by the party to the department or any of its offices or programs on an application or other agency form; or
 - c. if no other address exists, then any address otherwise provided by law.

C. Dispute of an Applicable Debt. In the event the party that is invoiced disputes the debt owed to DNR said party may request an administrative hearing in writing within sixty (60) days after the invoice is duly delivered to said party. Such requests shall set forth the basis for the party's belief that it does not owe the debt to DNR. Such requests shall be addressed to "DNR-Office of the Secretary, ATTN: DNR Debt Appeal, P.O. Box 94396, Baton Rouge, LA 70804-9396."

- 1. The request for an appeal of a debt will be deemed submitted to DNR on:
 - a. the date it is actually hand delivered to DNR;
 - b. if properly addressed, two (2) days after deposit in the U.S. Mail; or
 - c. if properly addressed, one (1) business day after it is sent by recognized commercial overnight courier service.
- 2. The administrative hearing shall be presided over by a Division of Administrative Law hearing officer and subject to the rules and requirements established by the Division of Administrative Law Act (R.S. 49:991—999.1).

D. Final Debts. Debts owed to DNR shall become final pursuant to La. R.S. 47:1676 either the day after the deadline to request an administrative hearing as set forth in subsection C of this section has passed and no request for an administrative hearing has been made, or when a final and un-appealable decision is made that the debt is owed to DNR by a competent administrative hearing officer or a court of competent jurisdiction.

E. Cost Recovery. Pursuant to La. R.S. 47:1676, when any debt owed to DNR becomes final then the debt shall be referred to the Office of Debt Recovery, Department of Revenue or to the Attorney General's office for collection in accordance with the agency participation agreement between the Department of Natural Resources, the Louisiana Department of Revenue, and the Louisiana Attorney General's Office that is then in effect.

F. Not a Replacement of the Judicial Review Process. Creation of the right set forth in subsection C of this section to request an administrative hearing to challenge whether a specific party owes a specific invoiced debt is not intended to replace or alter the judicial review process for challenging the validity of underlying regulations, orders, civil penalties, or other decisions properly challenged under other statutory authority, including but not limited to, La. R.S. 30:12, La. R.S. 49:962.1 – 965, La. R.S. 49:968, or La. R.S. 49:214.35.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:353(A)(3).

Family Impact Statement

In accordance with Section 953 and 972 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal, or amendment. This Family Impact Statement shall be kept on file in the Office of the Secretary, Department of Natural Resources in accordance with the Louisiana Public Records Law.

- 1. Will the proposed Rule affect the stability of the family? No.
- 2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
- 3. Will the proposed Rule affect the functioning of the family? No.
- 4. Will the proposed Rule affect the family earnings and family budget? No.
- 5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
- 6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Poverty Impact Statement

The proposed Rule does not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. household income, assets, and financial security;
2. early childhood development and preschool through postsecondary education development;
3. employment and workforce development;
4. taxes and tax credits; or
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Provider Impact Statement

This proposed Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested parties will be afforded the opportunity to submit data, views, or arguments orally or in writing at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until noon on December 29, 2017, at the Office of the Secretary, Department of Natural Resources, P.O. Box 94396, Baton Rouge, LA, 70804. All inquiries should be directed to Blake Canfield, Executive Counsel at the above address or by phone at 225-342-2017.

Public Hearing

The Secretary of DNR or his designee will conduct a public hearing at 1:30 p.m., December 26, 2017, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

Thomas F. Harris
Secretary