and tribes that choose and implement appropriate permit reform. As specific program changes are developed, opportunities for stakeholder input will be provided. It is anticipated that stakeholders will use the final concept paper, as well as other relevant documents and authorities such as applicable statutes, in their review of specific permit program changes. This will help to provide all stakeholders with a common context when commenting on these specific changes. For some permitting programs, minor changes may be needed to implement many of the concepts specified in the document; while other programs may require more significant modifications. Some of these modifications may also require changes to statutes and regulations and could necessitate technical research and analysis prior to revising permit programs to conform with the recommendations. Therefore, the time-frame to implement the recommendations could range from several months to many years. The Agency notes that the current permitting systems were developed over the last three decades, and that changes need to be made within the existing systems while they evolve to the approach envisioned in the concept paper. Furthermore, as implementation proceeds, it is likely that some of the concepts will require revision based on new information.

Paperless Office Effort

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ACSII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Rather, EPA is experimenting with this procedure as an attempt to expedite our internal review and response to comments. This expedited procedure is in conjunction with the Agency ''Paperless Office'' campaign.

James Mathews,

Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

[FR Doc. 96–23220 Filed 9–10–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5604–7]

State Program Requirements; Approval of Application by Louisiana To Administer the National Pollutant Discharge Elimination System (NPDES) Program; Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Approval of the Louisiana Pollutant Discharge Elimination System Under CWA.

SUMMARY: On August 27, 1996, the Regional Administrator for the Environmental Protection Agency, Region 6, approved the application by the State of Louisiana to administer and enforce the National Pollutant Discharge Elimination System (NPDES) for regulating discharges of pollutants into waters within the state. The authority to approve state programs is provided to EPA in Section 402(b) of the Clean Water Act (CWA). The Louisiana Pollutant Discharge Elimination System (LPDES) program will operate in lieu of the EPA administered NPDES program pursuant to Section 402 of the CWA. In making its decision, EPA has considered all comments and issues raised during the publicly noticed comment period.

EFFECTIVE DATE: Because CWA § 301(a) prohibits new discharges until they are authorized by an NPDES permit, this action is effective August 27, 1996 to avoid futher suspension of permitting actions in Louisiana and the unnecessary burden such a suspension would impose on new dischargers.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell at U.S. EPA, Region 6, Water Quality Protection Division, 1445 Ross Avenue, Dallas, Texas 75202, or by calling (214) 665–7513, or electronically at CALDWELL.ELLEN@EPAMAIL.EPA.GOV; or Ms. Barbara Bevis at the Office of Water Resources, LDEQ, P.O. Box 82215, Baton Rouge, Louisiana, 70884–2215, or by calling (504) 765–2740, or electronically at BARBARA__B@DEQ.STATE.LA.US.

SUPPLEMENTARY INFORMATION: Louisiana's application was described in the Federal Register (61 FR 15258) on April 5, 1996, in which EPA requested comments. Notices of EPA's proposal to approve the LPDES program were also published on April 8, 1996, in The Advertiser (Layfayette, La.); The Alexandria Daily Town Talk (Alexandria, La.); The Shreveport Times (Shreveport, La.); The Times-Picayune (New Orleans, La.); The Lake Charles American Press (Lake Charles, La.); The Courier (Houma, La.); The News Star (Monroe, La.); and The Baton Rouge Advocate (Baton Rouge, La.). Copies of the application were made available at the addresses below and could also be purchased from the state for the cost of $108.00. EPA provided copies of the public notice to permitted facilities, Indian tribes, and other federal and state agencies. '

Both a public meeting and hearing were held in Baton Rouge, Louisiana, on May 9, 1996. The meeting (provided as an informal question and answer session), began at 3:00 pm and ended at 4:30 pm. The hearing started at 7:00 pm and lasted until 8:17 pm. Oral comments were recorded during the hearing and entered into EPA's official record. Written comments were accepted by EPA through May 27, 1996 (the original comment period, which was to end May 20, 1996, was extended to May 27, 1996, at the request of commenters). EPA's response to the issues raised during the comment period are contained in the Responsiveness Summary contained in this notice. A copy of EPA's decision and its Responsiveness Summary has been sent to all commenters and interested parties.

The LPDES program description and agency agreements continue to be available to the public at the following internet address: http://WWW.DEQ.STATE.LA.US—select Office of Water Resources.

Copies of the final program documents for the LPDES program are also available to the public during normal business hours, Monday through Friday, excluding holidays, at:

EPA Region 6, 12th Floor Library, 1446 Ross Avenue Dallas, Texas 75202, (214) 665–7513

LDEQ Headquarters, 7290 Bluebonnet, Baton Rouge, LA 70884–2215, (504) 765–2740

LDEQ Acadiana Regional Office, 100 Asma Blvd., Suite 151, Lafayette, LA 70508, (318) 262–5584

LDEQ Bayou Lafourche Regional Office, 104 Lococo Drive, Raceland, LA 70394, (504) 532–6206

LDEQ Capitol Regional Office, 11720 Airline Highway, Baton Rouge, LA 70817–1720, (504) 295–8583

LDEQ Kisatchie Central Regional Office, 402 Rainbow Drive, Bldg. 402, Pineville, LA 71360, (318) 487–5656

LDEQ Northeast Regional Office, 804 31st Street, Suite D, Monroe, LA 71211–4967, (318) 362–5439
LDEQ Northwest Regional Office, 1525 Fairfield, Room 11, Shreveport, LA 71101–4388, (318) 867–7476
LDEQ Southeast Regional Office, 3501 Chateau Boulevard-West Wing, Kenner, LA 70065, (504) 471–2800
LDEQ Southwest Regional Office, 3519 Patrick Street, Room 265A, Lake Charles, LA 70605, (318) 475–8644

The Regional Administrator has notified the State and notice of EPA's final decision has been published in the same newspapers in which the public notice of the proposed program appeared (listed above). As of August 27, 1996, EPA suspended issuance of NPDES permits in Louisiana (except for those permits which EPA retained jurisdiction as specified below). The State's LPDES program will implement federal law and operate in lieu of the EPA-administered NPDES program. EPA does, however, retain the right to object to LPDES permits proposed by LDEQ, and if the objections are not resolved, to issue the permit itself.

Scope of the LPDES Program and Clarifications on EPA Authority and Oversight

All NPDES files under the jurisdiction of LDEQ will be transferred from EPA to the state within 30 days. NPDES permits under LDEQ's jurisdiction will become state administered LPDES permits and will be reissued (upon expiration) or modified by the state agency. All permits brought to public notice by LDEQ after this authorization and under its LPDES authority will be LPDES permits providing NPDES coverage to those dischargers. [NOTE: Until otherwise notified by the State, all Notices of Intent and Termination (NOIs and NOTs) for coverage under EPA's general permits for storm water (only) should continue to be sent to the EPA NOI processing center (4203), 401 M Street, S.W., Washington, D.C. 20460. Discharge Monitoring Reports (DMRs) under those general permits should be sent to LDEQ.]

A. EPA Authority

Louisiana's LPDES program generally covers all discharges of pollutants subject to the federal NPDES program, with some exceptions and clarifications. EPA will retain the permitting authority for the following discharges in the State of Louisiana:

1. Municipal Sewage Sludge: LDEQ has not elected to not seek authorization for the municipal sewage sludge regulatory program at this time. EPA will thus continue to regulate municipal sewage sludge disposal in Louisiana in accordance with Section 405 of the Act and 40 CFR Part 503.

Since EPA desires all treatment works treating domestic sewage (TWTDS) in the State of Louisiana to be covered under a permit, EPA is currently preparing a draft general permit to cover eligible TWTDS. TWDTS includes facilities generating sewage sludge or otherwise effectively controlling the quality of sewage sludge or the manner in which it is disposed.

Enforcement for sludge management and reporting authority as defined by 40 CFR Part 503 will be retained by EPA Region 6 until such time as the State of Louisiana is authorized to run the sludge disposal program.

2. Jurisdiction over Discharges in Indian Country: As noted in EPA/LDEQ MOA (§ II.C.2.b, at page 7), LDEQ does not seek to administer the LPDES program in Indian Country. EPA will thus issue NPDES permits for discharges in Indian Country within the geographic boundaries of Louisiana, i.e., the reservations of the Chitimacha, Coushatta, and Tunica-Biloxi tribes. Until they are deleted by regulatory amendment, the references to ''an Indian tribe or an authorized Indian tribal organization'' in the definition of ''municipality'' and to ''an Indian tribe'' in the definition of ''state'' at L.A.C. 33:IX.2313 should thus be regarded as mere surplusage. They do not suggest that LDEQ will seek to regulate discharges from POTWs or other facilities on Indian lands in Louisiana. The LDEQ will work with EPA Region 6 to identify any potential discrepancies having to do with Indian Lands or Tribes, and will address them in the first revision to the LPDES regulations.

3. Discharges to U.S. Waters Beyond the Territorial Seas: EPA retains the permanent NPDES authority for discharges seaward of the 3 mile territorial seas limit and within the jurisdiction of the United States. Many of these discharges are from oil and gas exploration and production operations in the Outer Continental Shelf area of the Western Portion of the Gulf of Mexico, currently regulated under NPDES general permit No. GMG290000.

4. Discharges from Cleanup of Petroleum UST Systems: In the July 22, 1996, Federal Register, EPA proposed a general NPDES permit (LAG280000) authorizing discharges resulting from the implemention of Corrective Action Plans for the cleanup of Petroleum UST Systems in Louisiana. A Petroleum UST System is an undergound storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oil, etc. In accordance with the EPA/LDEQ MOA, EPA will retain authority to issue the final decision on this permit. Once the permit is final it will be transfered to the State for administration.

5. Status of applications, proposed permits, contested permit actions, and unresolved EPA enforcement actions: Except for the files listed below, all pending NPDES permit applications and issued NPDES permits under jurisdiction of LDEQ will be transferred to Louisiana within 30 days of the approval of the LPDES program. In accordance with the signed Memorandum of Agreement, EPA will retain temporary authority for all proposed permits until final issuance; permits contested under evidentiary hearing proceedings until those are resolved; and compliance files and authority for all open enforcement orders until such time as LDEQ has issued parallel orders or EPA has resolved the enforcement action.

Proposed Permits: EPA shall retain permit decision-making authority over permits which are currently public notice until they are final issued and effective. Once these permits are effective, they will be transferred to LDEQ unless contested. The permit files will be transferred to the state as the permits become effective.

Contested Permit Actions: EPA will retain permits for which variances or evidentiary hearings have been requested until such time as they are resolved. As each request is resolved, EPA will notify LDEQ and transfer jurisdiction of the permit to LDEQ. EPA shall also maintain enforcement lead over discharge permits with a pending evidentiary hearing request; these will be transferred to the state upon resolution of the issue for which the hearing was requested.

Enforcement Actions: EPA Region 6 will retain primary enforcement authority after the date the LPDES program is approved for a number of facilities which have unresolved compliance issues. These permittees will continue to report to EPA on all compliance issues including regular submittals of Discharge Monitoring Reports for their NPDES permits. Authority for these permits can subsequently be transferred to the State one of two ways: 1) The outstanding compliance issue can be resolved and the permittee has returned to compliance, or, 2) the State can issue a parallel administrative action to address the outstanding compliance issue. As a practical consideration, enforcement authority for municipal or parish

facilities that are operated by the same governmental entity will not be transferred to the State as long as one of its major facilities has an unresolved compliance issue. NOTE: EPA in coordination with LDEQ will inform *all* permittees in writing of their reporting responsibilities. Permittees should continue to report as specified by both their State and Federal permits until otherwise notified.

B. Penalty Policy Status and Regulation Corrections

In a letter dated March 29, 1996, J. Dale Givens, LDEQ Secretary, committed to developing and promulgating a penalty policy by April 1, 1997. The State is in the process of drafting the policy. EPA will work with the State in an effort to assure that policy is consistent with Federal policies.

The definition of ''Waters of the State'' is not included in the definition section of the LPDES regulations. The definition of ''Waters of the State'' for LPDES purposes is in La. R.S. 30:2073(7). This definition will be added to the LPDES regulations at the first opportunity.

C. Consultation Agreements Under the Endangered Species Act and the National Historic Preservation Act

1. Agreement with U.S. Fish and Wildlife Service: Consultation under Section 7 of the Endangered Species Act has been completed on EPA's approval of the LPDES program. An agreement has been reached between EPA Region 6 and the U.S. Fish and Wildlife Service (FWS) to provide EPA oversight of LPDES permit actions with respect to federally listed species. The conditions of the agreement signed by EPA and FWS are listed below:

a. EPA Region 6 will oversee activities conducted by the Louisiana Department of Environmental Quality to ensure that the conditions in the EPA/LDEQ Memorandum of Agreement are followed (particularly Sections III.E.1.b and III.E.1.d pertaining to provisions and agreements in the LDEQ/FWS Memorandum of Understanding).

b. U.S. Fish and Wildlife Service will work with LDEQ in the development of permits and provide comments on draft permits in accordance with LDEQ/FWS Memorandum of Understanding (hereby incorporated by reference).

c. When the FWS and LDEQ cannot agree on appropriate actions for the protection of listed or proposed species or critical habitat associated with a LPDES permit, and EPA is notified of FWS concerns by LDEQ, EPA will determine whether to make a formal objection to the issuance of the permit (in accordance with 40 CFR 123.44). EPA will formally object to the issuance of the draft permit if FWS determines that the action is likely to jeopardize the continued existence of a listed or proposed species or destroy designated critical habitat. Procedures for an EPA formal objection are outlined in the EPA/LDEQ MOA.

d. EPA will work with LDEQ and FWS to resolve issues of concern. Should EPA be able to facilitate a resolution of the issues that prompted the formal objection, the objection may be withdrawn, and LDEQ may proceed with the issuance of the permit.

e. If EPA determines to issue the permit, they will consult with FWS, prior to permit issuance, when it is determined that the permit action may have an effect on a federally listed species or may jeopardize the continued existence of a proposed species or adversely modify critical habitat, in accordance with Section 7 of the Endangered Species Act (regulations found at 50 CFR Part 402).

The U.S. Fish and Wildlife Service and U.S. EPA Region 6 agree that the provisions in the LDEQ/FWS MOU and the above-listed procedures describing EPA's oversight activities of the Louisiana program are appropriate mechanisms for the protection of federally listed or proposed species for LDEQ issued LPDES permits; and thus the authorization of the Louisiana State permitting program under NPDES is not likely to adversely affect listed species or adversely modify critical habitat, nor is likely to jeopardize the continued existence of a proposed species in the state of Louisiana. Signed by William B. Hathaway, Director, Water Quality Protection Division, U.S. EPA Region 6 [date: June 12, 1996]; and David Fruge, Field Supervisor, Louisiana Field Office, U.S. Fish and Wildlife Service [date: June 20, 1996].

2. Agreement with National Marine Fisheries Service: Consultation under Section 7 of the Endangered Species Act has been completed on EPA's approval of the LPDES program (letters dated August 16, 1996 and August 19, 1996). Informal consultation produced agreement between EPA Region 6 and the National Marine Fisheries Service (NMFS) that transfer of authority for permitting point source discharges to LDEQ would not be likely to adversely affect federally listed marine species. The conditions agreed upon by EPA and NMFS are listed below:

a. EPA Region 6 will oversee activities conducted by the Louisiana Department of Environmental Quality (LDEQ) to ensure that the conditions in the EPA/LDEQ Memorandum of Agreement are followed.

b. Annually, the National Marine Fisheries Service (NMFS) will provide LDEQ with a list of federally-listed threatened, endangered, and proposed species under NMFS jurisdiction, as well as proposed critical habitat, that occur in Louisiana and that are dependent upon marine habitat for all or part of their existence. NMFS will provide comments on draft permits in accordance with LDEQ/NMFS Memorandum of Understanding.

c. When the Service and LDEQ cannot agree on appropriate actions for the protection of listed or proposed species associated with a LPDES permit, and EPA is notified of NMFS concerns by LDEQ, EPA will work with NMFS and LDEQ to resolve the issue, and will determine whether to make a formal objection to the issuance of the permit (in accordance with 40 CFR 123.44). Procedures for an EPA formal objection are outlined in the EPA/LDEQ MOA.

d. EPA will work with LDEQ and NMFS to resolve issues of concern. Should EPA be able to facilitate a resolution of the issues that prompted a formal objection, the objection may be withdrawn, and LDEQ may proceed with the issuance of the permit.

e. If EPA determines to issue the permit, it will consult with NMFS when it is determined that the permit action is likely to adversely affect a federally listed species or may jeopardize the continued existence of a proposed species or adversely modify critical habitat, in accordance with Section 7 of the Endangered Species Act.

f. Where NMFS or LDEQ believes a State-drafted permit is likely to adversely affect a federally listed species or designated critical habitat, but EPA determines a formal objection to the permit is not justified, EPA will work with LDEQ and NMFS to try to find a resolution to the expressed concerns.

The National Marine Fisheries Service and U.S. EPA Region 6 agree that the above-listed procedures are appropriate mechanisms for the protection of federally listed or proposed species for LDEQ issued LPDES permits; and that the authorization of the Louisiana State permitting program under NPDES, will not be likely to adversely affect listed species or adversely modify critical habitat, nor is likely to jeopardize the continued existence of a proposed species. [Letter signed by William B. Hathaway, Director, Water Quality Protection Division, U.S. EPA Region 6 [date: August 16, 1996]; and concurrence letter from Dr. Andrew Kemmerer, Director, Southeast Region,

National Marine Fisheries Service dated: August 17, 1996.]

3. Agreement with State Historic Preservation Officer: Consultation under Section 106 of the National Historic Preservation Act has been completed on EPA's approval of the LPDES program. An agreement has been reached between EPA Region 6 and the Louisiana State Historic Preservation Officer (SHPO) to provide EPA oversight of LPDES permit actions with respect to properties listed or eligible for listing in the National Register of Historic Places. The conditions of the agreement signed by EPA and the SHPO are listed below:

a. EPA Region 6 will oversee activities conducted by the Louisiana Department of Environmental Quality to ensure that the conditions in the EPA/LDEQ Memorandum of Agreement are followed.

b. The Louisiana State Historic Preservation Officer will work with LDEQ in the development of permits and provide comments on draft permits in accordance with LDEQ/LSHPO Memorandum of Understanding.

c. When LSHPO and LDEQ cannot agree on appropriate actions for the protection of historic properties associated with a LPDES permit, and EPA is notified of LSHPO's concerns by LDEQ, EPA will determine whether to make a formal objection to the issuance of the permit (in accordance with 40 CFR 123.44). Procedures for an EPA formal objection are outlined in the EPA/LDEQ MOA.

d. EPA will work with LDEQ and the LSHPO to resolve issues of concern. Should EPA be able to facilitate a resolution of the issues that prompted the formal objection, the objection may be withdrawn, and LDEQ may proceed with the issuance of the permit.

e. If EPA determines to issue the permit, they will consult with the LSHPO and the Advisory Council on Historic Preservation (ACHP) when it is determined that a permit action will have an effect on a historic property listed, or eligible for listing in the National Register of Historic Places, in accordance with Section 106 of the National Historic Preservation Act.

The Louisiana State Historic Preservation Officer and U.S. EPA Region 6 agree that the above-listed procedures are appropriate mechanisms for the protection of historic properties listed or eligible for listing on the National Register of Historic Places for LDEQ issued LPDES permits; and that the authorization of the Louisiana State permitting program under NPDES, will not effect the above mentioned properties. Signed by William B. Hathaway, Director, Water Quality Protection Division, U.S. EPA Region 6 [date: March 20, 1996]; and Gerri Hobdy, Louisiana State Historic Preservation Officer, Office of Cultural Development, Louisiana Department of Culture, Recreation and Tourism [date: March 25, 1996].

Responsiveness Summary

The following is a summary of the issues raised by persons commenting on EPA's proposed approval and EPA's response to those issues.

1. *Comment Summary:* Some commenters favoring approval of the LPDES program cited *Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976), claiming EPA is required to approve the LPDES program as long as it meets CWA's minimum requirements. Others, who oppose such approval, suggest EPA has far more discretion in its program approval decisions and that it should disapprove the LPDES program.

Response: In *Union Electric*, the Supreme Court essentially held that EPA had limited discretion to disapprove a State Implementation Plan under Section 110 of the Clean Air Act. The case has no direct application to EPA actions under the Clean Water Act, but might be instructive in determining EPA obligations in reviewing state water quality standards. Nevertheless, EPA ''shall approve'' state NPDES programs that conform to the requirements of CWA and 40 CFR Part 123. In implementing this requirement, EPA does not merely look to the state program's theoretical or ''paper'' conformity; it also examines the state's capacity to implement a conforming program. EPA Region 6 has examined the resources LDEQ will devote to the LPDES program and supports (via the CWA grant process) the development of LDEQ expertise and skills necessary for a successful program. In the judgment of EPA Region 6, LDEQ is now capable of undertaking primary responsibility for administration of the NPDES program in Louisiana.

2. *Comment Summary:* Some commenters expressed support for program authorization, pointing out LDEQ staff was ''knowledgeable and experienced.'' They note that LDEQ has historically issued permits for minor discharges in more timely fashion than EPA and suggest LDEQ may thus devote more staff resources to permitting tasks than EPA. Others, however, claimed the Program Description lacked sufficient information on program costs and sources of funding. They also claimed LDEQ will necessarily be understaffed because the Program Description (Section 6, p. 12) states that ''workload analysis of the anticipated number of enforcement actions the LDEQ will prepare over the next two years is difficult to project.''

Response: Chapters 4, 6, and Appendix H of the Program Description provide detailed information on LDEQ's organization, positions, projected costs, and sources of funding, including a projection of enforcement resource needs. EPA Region 6 agrees with LDEQ that it is ''difficult'' to project enforcement resource needs for the next two years, but finds the State's estimate of 600 enforcement actions consuming 5280 workdays reasonable. Based on its review of the Program Description, Region 6 found the LPDES program adequately staffed and funded.

3. *Comment Summary:* Commenters provided anecdotal information on LDEQ's implementation of EPA-approved programs under the Clean Air Act (CAA) and Resource Conservation and Recovery Act (RCRA), and state Louisiana Water Discharge Permit System (LWDPS) program in support of LPDES program approval. Some contended that the State's adoption of new regulations consistent with EPA's NPDES regulations showed LDEQ understood the program and was capable of administering it. Other commenters providing anecdotal information on LDEQ's implementation of RCRA and CAA programs contended it showed the State was incapable or unwilling to administer an effective NPDES program. Some pointed to the number of Louisiana's waters which have not attained applicable water quality standards. They claimed LDEQ is likely to render decisions affecting water quality on the basis of political considerations and expressed concern that federal ''monitoring'' of the LDEQ program would be insufficient to avoid attendant declines in water quality. They pointed out that water quality is important to the State's fishing, recreation, and tourism industries.

Response: Whether or not anecdotal examples show Louisiana's implementation of the CAA and RCRA programs to be exemplary or deficient, it is not an issue which EPA can weigh heavily in its decision to approve or disapprove a state program. EPA can not appropriately withhold approval of a state NPDES program to coerce improvements to a state RCRA program, nor can EPA appropriately approve a state NPDES program just because it was satisfied with that state's RCRA program. Each state program must be approved or disapproved on its own merit and oversight decisions on each program must stand on their own. EPA does not believe past administration of a state program accurately indicates

how it will administer the NPDES program. As EPA has previously stated, ''the Agency does not intend to disapprove all State programs which have had problems in the past. It views the decision on whether or not to approve as being forward looking; the Agency is primarily concerned that the program be effective in the future.'' 98 Fed. Reg. 33290, 33377 (May 19, 1980). Because the State's new LPDES regulations replicate the decisional criteria of EPA's own NPDES regulations, LPDES permits will be as least as stringent as NPDES permits issued by EPA, and therefore, will provide equivalent protection of water quality. LDEQ's permitting process will be subject to federal oversight and public participation.

4. *Comment Summary:* Some commenters argued EPA should not approve the LPDES program unless and until LDEQ adopts a penalty policy similar to EPA's. Citing a decline in State-imposed penalties since 1992, they claimed that LDEQ abuses its enforcement discretion in assessing penalties and that the lack of a written State penalty policy leaves EPA without a necessary oversight tool. Others suggested penalties are a poor indicator of program effectiveness, claiming LDEQ's enforcement program appropriately emphasizes compliance instead of penalties.

Response: EPA encourages, but does not require, that states implementing the NPDES program adopt penalty policies equivalent to EPA's. In a letter dated March 29, 1996, from LDEQ Secretary Dale Givens, the State has committed to developing and promulgating a penalty policy by April 1, 1997. EPA will work with the State in an effort to assure that policy is consistent with federal policies.

5. Comment Summary: Some commenters requested that EPA delay approval of the LPDES program until an ongoing FBI investigation into influence peddling by State officials is completed.

Response: If the ongoing FBI investigation reveals criminal wrongdoing by anyone currently associated with the LPDES program, it seems likely that association will end. Further discussion of an ongoing law enforcement investigation would be inappropriate here.

6. Comment Summary: Some commenters opposed approval on the grounds that Louisiana law does not provide minimum (''not less than'') penalties for program violations. Some also expressed concern that the Louisiana Legislature might pass an environmental audit statute inhibiting LDEQ's ability to penalize violators.

Response: Neither CWA § 402 nor 40 CFR Part 123 require that state law mandate minimum penalties to obtain NPDES approval. The regulation instead requires that states possess authority to assess civil penalties of at least $5,000 per day, per violation and criminal penalties of at least $10,000 per day, per violation. Louisiana law authorizes assessment of both civil and criminal penalties exceeding these amounts. *See* La. R.S. 30:2025. Post-approval changes to Louisiana law, if any, will be subject to review by EPA (in accordance with 40 CFR § 123.62). If any changes render the LPDES program noncompliant with federal requirements, EPA may withdraw program approval in accordance with 40 CFR § 123.63.

7. Comment Summary: Some commenters contended LDEQ must have the Permits Compliance System (PCS) in place before EPA approves the LPDES program.

Response: 40 CFR Part 123.26(e)(1) requires states to maintain a ''comprehensive inventory of all sources covered by NPDES permits and a schedule of reports required to be submitted by permittees to the State agency.'' EPA strongly encourages states to use the PCS system for compliance with this requirement. LDEQ is currently connected to PCS and EPA is actively training LDEQ staff in its use.

8. Comment Summary: One commenter suggested EPA should not approve the LPDES program until it revises its own system of determining significant noncompliance (SNC) and penalty assessment. The commenter apparently believes EPA's present system precludes assessment of penalties for more than one day's violation of a daily maximum limitation.

Response: Nothing in its current system precludes EPA from seeking penalties for each day a daily maximum effluent limitation is exceeded. As pointed out in a recent General Accounting Office report, however, EPA's existing compliance tracking system does not take such violations into proper account in targeting enforcement actions against facilities in SNC and the Agency is thus expanding its systemic definition of SNC to better address such violations. That EPA is updating and improving its own enforcement system, however, has no bearing on whether or not it should approve the LPDES program. The MOA between EPA and LDEQ commits LDEQ to address SNC in a timely manner. If EPA's definition of SNC is expanded, there will simply be more facilities in SNC for EPA and LDEQ to address.

9. Comment Summary: Some commenters claimed EPA has inappropriately waived its right to oversight review of many of the State's permitting actions.

Response: CWA § 402(e) authorizes EPA to waive oversight review of state permit actions on categories of point sources, thus allowing the Agency to concentrate its oversight resources on actions which may have the greatest effect on water quality or in which there is a paramount federal interest. These ''must review'' categories of discharges are generally described at 40 CFR § 123. 24(d). In the MOA with LDEQ, EPA has retained its oversight of those categories and added to them, requiring that LDEQ submit proposals to permit discharges from sanitary sewer overflows, discharges from municipal separate storm sewers, discharges which may adversely affect endangered or threatened species, and discharges which may adversely affect historic sites. In addition, EPA has retained its right to add to the classes of permitting actions it will review and to require review, on a case-by-case basis, of permits for which it has waived review.

10. Comment Summary: Some commenters contended EPA should retain jurisdiction over all permits for which applications are currently pending.

Response: Pursuant to CWA § 402(c) and 40 CFR § 124.15(a), EPA may not unilaterally retain jurisidiction over NPDES permits for which it has not yet issued a final permit decision in accordance with 40 CFR § 124.15. *See generally Central Hudson Gas & Electric Corp.* v. *U.S. EPA*, 587 F.2d 549 (2d Cir. 1978). To render programmatic transition more efficient and less confusing for permit applicants and the public, EPA and LDEQ have agreed that EPA will retain jurisdiction over permitting actions it has already proposed. The far broader jurisdictional retention suggested by the commenters would extend the transition period indefinitely and thus indefinitely delay the benefits of program authorization. Therefore, all permit applications which were submitted to EPA (except for those designated in Scope of the LPDES program part A.5. above) will be transferred within 30 days to the State for permitting action.

11. Comment Summary: Some commenters claimed that EPA should not approve LDEQ's use of general permits or should restrict it to instances in which EPA has already issued general permits. They expressed concern that general permits allow permit coverage for discharges without public notice or review. They also

claimed such general permits may not include monitoring or reporting requirements, depriving the public of access to effluent data. Other commenters supported LDEQ's use of general permits as a streamlining mechanism for both LDEQ and dischargers.

Response: EPA agrees that regulation of large numbers of similar discharges, for which similar effluent limitations are appropriate, is often more efficient with general permits. *See generally* 40 CFR § 122.28. Although LDEQ and EPA procedures for developing general permits are different, LDEQ's procedures provide for equivalent public notice and review. When it proposes general permits, LDEQ provides notice to interested parties on mailing lists and in newspapers of general circulation throughout the State, soliciting comments on those proposals. Copies of draft general permits and fact sheets are available for public review in the same manner as for individual permits. Louisiana Administrative Code (L.A.C.) 33:IX.2369 requires that all LPDES permits, including general permits, impose monitoring and reporting requirements as needed to assure compliance with permit conditions. Discharge monitoring reports submitted to LDEQ by general permittees will be maintained in individual facility files which are available for public review.

12. Comment Summary: Some commenters claim LDEQ has authority to grant broader variances than allowed by 40 CFR § 124.62.

Response: LDEQ's authority to grant variances to LPDES program requirements is not broader than EPA's corresponding NPDES authority. The Louisiana Attorney General (AG) has explained in the AG's Statement that the words ''as appropriate'' in the law which gives LDEQ the authority to grant variances [La. R.S. 30:2074(B)(4)] does not allow for variances which would not be allowed by the CWA. This statement by the AG is consistent with Louisiana regulation L.A.C. 33.IX.2317(A) which prohibits LDEQ from granting variances ''which under federal law may only be granted by EPA''; and L.A.C. 33.IX.2317(A) which prohibits issuance of permits ''when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA * * *'' This would also be a violation of the EPA/LDEQ MOA.

13. Comment Summary: Some commenters expressed concern that LPDES program approval would eliminate environmental protection afforded by the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). They requested that EPA not approve the LPDES program until the State adopts equivalent statutes. Others claimed the LPDES program would provide equivalent protection as a result of the Louisiana Supreme Court's decision in *Save Ourselves, Inc.* v. *Louisiana* Environmental Control Commission, 452 So.2d 1152 (La. 1984) and the EPA/LDEQ MOA.

Response: Because state permit actions under EPA-approved programs are not federal actions, neither NEPA nor ESA apply to them. *See, e.g., Chesapeake Bay Foundation* v. *United States,* 453 F.Supp. 122 (E.D. Va. 1978). Nor does CWA or 40 C.F.R. Part 123 require that states adopt equivalent statutes to obtain NPDES program approval. EPA's approval of state NPDES programs is itself moreover excluded from NEPA requirements by CWA § 511(c)(1). Although it is thus immaterial to its program approval decision, EPA Region 6 hopes the *Save Ourselves* decision provides a degree of environmental protection comparable to NEPA's, but believes it may be too early to tell.

In *Save Ourselves,* the Louisiana Supreme Court reversed a hazardous waste permit decision of the Louisiana Environmental Control Commission (an LDEQ predecessor), finding the Commission had failed to explain or document its decisions on issues raised by public commenters. The Court's decision was based in part on a public trust doctrine established by the Natural Resources Article of the Louisiana Constitution. At 452 So.2d 1156–57, the Court stated:

> The Constitutional standard requires environmental protection ''insofar as possible and consistent with the health, safety, and welfare of the people.'' La. Const. art. IX § 1. This is a rule of reasonableness which requires an agency or official, before granting approval of a proposed action affecting the environment, to determine that adverse impacts have been minimized or avoided as much as possible consistently with the public welfare. Thus, the constitution does not establish environmental protection as an exclusive goal, but requires a balancing process in which environmental costs and benefits must be given full and careful consideration along with economic, social and other factors.

Because the Court's decision was also grounded in provisions of Louisiana statutory law, some may interpret its public trust doctrine discussion as nonprecedential *dictum.* Others may read the *Save Ourselves* case as authorizing or requiring LDEQ to consider a broader range of environmental issues in permit actions than are specifically encompassed by its permit regulations. Under the latter reading, the decision's effect on the development of Louisiana environmental law may be considered comparable to the effect of *Calvert Cliff's Coordinating Committee* v. *U.S. Atomic Energy Commission,* 449 F.2d 1109 (D.C. Cir. 1971) on development of federal NEPA jurisprudence. Recent Louisiana judicial decisions have referenced the public trust doctrine of *Save Ourselves,* but none have yet provided clear direction on LDEQ's authority to consider or act in response to environmental issues not otherwise addressed by its regulations. *See, e.g., In the matter of Cytec Industries, Inc.,* 94 1693 (La. App. 1st Cir. 02/23/96), 672 So.2d 179.

Regardless of the scope of LDEQ authority, however, it appears the public trust doctrine imposes no specific ''action forcing'' mechanism equivalent to NEPA's environmental impact statement requirement and thus does not assure LDEQ will ferret out unforeseen issues not otherwise addressed by requirements specific to its various programs. To obtain LDEQ consideration of specific environmental problems and potential alternatives in LPDES permit actions, interested parties would thus be well advised to raise their concerns and suggest specific alternatives in comments submitted for LDEQ's administrative record in those actions.

EPA's approval of the LPDES program should not diminish the federal protection ESA affords threatened and endangered species. Because Louisiana law does not specifically require LDEQ to provide the same protection, EPA and LDEQ have developed procedures, in consultation with the U.S. Fish & Wildlife Service and National Marine Fisheries Service, to assure program approval is unlikely to adversely affect listed species or critical habitat. *See* Consultation Agreements Nos. 1 and 2, Section C, Scope of the LPDES Program, above. Region 6 anticipates that LDEQ and the appropriate Service(s) will usually avoid such harm without the need for EPA intervention, but will not hesitate to use its oversight authority to provide protection due under ESA.

14. Comment Summary: Some commenters urge EPA not to approve the LPDES program because the protection now provided by the National Historic Preservation Act (NHPA) to historic sites would be altered. These commenters claimed the procedures outlined in the EPA/LDEQ MOA and associated consultation agreements are insufficient protection for historic properties in Louisiana. These commenters additionally express

the opinion that EPA is responsible for making determinations of ''affect'' in consultation with the State Historic Preservation Officer (SHPO) on all permits issued by the authorized program (citing the 1992 Congressional redefinition of ''undertaking''). They viewed the MOA provisions on consultations between LDEQ, the SHPO, and EPA Region 6 as an unauthorized attempt to evade the procedural requirements of the consultation regulations under Section 106 of the NHPA.

Response: EPA Region 6 agrees that the 1992 amendments to the NHPA revised the statutory definition of ''undertaking'' for purposes of the section 106 consultation process. However, the Advisory Council on Historic Preservation has not yet amended its implementing regulations to interpret the effect of that statutory change. In consultation with the SHPO on LPDES program approval, the Region and LDEQ have thus developed procedures for protecting historic properties, as documented in agreements among EPA Region 6, LDEQ, and the SHPO. Under those procedures, the Region and SHPO agree that LPDES program approval will have no effect on historic properties. When the Advisory Council promulgates regulations implementing the 1992 NHPA amendment, it may be necessary to review the procedures/agreements and possibly amend them.

In view of the agreements among Region 6, LDEQ, and the SHPO, Region 6 does not agree with the commenters' suggestion that EPA must itself consult each time LDEQ proposes action on an LPDES permit application. Even as federal NPDES permit actions, many of those proposals (e.g., most permit renewals) would have no potential adverse effect on historic properties; and LDEQ may tailor others to avoid such potential effects after coordination with the SHPO under the outlined procedures. If LDEQ, the SHPO, or the Advisory Council requests its assistance to resolve issues concerning adverse effects to such properties, EPA Region 6 will consult and, when appropriate, use its program oversight authority to resolve potential adverse effects to historic properties.

15. Comment Summary: Some commenters opposed approval of the LPDES program on ''environmental justice'' grounds, contending that LDEQ may issue permits to facilities in economically depressed areas or areas primarily populated by minorities, while denying permits or requiring more stringent limitations in more affluent neighborhoods. They request that EPA Region 6 withhold approval of the LPDES program until an ongoing investigation by EPA's Office of Civil Rights is completed.

Response: EPA is not at this time investigating any civil rights violations by LDEQ. EPA headquarters is reviewing a complaint to determine if that complaint meets the criteria for an investigation. Both EPA and LDEQ are firmly committed to environmental justice and will work together to address it in permitting actions. Current EPA regulations provide little room for consideration of such factors in NPDES permitting (except in EPA's permitting actions involving ''new sources'' to which NEPA applies). Possibly, the Louisiana public trust doctrine (see response number 13) provides LDEQ greater ability to respond to environmental justice concerns than EPA possesses.

16. Comment Summary: Commenters both supporting and opposing program approval encouraged EPA to review LDEQ's new rules for protecting confidential business information for conformity with federal requirements. Some expressed concern the rules might inhibit citizen access to information necessary to effective public participation in the LPDES program.

Response: Like CWA § 308(b), La. R.S. 30:2074 (D) provides trade secrecy protection for confidential business information submitted to LDEQ, but contains an ''effluent data'' exclusion for information relating to discharges. Both federal and Louisiana statutes thus strike a balance between protection of competitive business interests and of the public's right to participate in important governmental decisions of public effect. LDEQ's new rules [L.A.C. 33:I.Chapter 5], are functionally equivalent to EPA's [40 CFR Part 2, Subpart B], as they both rely on similar procedures and substantive elements for evaluating business confidentiality claims. LDEQ's regulations do not define ''effluent data,'' but there is little reason to believe LDEQ and EPA would reach different decisions on public access to information given the common purpose of the federal and State statutory exclusions, i.e., promoting public participation in permitting and enforcement actions. It is more likely EPA's regulatory interpretation [at 40 CFR § 2.302(a)(2)] would be accorded persuasive weight in State confidentiality proceedings. Louisiana's regulations also provide confidential treatment to documents in investigatory files if necessary to ''prevent impairment of an ongoing investigation or prejudice to the final decision regarding a violation.'' L.A.C. 33:I.501(1). This regulation appears comparable to 5 U.S.C. § 552(b)(7)(A) and 40 CFR § 2.118(a)(7)(i)(A), allowing LDEQ to avoid disclosure of sensitive information, e.g., privileged predecisional staff recommendations or evaluations, to the targets of potential or proposed enforcement actions. It may not, consistent with the intent underlying La. R.S. 30:2074(D), be applied to the objective effluent data necessary to establish a violation in enforcement proceedings. Although the public may have to obtain independent analysis of such data (instead of relying on written LDEQ evaluations) to effectively participate in enforcement proceedings, that burden is consistent with EPA's own regulations and practices.

17. Comment Summary: Some commenters opposed program approval on the basis of claims that LDEQ copying charges unduly inhibit access to public information needed for effective public participation in the LPDES program. They claimed the State should provide copies of public records free of charge, consistent with EPA practices. Others claimed LDEQ does not respond to requests for public information.

Response: Although the federal Freedom of Information Act and EPA regulations allow it to provide document copies at reduced or no charge to public interest requestors, neither CWA nor EPA's regulations impose such a requirement on states with approved NPDES programs. Unless state information access practices frustrate the mandate of CWA § 101(e) or conflict with controlling EPA regulations, they provide no reason for disapproval of a state program. Louisiana's practices are consistent with that mandate and with EPA's regulations. Consistent with 40 CFR § 124.10(d), for instance, LDEQ notices of proposed permitting actions provide the name, address, and phone number of the person from whom a copy of the draft permit, fact sheet or statement of basis, and application may be obtained. Charges LDEQ assesses reflect its cost for providing the requested documents and should not greatly inhibit public access. Even citizens unable to pay the indigent rate of 5 cents a page copy cost may freely examine such information at LDEQ offices during normal business hours, taking notes or rendering hand-written copies. Additionally, LDEQ no longer charges those who use personal copiers in such onsite examinations. Commenters claiming LDEQ has been nonresponsive to information requests provided no specific examples. EPA Region 6 notes that La. R.S. 44:35

provides for expedited judicial review of a Louisiana agency's failure to produce requested records and authorizes award of reasonable attorney's fees for prevailing parties.

18. Comment Summary: Some commenters contended EPA should disapprove the LPDES program for inconsistency with CWA § 402(b)(3), which requires that states provide opportunity for public hearing before permit issuance. The commenters pointed out that L.A.C. 33:IX.2419 requires that LDEQ provide a hearing only if it finds ''a significant degree of public interest'' in a permit action; and claim such a provision is insufficient for compliance with the statute's mandate.

Response: The statute requires only an ''opportunity'' for public hearing; it does not require that a hearing be convened merely because there is a single request. The minimum requirements for providing such opportunity are reflected by 40 CFR § 124.12(a) (i.e. when there is sufficient public interest or at the discretion of the Director). L.A.C. 33:IX.2419 is almost a verbatim copy of that federal regulation.

19. Comment Summary: Some commenters claimed the Program Description's explanation of the judicial review process on LDEQ permitting decisions was inadequate and misleading. They claimed an applicant's request for *de novo* review pursuant to La. R.S. 30:2024(A) would result in the Nineteenth Judicial District Court rendering final permit decisions independent of LDEQ. They also claimed this was unfair inasmuch as citizens adversely affected by permit actions were limited to seeking judicial review under La. R.S. 30:2024(C)(1) in which the review is normally limited to the administrative record.

Response: These commenters appear to confuse the standard of review with scope of review under La. R.S. 30:2024(C). As explained in the Program Description, controlling State jurisprudence limits the scope of judicial review under that provision to LDEQ's decision (or indecision) on whether to grant an adjudicatory hearing requested under LRS 30:2024(A); the merits of LDEQ's permit decisions are not subject to review in such proceedings. *See In the matter of Carline Tank Services, Inc.,* 623 So.2d 669 (La. App. 1st Cir. 1993). The *de novo* (i.e., new evidence) review standard presumably allows LDEQ to interpose reasons for denying a hearing which do not appear on the administrative record when, for instance, it has rendered no formal decision within the 30 days provided by the statute.

The commenters claim *Pardue* v. *Stevens,* 558 So.2d 1149 (La. App. 1st Cir. 1989) shows that Louisiana law allows a reviewing court to ''issue its own permits'' following *de novo* review. *Pardue* involved review of a Coastal Use Permit under La. R.S. 49:213.16(F), a statute which does not apply to the LPDES program. Indeed, Louisiana's legislature has specifically excluded the LPDES program from a similar State statutory provision which would otherwise allow judicial issuance of permits in ''show cause'' proceedings. *See* La. R.S. 49:962.1(D). It is difficult to imagine a clearer manifestation of legislative intent that the judiciary is not to ''issue'' LPDES permits.

Simply stated, the State court reviews LDEQ's decision to grant a hearing, not the conditions or requirements of the final permit under consideration. The only issue on which *de novo* review is allowed is whether LDEQ should have granted a permit applicant's request for adjudication. Following such review, the court will presumably either find no hearing was required or remand the matter for adjudication. ''Aggrieved parties,'' whether permit applicants or citizens with potentially affected aesthetic or recreational interests, may obtain judicial review of final decisions on LPDES permit terms only in accordance with La. R.S. 30:2024(C)(1), which provides for summary review in accordance with La. R.S. 49:964, i.e., on the administrative record. *See generally In the Matter of Recovery I, Inc.,* 635 So.2d 690 (La. App. 1st Cir. 1994); *In the matter of Carline Tank Services, supra.*

20. Comment Summary: Some commenters requested that EPA disapprove the State's program submission until the State enacts a statute providing for State court jurisdiction over citizen suits equivalent to federal district court jurisdiction under CWA § 505. These commenters were concerned that, under La. R.S. 30:2026, LDEQ could preempt State court jurisdiction over a citizen suit by issuing a compliance order and requested EPA ''reassurance'' that CWA § 505 would continue to apply in Louisiana.

Response: Neither CWA nor 40 CFR Part 123 requires that a state provide its courts with jurisdiction over citizen suits to obtain EPA approval of its NPDES program. La. R.S. 30:2026, however, provides such jurisdiction in Louisiana. That State statute is comparable to CWA § 505, but differs in several respects, one of which appears to be the basis for the comment. In contrast to corresponding CWA provisions, the Louisiana statute prohibits citizen suits if, within 30 days of notice, the alleged violator ''is * * * under any order issued * * * to enforce any provision of this Subtitle.'' La. R.S. 30:2026(B)(3)(a).

EPA approval of a State NPDES program does not divest the federal courts of jurisdiction over citizen suits under CWA § 505. Pursuant to CWA § 309(g)(6)(A)(ii), however, state proceedings ''comparable to'' EPA administrative penalty assessments preempt subsequent penalty actions, including actions under CWA § 505, for the same violations. EPA does not believe that non-punitive compliance orders issued by state agencies are comparable to EPA administrative penalty actions under CWA § 309(g). The federal courts, however, have reached differing conclusions on that issue. Compare *Citizens for a Better Environment* v. *Union Oil Co. of California,* 83 F.3d 1111 (9th Cir. 1996) *with North & South Rivers Watershed Ass'n* v. *Scituate,* 949 F.2d 552 (1st Cir. 1991).

21. Comment Summary: Some commenters submitted a petition raising concerns on alleged pollution from Hunt Correctional Center and the Louisiana Correctional Institute for Women. The petition urged public officials to bring these facilities into compliance.

Response: The petition raises no issues of direct relevance to EPA's program approval decision. EPA has recently received a notice of intent to file suit against these State correctional facilities from Sierra Club Legal Defense Fund. EPA is currently discussing the matter with LDEQ and the Louisiana Department of Corrections.

22. Comment Summary: Some commenters supporting LPDES program approval noted that it is both inconvenient and expensive to obtain permits for surface water discharges from two separate agencies. They claimed that program oversight is a more appropriate role for EPA and that EPA retains the right to withdraw the program if LDEQ does not implement it appropriately.

Response: ''It is the policy of Congress that the States * * * implement the permit programs under sections 402 and 404 of this [Clean Water] Act.'' CWA § 101(b). Today's program approval is also consistent with that policy and with the goal of preventing ''needless duplication of paperwork'' under CWA § 101(f).

Other Federal Statutes

A. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

B. Regulatory Flexibility Act

After review of the facts presented in this document, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this authorization will not have a significant impact on a substantial number of small entities. The approval of the Louisiana NPDES permit program merely transfers responsibilities for administration of the NPDES permit program from Federal to State government. This change will allow small entities more convenient access to the regulatory process.

I hereby authorize the LPDES program in accordance with 40 CFR part 123.

Dated: August 27, 1996.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 96–23067 Filed 9–10–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 96–1495]

FCC Establishes North American Numbering Council Advisory Committee, Announces Members and Sets Initial Meeting Date

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On September 5, 1996, the Commission released a public notice announcing the establishment of the North American Numbering Council (NANC) as a Federal Advisory Committee and announcing the members of the committee and the committee's first meeting on October 1, 1996. The intended effect of this action is to make the public aware of the NANC's establishment, members and first meeting.

FOR FURTHER INFORMATION CONTACT: Marian Gordon, Designated Federal Official of the North American Numbering Council, (202) 418–2337 or Mary DeLuca, Alternate Designated Federal Official of the North American Numbering Council, (202) 418–2334. The address for both is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, D.C. 20054. The fax number for both is: (202) 418–2345. The TTY number for both is: (202) 418–0484.

SUPPLEMENTARY INFORMATION:

Released: September 5, 1996.

The Federal Communications Commission (FCC) has established the North American Numbering Council (NANC or Council). The NANC is established under the provisions of the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988) (FACA).

The initial Council meeting will be held on Tuesday, October 1, 1996, at 9:30 A.M. EDT at the Federal Communications Commission, 1919 M Street, NW., Room 856, Washington, D.C. 20554.

On July 13, 1995, the Commission adopted a new model for administration of the North American Numbering Plan (NANP) and announced the establishment of the NANC. *See Administration of the North American Numbering Plan,* CC Docket No. 92–237; 60 FR 38737, July 28, 1995; Report and Order, 11 FCC Rcd 2588, 2591 (1995). The NANP is the basic numbering scheme for the telecommunications networks located in Anguilla, Antigua, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent, Turks & Caicos Islands, Trinidad & Tobago, and the United States (including Puerto Rico, the U.S. Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands). The new model is guided by several principles, including maintaining and fostering an integrated approach to number administration throughout portions of North America and providing a structure for number administration that is impartial and pro-competitive. The NANC will advise the Commission on numbering issues (such as number portability implementation), select and guide a neutral NANP Administrator, apply Commission policy to resolve issues arising in the administration of the NANP, and conduct initial dispute resolution. The NANP Administrator will process number resource applications and maintain administrative numbering databases. Operational details and additional activities of the NANP Administrator are to be determined by the NANC. The Commission, with other NANP member countries, will oversee the NANC. The establishment of this Council is necessary and in the public interest. In carrying out its responsibilities, the Council shall assure that NANP administration supports the following policy objectives: (1) That the NANP facilitates entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications service providers; (2) that the NANP does not unduly favor or disfavor any particular industry segment or group of consumers; (3) that the NANP gives due regard to state and local interests; (4) that the NANP does not unduly favor one technology over another; (5) that the NANP gives consumers easy access to the public switched telephone network; and (6) that the NANP ensure that the interests of all NANP member countries are addressed fairly and efficiently, fostering continued integration of the NANP across NANP member countries.

The FCC requested nominations for membership on the NANC. See Public Notice in CC Docket No. 92–237, DA 95–1721, 60 FR 42158 (August 15, 1995). The FCC considered all applications and nominations for membership filed in response to the Notice and selected members named in the list attached to this Public Notice. Because the Council includes representatives from every sector of the telecommunications industry, as well as members representing NANP member countries, the states, and consumers, the Council's membership will be impartial and well balanced.

This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. The public may submit written statements to the Council. The statements must be submitted two business days before the meeting in which the commenter desires his/her comments to be distributed. In addition, statements at the meeting by parties or entities not represented on the Council will be permitted to the extent time permits. Statements will be limited to five minutes in length by any one party or entity, and requests to make such statements to the Council in person must be received two business days before the meeting in which the commenter desires to be heard. Requests for comment opportunity, and written comments, should be sent to Marian Gordon or Mary DeLuca, at the address