

**FEDERAL, STATE, AND LOCAL  
ENVIRONMENTAL REGULATORY AND REVIEW RESPONSIBILITIES**  
within the  
**PONTCHARTRAIN BASIN, LOUISIANA**

Prepared for:

Lake Pontchartrain Basin Foundation  
Post Office Box 6965  
Metairie, Louisiana 70009-6965

as part of:

The Pontchartrain Basin Comprehensive Management Project

By:

Rod E. Emmer, Ph.D. and Linda Stone Calvert  
University of New Orleans  
College of Urban and Public Affairs  
New Orleans, Louisiana 70148

March 1992  
in partial fulfillment of  
EPA Grant  
No. X006710-01-0



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## PREFACE

The Lake Pontchartrain Basin Foundation (LPBF), in a cooperative effort with the U.S. Environmental Protection Agency, has been granted a \$500,000 congressional appropriation which covers 95% of the costs of a project to develop and implement a Comprehensive Management Plan (CMP) for the restoration and cleanup of the Pontchartrain Basin.

Within the Pontchartrain Basin (frontispiece) there are at least 98 governmental entities, at six levels of government (federal, state, regional, parish, municipal, and special districts), working to protect the basin's renewable resources and prevent degradation of the physical and biological systems, while at the same time encouraging economic growth and development. The efforts put forth by these entities are commendable. However, there is no accepted universal means of coordinating the governmental programs.

Environmental degradation in the basin must be addressed through a systematic methodology incorporating the legal responsibilities of each governmental entity. An effective plan for restoration and enhancement of renewable resources, protection of public health and safety, and economic growth within a basin should incorporate institutional and structural components in a coordinated fashion. To have a realistic chance of implementation in a timely manner, the CMP must take all components into consideration from the initiation of the program.

This report delineates the legal mandates of those federal, state and local agencies with regulatory authority or oversight responsibility in the Pontchartrain Basin. It provides a background from which to coordinate agency programs, and is useful for clarifying those areas in which regulations are

lacking or enforcement is not occurring. As such, it is an important starting point in the creation of a CMP.

## I. INTRODUCTION

The 1970 National Environmental Policy Act (NEPA) dramatically changed the implementation process for engineering projects, physical development, and programs. NEPA requires governments, individuals, and companies to consider the environmental suitability of projects and to report on expected environmental impacts. Since NEPA's passage, federal and state legislatures have implemented hundreds of programs to conserve natural resources, protect public health and safety, and limit pollution. As a result, numerous federal, state, and local agencies are involved in decision-making and/or regulation of activities such as the release of potentially toxic substances into the environment or the modification of waters of the United States. Some agencies have a direct regulatory role through the permitting process, while other agencies have review and comment responsibilities. As might be expected, the attempt to address environmental issues on an almost ad hoc basis for twenty years has resulted in a largely uncoordinated development of regulations and programs at federal, state, regional, and local levels of government.

Agencies at all levels of government and with varying degrees of authority are working to protect public health and safety and prevent degradation of the physical and biological resource base, while simultaneously encouraging economic growth and development. The effort put forth by these agencies is commendable. However, there is no accepted universal means of coordinating the agencies' individual actions. Matters are further complicated because the basin includes coastal lowlands and Pleistocene terraces and uplands, each of which must be considered individually because of its unique physical characteristics.

The Pontchartrain Basin is a 4,700 square mile watershed in southeastern Louisiana, ranging from over 300 feet in elevation along the Mississippi state line to sea level in the coastal lowlands. The older Pleistocene terraces and uplands form the northern half of the basin, an area locally known as the Florida Parishes. South of the terraces are the coastal lowlands, the marshes, swamps, and waterbodies of the Pontchartrain estuary. Many small rivers within eroded valleys drain the Florida Parishes and introduce most of the freshwater into Lakes Maurepas and Pontchartrain, the great mixing zone of fresh and saline water. The largest of these rivers is the Amite with its headwaters in the counties of southwestern Mississippi. Bayous and tidal channels of slow moving water characterize the coastal lowlands.

Pines dominate the uplands, while in the river valley and sloughs are hardwoods. Coastal vegetation includes natural levee and bottomland hardwoods, cypress-tupelo swamp, and fresh to brackish marshes. The distribution and composition of vegetation associations are undergoing rapid changes. Small farms and wooded uplands have been converted into suburban houses, shopping centers, and small businesses. Along the Mississippi River are petrochemical plants, grain elevators and refineries that have turned the river into an industrial corridor from Baton Rouge to New Orleans. Surrounding the industries are subdivisions and malls covering abandoned sugar cane fields. Finally, Orleans, Jefferson, and St. Bernard Parishes have defined their maximum extent of expansion with the construction of an elaborate hurricane levee protection system. Located in the center of this basin is the state's largest waterbody, Lake Pontchartrain.

Lake Pontchartrain was formed 5,000 years ago and covers almost 630 square miles. The shallow lake (average depth 14 feet) is brackish, receiving freshwater from many sources,

including the Tangipahoa and Tchefuncte Rivers, Bayous Lacombe and Bonfouca, as well as drainage canals. Salt water from the Gulf of Mexico enters the lake through the Chef and Rigolets passes and the Industrial Canal. For many years, the basin's wetlands have been channelized, drained and filled, with Lake Pontchartrain serving as the receiving waters for a variety of contaminants. The cumulative effects of wetland degradation and discharge of pollutants into the lake result in eroded shorelines, dwindling wetlands and grassbeds, diminished shellfish and fisheries, closed beaches, and the occasional occurrence of "dead zones" in the lake.

The Lake Pontchartrain Basin contains a rapidly increasing human population. The continuing push of urbanization into the wetlands conflicts with the natural values and functions of wetlands, with commercial fishing and recreation, and contributes a variety of impacts (Emmer et al. 1984). Municipal runoff, sewerage from humans and farm animals, and industrial and agricultural discharges exemplify several problems currently facing the lake. Commercial ventures such as shell dredging, oil and gas exploration and development, and the maintenance of the Mississippi River Gulf Outlet (MRGO) and Inner Harbor Navigation Canal (IHNC) affect the basin as well.

Exploitation of the valuable resources within the Pontchartrain Basin, has resulted in conflicts among the many users. Unfortunately, existing government programs do not permit a comprehensive approach for resolving these confrontations. Lack of an overall plan for addressing issues in the basin was identified in the Houck and Wagner report (1989). In partial response to this void, the Lake Pontchartrain Basin Foundation (LPBF) was created.

The LPBF is a non-profit, publicly supported organization which was established and incorporated September 19, 1989. The purposes of the LPBF, as stated in its charter, are the restoration and preservation of the environmental and ecological balance of the Lake Pontchartrain Basin. A fundamental goal of the LPBF is the creation and implementation, for the first time, of a plan to address these purposes. This plan is to bring together the federal, state, and local agencies with responsibilities and/or regulatory authority affecting the basin's environment. The LPBF is guided by a 13 member board representing the parishes surrounding Lake Pontchartrain and the state agencies with specific basin-related responsibilities.

In 1990 Congress appropriated \$500,000 to the Lake Pontchartrain Basin Foundation (LPBF) to cover 95% of the costs of developing and implementing a Comprehensive Management Plan for the restoration and cleanup of the Pontchartrain Basin. The grant was provided to the LPBF through the U.S. Environmental Protection Agency (EPA), the oversight agency for the project. The final product of the first year's effort will be a twenty year Comprehensive Management Plan (CMP) containing implementation strategies for the first five years. The second year of the project will focus on implementation of the plan.

The CMP will be developed by an Interagency Working Group (IAWG) consisting of federal and state agencies, parishes, and a municipal component, all of whom have significant regulatory authority in the basin. The LPBF will serve as a representative of the general public. Each participant will have one vote. Federal and state resource agencies and local governments, as well as members of the private sector will serve as advisors to the IAWG and be actively involved in IAWG subcom-

mittees. The plan and strategy will be developed through a series of six workshops, scheduled to begin in March, 1992.

This report is divided into five parts presenting information that will serve as a basis for developing the institutional component of a comprehensive plan. It begins with a review of the comprehensive planning process to illustrate the place of institutional elements within the overall effort. Secondly, federal environmental programs having a significant regulatory impact on activities within the basin are described. Next, the mission and roles of state agencies are presented. The fourth part examines the level of decision-making closest to the general public, local government. The last section summarizes the information compiled and presents the conclusions of the study.



## II. THE PLANNING AND REGULATORY PROCESS

There are three basic characteristics of a Comprehensive Management Plan (CMP): first, it is an official document that has been adopted by government as a policy guide to decisions about a particular area; second, it is a physical plan which encompasses all geographical parts of an area and all functional elements which influence physical development; and third, it is a long-term plan that usually indicates in a general way how government wants an area to develop in the next 20 to 30 years. That is, the plan sets goals and objectives, such as growth or conservation and how they will be achieved.

Originally, as conceived during the early part of this century, the CMP depicted static future land uses. Communities focused on achieving these idealistic configurations and support systems. Gradually, the CMP evolved into a dynamic process including documents and maps, and more importantly, embodying a procedure for continuously adjusting the plan to meet the needs of a changing community. Today, when planners initiate a CMP, their first step is to assemble background information describing community characteristics and interactions among various elements. Generally, tables, figures, maps and text are compiled on data that includes, but is not limited to: land use; community facilities; transportation routes; housing and public facilities; public utilities; rights-of-way and open spaces; and economic and environmental issues and problems (Levy 1988).

Based on the information collected during the first step, the planning staff, with public participation, identifies the problems and issues of importance. Goals and objectives can then be developed that will result in the community achieving its aspirations and desires (So and Getzels 1988). The third

step is generally the preparation of alternative scenarios for accomplishing the community goals and objectives. Each scenario proposes general land use patterns with approximate boundaries, but does not specify sites or facilities, information that is far too detailed for a CMP.

The concluding phase of the planning process is implementation. The time needed to complete a plan varies from one effort to another and depends on several variables, such as financing, availability of staff, and/or public acceptance of the plan. The final step of the comprehensive planning process is reserved for review and revisions, including public hearings (Levy 1988). This last part is important because it allows for continual assessment of plan elements in a timely manner, and permits updating the parts as conditions in the community change, or to resolve conflicts (So et al. 1979).

### **Planning in Louisiana**

The authority to plan for growth and development has been in place in Louisiana since 1926 when municipalities of 5,000 or more inhabitants could initiate the planning process. This opportunity was extended to the parishes in 1928, and to the state level in 1936 with the creation of the State Planning Commission (Emmer et al. 1990). The first planning efforts were limited in scope and required revisions to make them more effective. Changes came in 1942 with the formation of the Department of Public Works, and in 1946 when the legislature more precisely described parish and municipal planning, planning commissions, and the development of comprehensive plans.

In the early stages, administrative and financial support for planning was not very high, even among the few municipalities with populations of more than 5,000. The State Planning

Commission had a budget for only three people and worked on federally supported programs, not on a comprehensive plan as was mandated. The Department of Public Works did some planning at a gross scale for public works projects and assisted parishes and municipalities only when invited to do so. Except for the larger municipalities, such as New Orleans and Baton Rouge, little evidence exists to suggest that there was much of an attempt at organized planning offices.

Planning efforts radically changed with the passage of the Housing Act of 1954 (PL 83-560), as amended, when federal monies were made available for developing plans. Approximately 200 plans at the state, regional, parish, and local levels were prepared through the 701 program (Emmer et al. 1990). Attempts were made in the mid-1960s to better coordinate planning by defining regional planning districts and establishing a state planning office. Again, a lack of support resulted in the demise of both entities (Emmer et al. 1990).

The opportunity exists for parishes and municipalities to do comprehensive planning and to assure that elements of growth do not conflict with each other. Authority for planning resides in the Louisiana Revised Statutes (LRS 33:101-120, Physical Development of Parishes and Municipalities; LRS 33:131-140, Regional Planning Commissions; LRS 33:140.61-140.64, State Planning and Development Districts). In fact, parish and municipal planning commissions, once they are created, "shall make and adopt a master plan for the physical development" of the jurisdiction (LRS 33:106). This appears to mandate a plan when a planning commission exists. Therefore, planning can be done and it is a governmental responsibility to determine how it will be accomplished and implemented.

## A Comprehensive Management Plan for the Pontchartrain Basin

The Pontchartrain Basin CMP will address real world issues of public health and safety, community well-being, and the degradation of natural systems, as well as economic concerns such as growth and development. Like any management plan, the Pontchartrain Basin CMP will focus on agency coordination and will offer strategies for addressing community concerns.

The planning process previously described will direct the creation of a CMP for the Pontchartrain Basin. There will be a few minor differences. Step one, data compilation, builds on existing studies and reports describing the basin's environmental status. Technical reports on the Pontchartrain Basin existed prior to formation of the LPBF (Stone et al. 1980; Emmer et al. 1984; Houck et al. 1989). To augment the technical data, four public meetings were held in October of 1991 (Metairie, Mandeville, Destrehan, and Hammond) for identification of public desires. As a result of these meetings, an in-depth report listing basin-related concerns was developed. This completed step two, identification of the problems and issues of importance.

Step three, preparation of alternative scenarios for accomplishing community goals and objectives, will take place during Interagency Working Group (IAWG) subcommittee meetings. Subcommittees will be responsible for developing specific sections of the overall plan, and in so doing, will need to discuss various options. The plan will evolve from the efforts of the subcommittees. Finally, the Pontchartrain Basin planning process will include public hearing(s) to receive comments on the initial draft of the CMP, including implementation strategies and procedures for updating the CMP in a timely fashion.

### III. FEDERAL GOVERNMENT

The federal government does not have direct control over private land use (Platt 1976). Federal lands, such as wildlife management areas, national parks, forests, and military reservations, are under direct federal supervision. This is not to imply that the federal government remains idle as other lands are developed. Federal programs and policies indirectly influence, and to a degree shape, activities or the planning for activities on private lands. Studies (Conner 1977; Goldman-Carter 1989; Goldstein 1988; Houck 1983; Kusler 1983; Masterson 1991; Office of Technology Assessment 1984; Office of Coastal Zone Management and Coastal Management Section 1980; Ransel and Fish 1989; Want 1989; Zinn and Copeland 1982) have identified those federal programs which significantly affect activities. The dominant federal agencies that must be considered in the Pontchartrain Basin because of their permitting authority and the breath of their jurisdiction are: the U.S. Army Corps of Engineers and the Environmental Protection Agency. The U.S. Coast Guard is the other federal agency with permit responsibility in the basin. In addition to the fact that every federal agency must comply with the provisions of the National Environmental Policy Act, many federal agencies have review and oversight responsibilities within the basin. These include: the U.S. Fish and Wildlife Service; the National Marine Fisheries Service; the Federal Emergency Management Agency; the Soil Conservation Service; the Agricultural Stabilization and Conservation Service; the Advisory Council on Historic Preservation; and the Council on Environmental Quality.

This section presents those federal programs that must be considered during the planning process for the Pontchartrain Basin. Table 1 identifies lead agencies and outlines authorities, statutes, actions required and regulations for those

LEAD AGENCY	AUTHORITY	STATUTE	ACTION REQUIRED	REGULATION
U.S. Army Corps of Engineers (USACE)	CWA, as amended, Section 404	33 USC 1251-1376	Permit	Applies to dredged or fill material placed in wetlands and waters of the U.S.
USACE	Rivers and Harbors Act of 1899, Sections 9 and 10	33 USC 401-406	Permit	Prohibits obstructing by dams, dikes, bridges of navigable waters or excavating or filling in any wetlands and waters of the U.S.
Environmental Protection Agency (EPA)	Clean Water Act (CWA), as amended, Section 402	33 USC 1251-1376	Permit	Effluent limitations of point sources of pollution.
EPA	CWA, as amended, Section 404	33 USC 1251-1376	Identification of wetlands	Makes final determination on all wetland permit proposals; determines where 404 permit is applicable.
EPA	Resource Conservation and Recovery Act (RCRA)	42 USC 6901-6987	Permit	Regulations and standards for hazardous waste treatment, storage and disposal facilities.
EPA	Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	42 USC 9601-9675	Permit	Superfund cleanup of abandoned waste disposal sites.

TABLE 1: SELECTED FEDERAL GOVERNMENT PROGRAMS AFFECTING THE PONTCHARTRAIN BASIN

LEAD AGENCY	AUTHORITY	STATUTE	ACTION REQUIRED	REGULATION
EPA	PL 100-104, Section 319	33 USC 1251-1376	Planning	States must develop programs to reduce non-point sources of pollution.
EPA	Safe Drinking Water Act	42 USC 300f	Permit; review	Regulates deep well injection of wastes; establishes Sole Source Aquifer and Wellhead Protection Program.
EPA	Clean Air Act	42 USC 7401 and 7625-6; 15 USC 792	Permit	Prevention of significant deterioration of air quality.
U.S. Coast Guard (USCG)	Department of Transportation Act of October 15, 1966	49 USC 1155g(6)(A)	Permit	Permitting of bridges and causeways.
Advisory Council on Historic Preservation	National Historic Preservation Act	16 USC 470	Review and comment	Protection of National Register Sites and Archaeological Sites and recovery and preservation of data.
	Preservation of Historical and Archaeological Data Act of 1974	16 USC 469 et seq.		
Agricultural Stabilization and Conservation Service	Food Security Act of 1985	16 USC 3801-3845	Regulation and support	Protection of wetlands.

TABLE 1: CONTINUED

LEAD AGENCY	AUTHORITY	STATUTE	ACTION REQUIRED	REGULATION
Council on Environmental Quality	National Environmental Policy Act, as amended	42 USC 4321-4347	Environmental impact statement	Preparation of environmental documents identifying alternatives considered and beneficial and adverse primary and secondary impacts.
Federal Emergency Management Agency (FEMA)	National Flood Insurance Program	42 USC 4001-4128	Review and floodplain management	Modification of land uses and structures in the flood plain to reduce flood damage to an acceptable level or eliminate damage.
National Marine Fisheries Services (NMFS)	Fish and Wildlife Coordination Act	16 USC 661-668c	Consultation in permit decisions	Integrates concern for fish and wildlife resources into permit process.
Office of Coastal Resource Management (OCRM)	Coastal Zone Management Act, as amended	16 USC 1451-1464	Develop coastal zone plan	States and parishes develop and implement long range management plan approved by federal government.
Soil Conservation Service (SCS)	Food Security Act of 1985	16 USC 3801-3845	Reduction and support	Protects wetlands from conversion to agricultural uses.

TABLE 1: CONTINUED

LEAD AGENCY	AUTHORITY	STATUTE	ACTION REQUIRED	REGULATION
SCS	Small Watershed Program, PL566	43 USC 422a-422h	Planning and support	Provides technical assistance for planning and implementing the protection, development and utilization of land and water resources in small watersheds.
SCS	Resource Conservation and Development Program	PL74-46, as amended	Grants	Advisory services and counselling for projects.
U.S. Fish and Wildlife Service (NMFS)	Fish and Wildlife Coordination Act	16 USC 661-668c	Consultation in permit decisions	Integrates concern for fish and wildlife resources into permit process.

TABLE 1: CONTINUED

federal actions applicable to the issues and concerns expressed by the public. Federal programs dominate the formulation of policies by establishing the scope of state and local programs. They provide funds for achieving program objectives. And, more importantly, federal programs define and set restrictions and prerequisites for what can take place in the basin and who can undertake an action. The section begins with a discussion of the two dominant agencies, the Corps and EPA. Following that, the Coast Guard and agencies with review and oversight responsibility are discussed.

### **United States Army Corps of Engineers**

The U.S. Army Corps of Engineers (USACE or the Corps) achieves its regulatory authority from the Rivers and Harbors Act of 1899 (33U.S.C.A.401-406) and the Clean Water Act, Section 404 (33U.S.C.A.1251-1376 (1989)). Section 9 of the Rivers and Harbors Act prohibits the construction of dams or dikes across navigable waterways within a state unless the structure is built under the authority of the legislature and the location and plans are approved by the Chief of Engineers and the Secretary of the Army. A permit is issued for such an action. Section 10 of the Rivers and Harbors Act prohibits the unauthorized obstruction by structures or alteration of any navigable waters of the United States. Alterations include the excavation from or depositing of material in navigable waters or other actions that affect the course, location, condition, or capacity of navigable water. The Chief of Engineers can authorize works within navigable waters of the United States and issue a permit for the project.

Section 404 of the Clean Water Act establishes a program for regulating the discharge of dredged or fill material into waters of the United States. The Corps is responsible for the day-to-day administration of the program, including review of

permit applications and deciding whether to issue or deny a permit. Corps evaluations are based on project compliance with Section 404(b)(1) guidelines and public interest review. Public interest review requires balancing the project's public and private benefits against the expected adverse impacts. Among the considerations are aesthetics, economics, energy needs, flood damage prevention, historic values, recreation, water quality, and water supply.

Some projects, such as normal farming and ranching, silviculture, farm and stock ponds, and farm or forest roads, are exempted from the permitting process. Exemptions do not apply if the projects are designed to change the land use of the area or convert wetlands to dry land.

#### **Environmental Protection Agency**

The U. S. Environmental Protection Agency's (EPA) general charge is to protect and enhance the environment now and for the future to the fullest extent possible under federal law. EPA's mission is to control and abate pollution in the areas of air, water, solid waste, pesticides, radiation, and toxic substances. EPA has major responsibilities for management of water quality with the primary objective being to "restore and maintain the chemical, physical and biological integrity of the nation's waters." Its mandate is for an integrated, coordinated attack on environmental pollution in cooperation with state and local governments, making EPA's responsibilities and activities broad and often cooperative with other agencies.

Through Section 404(c) of the Clean Water Act (40C.F.R.231 (1989)) the EPA Administrator can prohibit or restrict the use of specified areas in waters of the United States as disposal sites for dredged or fill material. Restricted use occurs

when EPA determines that such disposal will have an unacceptable adverse effect on any of the following:

- municipal water supplies
- shellfish beds
- fishery areas (including spawning and breeding areas)
- wildlife areas
- recreational areas.

EPA can invoke a Section 404(c) action in the absence of a proposed project, prior to the receipt of a permit application, or following notification by the Corps of their intent to issue a permit that EPA believes may be unacceptable. Under Section 404(f), EPA has the final determination on the geographic extent of Section 404 jurisdiction.

Section 404(b)(1) of the Clean Water Act codifies the regulations establishing the substantive environmental criteria to be used in the review of Section 404 permit applications. No Section 404 permit will be issued if the project:

- violates any applicable state water quality standards;
- violates applicable toxic effluent standards or is prohibited under Section 307 of the Clean Water Act;
- jeopardizes threatened or endangered species;
- violates any marine sanctuary;
- significantly degrades waters of the United States;
- has a significant adverse effect on human health and welfare (for example, water supplies, shellfish, or wildlife sites);
- significantly affects the aquatic ecosystem, including polluting and loss of habitat;

- significantly affects recreational, aesthetic, and economic values of the area;
- has practicable alternatives available to the project sponsor that has fewer environmental impacts; or
- has not taken the appropriate steps to minimize unavoidable impacts to the environment.

A permit application must consider practicable alternatives that do not involve the discharge of dredged or fill material into waters of the United States. Alternatives are "practicable" if EPA determines that they can be accomplished considering the costs, existing technology, and logistics.

Section 401 of the Clean Water Act requires that an applicant for a federal permit or license for an activity that may discharge a pollutant into waters of the United States obtain a certification from the state that the discharge will comply with the applicable effluent limitations and water quality standards. Section 401 enables states to have broad review authority over a variety of activities affecting state waters (including wetlands). States have the authority to grant, deny, or condition water quality certification for federal permits or licenses which regulate discharges to state waters. Five federal permits and/or licenses may result in discharges to the waters of the United States: Section 402 for point source discharges; Section 404 for discharges of dredged and fill material; activities in navigable waters under Section 9 and 10 of the Rivers and Harbors Act of 1899; and hydroelectric projects licensed by the Federal Power Act. If a state denies certification of a permit or license, the federal agency cannot issue that permit or license.

Section 319 of the Clean Water Act of 1987 establishes a national program addressing non-point source (NPS) water pollution. Section 319 required states to develop an assess-

ment report detailing the effect of non-point pollution, and a management program specifying non-point source controls. In response to Section 319, the Louisiana Department of Environmental Quality has developed an assessment report detailing the extent of non-point pollution and proposing a management program specifying non-point source controls. Louisiana has an approved non-point source assessment and management program.

Section 402 of the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) program, requires permits for a range of point source dischargers. Pollution discharges must meet specific criteria limits and industry specific technology based standards on the toxicity of the whole effluent in addition to that of a specific chemical. The approach is designed to address a wide variety of concerns, including, but not limited to: toxins, pathogens, dissolved oxygen depletion, nutrient enrichment and over-production, and bioaccumulation and exposure to humans. State water quality criteria and standards are the basis for the NPDES permits (Tetra Tech, Inc. and American Management Systems, Inc. 1991). Water quality standards define water quality goals for a waterbody or part of a waterbody. The uses of a waterbody are designated by setting criteria necessary to protect the use and by preventing degradation of water quality.

The EPA recently completed final rules for stormwater discharge permit applications under CWA part 402(p). The discharge of stormwater through any conveyance from an industry or a municipality is a point source discharge. The industries and cities which are required to apply for permits now are defined in the regulation which was published November 16, 1990. For the area of Lake Pontchartrain this would include the City of New Orleans and the urbanized areas of Jefferson Parish, as well as, all of the industries in the

basin which fall into the industrial classifications described in the final rule. Permits for stormwater discharges will emphasize source controls, but will be NPDES permits, and as such, must protect for water quality.

Federal agencies recognize that there is overlap in some of their programs (NOAA and EPA 1991):

The primary overlap occurs between the storm water permit program (under section 402(p) of the Clean Water Act) and traditional urban runoff programs. Often, runoff may begin as a non-point source but ultimately be channelized and become a point source. A further complication arises because the Clean Water Act currently requires a permit for some municipal storm water sources while postponing regulatory coverage of other (generally smaller) municipalities' storm water. Although the section 6217(g) management measures guidance does include urban runoff management measures, state coastal non-point pollution control programs will only be required to implement these measures for storm water discharges that are not required to apply for and receive storm water permits.

A second overlap occurs in connection with animal feeding operations. Concentrated animal feeding operations that meet particular size or other criteria are defined and regulated as point sources under the section 402 permit program. Other animal feeding operations are non-point sources and are not regulated under the NPDES program. State coastal non-point pollution control programs will only be required to implement the section 6217(g) guidance measures for confined animal production facilities for those facilities not currently subject to the NPDES permit program.

EPA Region 6 will be issuing a general permit for the facilities that are currently covered by 40 CFR, Part 412.

The Coastal Zone Reauthorization Amendments of 1990 (Section 6217) requires EPA and the National Oceanic and Atmospheric Administration (NOAA) to assist states with federally approved coastal programs to develop coastal non-point pollution

control programs. EPA and NOAA have proposed program guidance to control non-point pollution from agriculture, silviculture, urban (including construction activities), hydromodification, and marinas. State non-point programs developed by the Louisiana Departments of Environmental Quality and Natural Resources must contain provisions to:

- implement management measures "in conformity with" those specified in EPA's 6217(g) management measures guidance;
- identify land uses which may cause or contribute significantly to coastal waters degradation;
- identify critical coastal areas adjacent to coastal waters which are impaired or threatened by non-point source pollution;
- implement additional management measures for land uses or critical coastal areas as necessary to achieve and maintain water quality standards;
- provide technical assistance to local governments and the public to implement management measures;
- provide opportunities for public participation in all aspects of the program;
- establish mechanisms to improve coordination among state and local agencies;
- modify coastal zone boundaries as the state determines is necessary to implement NOAA's recommendations on the adequacy of existing coastal zone boundaries to control non-point source pollution significantly affecting coastal waters; and
- provide enforceable policies and mechanisms to implement the 6217(g) management measures and additional management measures.

EPA protects groundwater resources through the Resource Conservation and Recovery Act (RCRA) (42U.S.C.6901-6987 (1976)), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) (42U.S.C.9601-9675 (1980)), and the Safe Drinking Water Act (42U.S.C.300f). EPA

enforces RCRA regulations and develops standards applicable to generators and transporters of hazardous waste and operators of hazardous waste treatment, storage and disposal facilities. EPA's solid waste role is to provide performance standards to protect public health and the environment. Regulation of solid waste is the responsibility of the Louisiana Department of Environmental Quality. The Superfund Program authorizes the cleanup of abandoned waste disposal sites listed on the National Priorities List. EPA can also take immediate actions where a situation or site poses an imminent threat such as hazardous chemical spills or improper disposal of hazardous materials. The Safe Drinking Water Act regulates deep well injection of wastes and established the Sole Source Aquifer and Wellhead Protection program. Through the Sole Source Aquifer program individuals and organizations can ask EPA to designate an aquifer as a principal source of drinking water for an area. When Sole Source Aquifer status is achieved, EPA can then review federally financed projects to determine the potential for aquifer contamination. Under the Wellhead Protection program states delineate wellhead protection areas for each well or wellfield in order to protect areas used for public water. Management plans must be prepared for any pollutant sources within the protection area.

The Safe Drinking Water Act, Section 1431, also allows EPA to take immediate action upon receipt of information that a contaminant which is present or is likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of persons. This action can be taken if appropriate state and local authorities have not acted to protect such person.

EPA and the Corps, as principal federal oversight agencies, are working on the Coastal Wetlands, Planning, Protection, and Restoration Act (PL101-646, the Breaux Act). A task force of

federal and state agencies is identifying projects and involving the public in the preparation of a Comprehensive Coastal Restoration Plan.

Finally, the Clean Air Act (42U.S.C.7401; 7625-6; 15U.S.C.792) sets air quality standards for criteria pollutants which EPA is responsible for implementing through State Implementation Plans. EPA has permitting authority for the prevention of significant deterioration of air quality as the result of emission of pollutants from sources in attainment and non-attainment areas. Non-attainment areas are areas of a state where the air quality is below the National Ambient Air Quality Standards (NAAQS). NAAQS sets the allowable concentrations of various pollutants.

#### U. S. Coast Guard

The U. S. Coast Guard (USCG), a branch of the Department of Transportation, is responsible for permitting bridges and causeways (Department of Transportation Act of October 15, 1966; 49U.S.C.1155g(6)(A)). The USCG also supervises emergency response to spill contamination within navigable waters. The USCG is the implementing agency for a national contingency plan for oil spill response in tidal waters (EPA directs clean-up in non-tidal waters). As the lead agency, the USCG directs a Regional Response Team which includes federal agencies such as the EPA, FWS, NMFS, and USACE. If a spill has public health implications, the Center for Disease Control in Atlanta is requested to join the team.

In addition to spill response oversight, the USCG enforces marine debris regulations. Marine debris may be reported by the perpetrator or the public, or may be observed by the USCG. Penalties and regulations are defined under the Resource Conservation and Recovery Act, the Comprehensive Environmental

Response, Compensation and Liability Act, or the Marine Plastic Pollution Research and Control Act which implements Annex V of the International Convention for the Prevention of Pollution from Ships Treaty.

#### **Advisory Council on Historic Preservation**

The Advisory Council on Historic Preservation was created by the National Historic Preservation Act of 1966 (16U.S.C.470). The Council's responsibility is to review and comment on activities licensed by the federal government if the project may have an effect on property listed in the National Register of Historic Places or which may be eligible for such a listing. If a federal construction project or a federally licensed project, activity, or program alters a significant historical or archaeological site, the Secretary of the Interior is authorized by the Preservation of Historical and Archaeological Data Act of 1974, as amended (16U.S.C.469 et seq.) to take any action necessary to recover and preserve the data prior to commencement of the project.

#### **Agricultural Stabilization and Conservation Service**

The Agricultural Stabilization and Conservation Service (ASCS) is also affected by the Food Security Act of 1985 (16 U.S.C.A. 3801-3845 (1988)). ASCS has the authority to require the conservation and preservation of wetlands on its projects. Through the Water Bank Program (16U.S.C.1301-1311), SCS can give annual payments to landowners to help them improve important nesting, breeding, and feeding areas of migratory waterfowl.

## **Council on Environmental Quality**

The Council on Environmental Quality, created by the National Environmental Policy Act (42U.S.C.4321 et seq.), implements national environmental policy through the issuance of guidelines. These policy statements provide standards for agencies conducting environmental review. Thus, a project or program that requires a federal action must consider alternatives, environmental impacts, and mitigation needs.

## **Federal Emergency Management Agency**

The Federal Emergency Management Agency (FEMA) is responsible for the administration of the National Flood Insurance Program (42U.S.C.4001-4128 (1989)) and emergency response in the case of natural disasters such as floods or hurricanes. To participate in the NFIP, communities must satisfy FEMA's regulations for floodplain management. Requirements and restrictions apply to building permits and are implemented during development plan review. Through the NFIP, FEMA works with the state and communities to reduce damages in floodprone areas. NFIP has established criteria for activities that can take place in the 100-year floodplain and the floodway. FEMA reviews permit applications and advises the lead federal agency on flood problems that may result from approval of the permit application.

## **National Marine Fisheries Service**

The National Marine Fisheries Service (NMFS), which is part of the National Oceanic and Atmospheric Administration (NOAA), has as its principal concern the protection of marine fisheries and their habitat. Under the Fish and Wildlife Coordination Act (16U.S.C.661-666c) the NMFS has comment responsibility on federal construction projects or permits in the waters

of the United States. Under the Endangered Species Act (16U.S.C.1531 et seq.), the NMFS, like the FWS, has the authority to take legal action against parties who are likely to jeopardize or harm the continued existence of or threaten endangered species or destroy or adversely modify their habitat.

#### **Office of Ocean and Coastal Resource Management**

The Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451-1464) requires that federal agencies conducting activities within a state's coastal zone comply to the maximum extent practicable with an approved state coastal zone management program. Louisiana has a federally approved coastal zone management program. Non-federal applicants for federal permits or licenses must obtain a certification from the Coastal Management Division, Louisiana Department of Natural Resources that the project will comply with the state's coastal zone management program. The Office of Ocean and Coastal Resource Management has review and oversight responsibility over the state's coastal program.

#### **U. S. Fish and Wildlife Service**

The U.S. Fish and Wildlife Service (FWS) is charged with protecting and conserving fisheries and wildlife (birds and most mammals) and their habitats. FWS also manages migratory game birds and conducts monitoring and research associated with changes in fish and wildlife populations. Through the Fish and Wildlife Coordination Act (16U.S.C.661-666c), federal permit actions must take into consideration the consequences of proposed projects on the fish and wildlife. Although the FWS alone cannot stop a particular action by its comment responsibility, it is a powerful agency that can delay the issuance of a permit for a significant period of time. Under

the Endangered Species Act (16U.S.C.1531 et seq.), the FWS has the authority to take legal action against parties who are likely to jeopardize or harm the continued existence of or threaten endangered species or destroy or adversely modify their habitat.

#### **U.S. Soil Conservation Service**

The Soil Conservation Service administers the Food Security Act of 1985 (16U.S.C.A.3801-3845(1988)) which is designed to discourage the conversion of wetlands into non-wetland areas. SCS also provides technical and financial assistance in planning and carrying out works of improvements to protect, develop, and utilize the land and water resources in small watersheds (43U.S.C.422a-422h). The Resource Conservation and Development program (PL74-46, as amended) allows SCS to assist local people in initiating and carrying out long-range programs of resource conservation through grants, advisory services, and counselling about projects.

#### IV. STATE GOVERNMENT

States have the power to control land use through the Tenth Amendment to the Constitution that gives them the "police power" (Barrows 1982). They can plan for and regulate activities that affect public health, safety, and welfare. Normally, states do not practice comprehensive planning because it is an impractical job for most of them (So et al. 1986). This is certainly true for Louisiana where the concept of planning has been around for a long time (Emmer et al. 1990). However, the state does administer federal programs and coordinate activities between federal and local governments, both of which influence specific activities throughout the state. For example, Louisiana developed and submitted a statewide water quality management plan in response to Section 208 of the Clean Water Act. At present, the Office of Water Resources, Department of Environmental Quality, maintains the plan.

The following subsections describe the jurisdictions of those Louisiana agencies with significant regulatory and/or review responsibility over environmental issues in the Pontchartrain Basin. Table 2 identifies lead agencies and outlines authorities, statutes, actions required, and regulations for those state programs that address the issues and concerns expressed by the public. It is necessary for these responsibilities to be presented before a CMP can be developed for the Pontchartrain Basin.

##### **Department of Agriculture and Forestry**

The Soil and Water Conservation Committee provides water quality assistance related to state agricultural programs to forty local soil and water conservation districts; coordinates non-point source water quality programs in agriculture; and

LEAD AGENCY	AUTHORITY	STATUTE	ACTION REQUIRED	REGULATION
<p>Dept. of Agriculture and Forestry (DAF), Soil and Water Conservation Committee</p>		<p>LRS 3:1204 and 1208; LRS 36: 628(c)</p>		<p>Provides water quality assistance related to state agricultural programs to 40 local soil and water conservation districts; in coordination with the Dept. of Environmental Quality, the state's lead agency for non-point source control activities, DAF is active in non-point source water quality programs in agriculture; facilitates and promotes re-source conservation programs and manages grant programs.</p>
<p>DAF, Office of Agricultural and Environmental Sciences (OAES)</p>	<p>Federal Insecticide, Fungicide, Rodenticide Act (FIFRA); LA Pesticide Law and Resource Conservation and Recovery Act (RCRA)</p>	<p>LRS 36: 628(C)</p>		<p>Enforces FIFRA and RCRA dealing with pesticide waste; participates in pesticide analyses of water, sediment and/or biological samples; provides technical assistance in non-point source studies.</p>

TABLE 2: SELECTED STATE GOVERNMENT PROGRAMS AFFECTING THE PONTCHARTRAIN BASIN

LEAD AGENCY	AUTHORITY	STATUTE	ACTION REQUIRED	REGULATION
DAF, Office of Forestry		LRS 36:358		Provides technical assistance related to state forestry programs, including administrative, supervisory, protection and preservation functions involving water quality.
Dept. of Culture, Recreation and Tourism (DCRT), Office of Cultural Development/ State Historic Preservation Office	Archeological Treasure Act (1974); National Historic Preservation Act (1966)	LRS 41: 1601-1613 PL 89-665; LRS 36:901 et seq.	Review procedure	Review permit applications in order to protect archaeological and historical sites and National Register sites.
Dept. of Environmental Quality (DEQ), Office of Air Quality and Radiation Protection	Clean Air Act; La. Air Control Law; La. Air Toxics Law	LRS 30: 2051, et seq.; LAC 33:III.907	Permits	Administers and enforces federal Clean Air Act, including permitting air emissions.
DEQ, Office of Legal Affairs and Enforcement		LRS 36: 237(E)	Legal counsel	Provides legal consultation and representation to other DEQ offices in areas such as permitting, enforcement, contracts and intergovernmental agreements.

TABLE 2: CONTINUED

LEAD AGENCY	AUTHORITY	STATUTE	ACTION REQUIRED	REGULATION
DEQ, Office of Solid and Hazardous Waste	Resource Conservation and Recovery Act (RCRA); numerous state laws	42 USC 6901-6987; LRS 30: 2171 et seq.; LRS 30: 2151; LRS 30: 2411-2422; LRS 30 4.1, Statewide Order 29-N-1.	Permits	Permit and enforcement responsibility for federal and state laws.
DEQ, Office of Water Resources (OWR)	LA Water Control Law, Act 449.1 (1979)	LRS 30: 2071-2088; 38: 216	Water Quality Certification, Permits	Permits for industrial and municipal discharges; conducts compliance and water quality monitoring and analysis, develops and enforces standards and regulations, plans water quality management for surface and ground water and non-point source pollutants.
Dept. of Health and Hospitals (DHH), Office of Preventative and Public Health Services (OPPHS)	State Sanitary Code; Federal Safe Drinking Water Act	LRS 36: 258(D); LRS 40:4-5; 42 USC 300f		Monitoring of public water supplies and regulation of water treatment and distribution systems; regulation of sewage disposal including on-site wastewater treatment systems (septic fields); bacterial analyses of water samples.

TABLE 2: CONTINUED

LEAD AGENCY	AUTHORITY	STATUTE	ACTION REQUIRED	REGULATION
Dept. of Justice		LRS 36:705(C)		Legal counsel for state.
Dept. of Natural Resources (DNR), Coastal Management Division (CMD)	State and Local Coastal Resources Management Act of 1978, as amended	LRS 49:213.1-.21 et seq.	Coastal Use Permit	Enforces guidelines designed to reduce adverse impacts of projects on the coastal zone.
DNR, Coastal Restoration Division (CRD)	Act 6	LRS 49:214.21; LRS 36:351		Oversees and contracts for projects for construction and enhancement of coastal environments.
DNR, Division of State Lands (DSL)	Act 645	LRS 41:1131 and LRS 41:1701-1714	Permit	Reclaiming land lost through erosion or the maintenance to prevent encroachment on non-eroded state land.
DNR, Office of Conservation (OC)	Underground Injection (UIC) Program; LA Surface Mining and Reclamation Act	LRS 40:4-6; LRS 47:646.4; LRS 36:359; LRS 30:4c(1)	Permit	Establishes and directs water quality parameters and compliance with standards and regulations; regulates production of oil, gas and salt; regulates geothermal energy programs.

TABLE 2: CONTINUED

LEAD AGENCY	AUTHORITY	STATUTE	ACTION REQUIRED	REGULATION
Dept. of Transportation and Development (DOTD)		LRS 36:501 LRS 36:508(D); LRS 38:30-34, 84 90.1-91, 3091, 3098; 44 CFR 60.25(B) (10), 60.3 (B)(6)	Coordination, review and comment	Performs public works functions related to flood and drainage control, dam safety, water resources supply and development; regulation of water well construction and abandonment; licensing of water well contractors; direction of the Louisiana Water Resources Information Center (LAWRIC).
Dept. of Wildlife and Fisheries (DWF)		LRS 56:450, 541, 609(c)(1)	Leases	Schedules dredging in dredging zones.
DWF	Scenic Stream Act, as amended, Act 398	LRS 56:1841-1849; LRS 30:1068, 1091-1096; 38:216	Permit	Regulates uses and activities associated with Scenic Streams; controls discharges of polluting substances.

TABLE 2: CONTINUED

LEAD AGENCY	AUTHORITY	STATUTE	ACTION REQUIRED	REGULATION
DWF, Office of Fisheries		LRS 36:601-610; LRS 34:343		Executes laws and implements policies enacted for the protection, conservation and replenishment of wildlife and aquatic species; participates in environmental review process; conducts water analyses in the state's waters; regulates the use of toxicants for fishing.
DWF, Office of Wildlife		LRS 56:109, 651-659, 701-801, 1901 et seq.	Coordination	Establishes, manages and regulates wildlife management areas, preserves, refuges and sanctuaries.

TABLE 2: CONTINUED

facilitates and promotes resource conservation programs and manages grant programs (LRS 3:1204 and 1208; LRS 36:628(C)).

The Office of Agricultural and Environmental Sciences (OAES) enforces the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) and the Louisiana Pesticide Law and Resource Conservation and Recovery Act (RCRA) in protecting the state from the introduction and spread of injurious insects, pests, and plant diseases. OAES samples pesticides, fertilizers, and agricultural minerals to assure they meet all requirements of law and regulations. OAES also trains and certifies pesticide applicators (LRS 36:628(C)). For example, the Division of Pesticide Waste Control administers provisions relating to the treatment, storage, or disposal of pesticide wastes (LRS 36:628(c)) and coordinates its programs with federal and state agencies, such as the Department of Natural Resources.

The Office of Forestry provides technical assistance related to state forestry programs, including administrative, supervisory, protection and preservation functions involving water quality (LRS 36:358).

#### **Department of Culture, Recreation and Tourism**

The Department of Culture, Recreation and Tourism (DCRT) supervises the preparation, maintenance, and upgrading of the State Comprehensive Outdoor Recreation Plan, the document that guides the development of outdoor recreation in Louisiana. DCRT plans, implements, and maintains programs and projects for the enjoyment of the people and for greater development of the cultural and physical resources of the state (LRS 36:201 et seq.). DCRT projects include libraries, parks, recreation areas, museums, and other cultural, recreational, and tourist programs. In addition, the DCRT establishes the policies and procedures for state, parish, municipal, and other local

government participation through the Land and Water Conservation Fund Act (16U.S.C.4601-11).

The Office of State Parks plans, designs, constructs, operates, and maintains the system of commemorative areas, parks, natural areas, and recreational facilities (LRS 36:208). Specifically, the Office:

- preserves and protects natural areas of unique and exceptional scenic values;
- establishes and operates parks for outdoor recreation in natural surroundings;
- portrays and interprets plant and animal life, geology, and other natural features and processes in the state parks; and
- preserves, protects, and portrays historic and scientific sites of statewide importance (LRS 56:1682).

The Office of Cultural Development oversees the arts, historical and archaeological preservation, crafts, humanities, cultural heritages and traditions, and related cultural programs (LRS 36:208). Under its jurisdiction is the State Historic Preservation Office (SHPO) which protects archaeological sites and properties on the National Register of Historic Places under the Archaeological Treasure Act and the National Historic Preservation Act (PL 89-665; LRS 36:901 et seq.). SHPO has review and comment on Section 404 applications to the U.S. Army Corps of Engineers.

#### **Department of Environmental Quality**

It is commonly believed that Department of Environmental Quality (DEQ) programs and regulatory authority dealing with the Pontchartrain Basin are limited to the Office of Water Resources and its three divisions, Water Pollution Control,

Water Quality Management, and Groundwater Protection. But other DEQ offices having as important a regulatory involvement are the Office of Air Quality and Radiation Protection; the Office of Legal Affairs; and the Office of Solid and Hazardous Waste (LRS 30:2001 et seq.).

The Office of Air Quality and Radiation Protection is responsible for administering and enforcing the federal Clean Air Act, the Louisiana Air Control Law (LRS 30:2051 et seq.) and a Louisiana Air Toxics law which includes permitting air emissions. The Air Quality Regulations developed under this law contain a general prohibition against allowing emissions resulting in "undesirable levels" of pollutants in the atmosphere (LAC 33:III.907).

The duties of the Office of Legal Affairs and Enforcement are self-explanatory, in that the office enforces state environmental laws and provides legal consultation and representation to other DEQ offices in areas such as permitting, enforcement, contracts and intergovernmental agreements (LRS 36:237(E)).

The Office of Solid and Hazardous Waste has permit and enforcement responsibility for federal and state hazardous waste laws. The main concern of this office is the Resource Conservation and Recovery Act (RCRA) (42U.S.C.6901-6987 (1976)). State laws covered in the office are the Louisiana Hazardous Waste Control Law (HWCL) (LRS 30:2172 et seq.); the Louisiana Solid Waste Management and Resource Recovery Law (SWL) (LRS 30:2151 et seq.); the Louisiana Solid Waste Recycling and Reduction Law (SWR) (LRS 30:2411-2422); and the Louisiana Underground Injection Control Program (LRS 30:4.1, Statewide Order 29-N-1).

The HWCL establishes requirements applicable to generators and transporters of hazardous waste and to treatment, storage and

disposal (TSD) facilities. The SWL and SWR establish requirements for collectors and off-site transporters of solid waste, and standards applicable to sanitary landfills. The DEQ has a Land Ban Regulation making this office responsible for implementation of a Statewide Order prohibiting all underground injection except as authorized by permit or rule.

The Office of Water Resources (OWR) is responsible for administering and enforcing the Louisiana Water Control Law (LRS 30:2071-2074) which gives the OWR the authority to develop, implement and enforce a water pollution control program for river basins within the state. OWR activities include permitting both industrial and municipal discharges, compliance monitoring, and water quality monitoring and analysis. OWR also develops and enforces water quality standards and other water regulations and conducts water quality management planning for surface and groundwaters. This management planning directive includes development of special programs for non-point source pollution, estuaries, and wetlands. The non-point source program, operating through an EPA approved Assessment Report and Management Program implements activities on a watershed-by-watershed basis.

Presently, EPA retains the National Pollution Discharge Elimination System (NPDES) authority over discharge permits pursuant to the Clean Water Act. The OWR does, however, operate the Louisiana Water Discharge Permit System (LWDPS) and tracks, in many instances, the Federal NPDES program. The OWR also operates the 401 certification program for federal permits. A Memorandum of Understanding between DEQ and the Department of Natural Resources, Coastal Management Division, allows for 401 certification with the state's Coastal Use Permit program. DEQ has certification responsibility on Section 404 applications to the U.S. Army Corps of Engineers.

An applicant must receive the DEQ's certification before the Corps can issue a Section 404 permit.

### **Department of Health and Hospitals**

The Department of Health and Hospitals (DHH) is responsible for developing and providing health and medical services for the citizens of the Louisiana. One duty of the DHH is development of the State Sanitary Code, which among other things regulates the discharges of sewage and controls the oyster and shellfishing industries (LRS 36:251(B)). The State Sanitary Code is administered through the Office of Public Health which addresses issues concerning the general health of the people, including, but not limited to, the preparation and supervision of the sanitary code, local health units, sewerage treatment and disposal, and oyster harvest closures (LRS 36:258(B)). The Office also performs those public health functions related to environmental quality and pollution control that are specifically assigned to DHH, with the exception of those duties assigned to the Department of Environmental Quality. Also within the Department of Health and Hospitals is the State Board of Health and Hospitals which has jurisdiction over the conduct of studies, surveys, and hearings on sanitary considerations throughout the state. As a result of this research, the board can make recommendations for improving conditions within Louisiana.

DHH has comment responsibility on Section 404 applications to the U.S. Army Corps of Engineers. When a project is intended for human occupance, DHH determines whether the site is served or will be served by a public sewerage system or an approved private or industrial system.

## Department of Justice

The Office of Lands and Natural Resources is responsible for the assertion or protection of any right or interest of the state, and provides legal services to state agencies and political subdivisions of the state relative to state lands, natural resources, and the environment (LRS 36:705(C)). The Office defends and pursues the title to lands and waterbottoms, including boundary claims to oil, gas, and minerals, of the state and its political subdivisions. Through appropriate civil and criminal proceedings, the Office protects the quality of the air, land, and waters of the state.

## Department of Natural Resources

The Department of Natural Resources (DNR) through the Coastal Management Division and the Coastal Restoration Division are principal state agencies protecting the coastal environments. The Coastal Management Division (CMD) implements the federally approved Louisiana Coastal Zone Management Program (LCZMP) as authorized by the Louisiana State and Local Coastal Resources Management Act of 1978 (Act 361), as amended (LRS 49:214.21 et seq.). This law seeks to protect, develop, and where feasible, restore and enhance the resources of the state's coastal zone. The coastal zone program seeks multiple uses of coastal resources and encourages economic growth while minimizing adverse effects or imposing undue restrictions on any user. The LCZMP also has goals that "require careful consideration of the impacts of users on water flow, circulation, quantity and quality and require that the discharge or release of any pollutant or toxic material into the water or air of the coastal zone be within all applicable limits established by law, or by federal, state or local regulatory authority" (Office of Coastal Zone Management and Coastal Management Section 1980).

The CMD regulates activities directly through the Coastal Use Permit (CUP) and enforcement programs, and indirectly by the Consistency Section. The CUP is the basic regulatory tool for managing individual, industrial, and public construction activities other than those by federal agencies or deep-water port commissions. A coastal use permit is required for certain projects in the coastal zone, such as linear facilities, shoreline maintenance, and other development projects. Permits for projects of local (parish) concern may be issued by approved local coastal management programs officials. The Enforcement Section investigates possible violations of the state program, such as undertaking a project without a coastal use permit. The Consistency Section of the CMD evaluates the activities of federal agencies and deep-water port commissions for consistency with the state program. They also comment on activities on federal lands within the coastal zone and in federal waters, for example oil and gas development in the Gulf of Mexico or federal flood control or navigation projects. CMD has comment responsibility on Section 404 applications to the U.S. Army Corps of Engineers. In fact, the Section 404 applicant must receive approval from the LCZMP or the Corps cannot issue the Section 404 permit.

The Coastal Restoration Division (CRD) is responsible for joint state-federal efforts to develop and implement a comprehensive coastal restoration and protection plan (LRS 49:214.21; LRS 36:351) through the implementation of freshwater and sediment diversions, coastal vegetation planting, and wetland enhancement projects. Among its many duties CRD develops concepts and plans for wetland restoration; reviews engineering designs; coordinates planning and design efforts of state, federal and local agencies and private interests; prepares and disseminates technical information on restoration; operates and monitors projects; and provides the public

with information about the state's coastal restoration efforts.

The Office of Conservation (OC) regulates oil and gas production and permitting subsurface disposal wells. The OC also regulates surface mining, drilling and production of geothermal resources; oversees the regulation of radioactive substances; monitors inter- and intrastate pipeline systems; is responsible for the conservation, management and development of all water, timber, mineral and other natural resources not specifically granted to other governmental agencies; and administers and supervision of state lands, including leasing, selling and using state property and resources.

#### **Department of Transportation and Development**

The Department of Transportation and Development (DOTD) develops and implements programs to assure adequate, safe, and efficient transportation and other public works facilities and services in Louisiana (LRS 36:501). For example, the public works function may relate to drainage control, flood plain management, reclamation, water resources, and soil conservation (LRS 36:507). DOTD has comment responsibility on Section 404 applications to the U.S. Army Corps of Engineers.

Louisiana participates in the National Flood Insurance Program (LRS 38:84). The State Coordinator, presently within DOTD, must be notified when a project proposes relocating or modifying a watercourse (44CFR60.3(B)(6)). The State Coordinator assures organization and consistency of flood plain management activities with other state agencies, area-wide and local planners and enforcement agencies (44CFR60.25(B)(10)).

## Department of Wildlife and Fisheries

The Department of Wildlife and Fisheries (DWF) enforces and supervises laws related to the management, protection, conservation, and replenishment of wildlife, fish, and aquatic life and the regulation of shipping of wildlife, fish, furs, and skins (LRS 36:602(B)). The Office of Wildlife administers and operates programs and research relating to wild birds, game and non-game species, threatened and endangered species (LRS 56:1901 et seq.). Secondly, the DWF administers and enforces laws related to the Louisiana Natural Areas Registry, scenic rivers (LRS 56:1841-1849), and water pollution and prevention. The DWF also reviews activities occurring in the coastal waters and wetlands and has comment responsibility on Section 404 applications to the U.S. Army Corps of Engineers. Finally, the Office of Wildlife protects, maintains, and operates wildlife management areas, refuges, and sanctuaries and undertakes research on marsh fauna, such as fur-bearers, alligators, and waterfowl.

The Office of Fisheries operates programs for research or protection of saltwater fisheries, waterbottoms, and seafood. Its activities include:

- regulation of the oyster, shrimp, and marine fishing industries;
- leasing and regulation of the use of state water bottoms for cultivation and propagation of oysters, mariculture, and the dredging of shell, sand gravel, and fill material;
- regulation of seismic operations the licensing of vessels engaged in the industry;
- establishing and maintaining oyster seed grounds; and
- the control and licensing of the shrimp and fishery industry (LRS 36:609).

The Office of Fisheries operates and enforces programs related to freshwater fisheries and other aquatic life. These programs include the regulation of sport and commercial fishing, domestic fish farming, and noxious aquatic weed control. The Office also operates fish hatcheries, fish preserves, and boat ramps.



## V. LOCAL GOVERNMENTS

This section identifies and discusses parish and municipal governments, and special districts in Louisiana.

### Parishes

Parishes are creatures of the state and exercise such authority as may be vested in them by the constitution and laws of the state (Baker 1975). However, the parishes may exercise only such powers as are delegated to them by the legislature and such powers are narrowly construed. Parishes in Louisiana are governed by a police jury or a home rule charter.

### Police Juries

The majority of Louisiana parishes operate under a police jury system. Police juries range from five to fifteen members or the number of members authorized for that police jury on or before May 13, 1974, whichever is greater, with some exceptions (LRS 33:1221). A police jury exercises those powers and performs those functions necessary, requisite, or proper for management of its affairs, if the functions are not denied by charter or general law, or if the electors of the parish vote in favor of the proposition that the police jury exercise such general powers. Otherwise, a police jury is limited to those powers authorized by the Constitution or by law (Const. Art. VI. Sec.7).

The legislature grants a police jury broad powers which include, but are not limited to:

- making regulations for its own government;
- making and repairing roads, bridges and levees;

- maintaining banks of rivers and natural drains, drainage ditches, and canals;
- levying taxes for parish expenses; and
- establishing ferries and toll bridges (LRS 33:1236).

As the legislative body of the parish, the police jury may enact ordinances and enforce them by imposing fines or imprisonment through criminal or civil processes (LRS 33:1242). The only limitation in this respect on the authority of police juries or any other form of local government is that no local government may define and provide for a felony and its punishment (Const. Art. VI, Sec.9). Table 3 shows the police jury parishes in the Pontchartrain Basin.

#### Home Rule Charters

As an alternative to the police jury, local government in Louisiana may be structured and organized under a home rule charter (Const. Art. VI, Sec.6). Home rule gives parishes (and municipalities) a greater degree of autonomy with respect to local affairs. The 1974 Louisiana Constitution recognizes the power of local governments to operate through the home rule provisions and to exercise all functions necessary or proper for the management of their affairs, subject, of course, to the approval of the electors voting in a special election called for that purpose. The constitution also ensures the autonomy of home rule charter jurisdictions by prohibiting the state legislature from enacting any law which would have the effect of changing or affecting the structure and organization or the distribution and redistribution of the powers and functions of a home rule government. Over half of the Pontchartrain Basin parishes operate through a home rule charter (Table 3).

POLICE JURY	HOME RULE
Ascension East Feliciana Iberville Livingston St. Helena St. Tammany Washington	East Baton Rouge Jefferson Orleans Plaquemines St. Bernard St. Charles St. James St. John Tangipahoa

**TABLE 3: PONTCHARTRAIN BASIN PARISH GOVERNMENTS**

### Municipalities

Within the sixteen parishes in the Pontchartrain Basin are 38 municipalities. Municipalities, like parishes, are creatures of the state and exercise only such powers as are vested in them by the state, and these powers are narrowly construed (Baker 1975). Unlike the parishes, the municipalities exercise two types of functions - those that are governmental in nature, in which they represent the state, and those that are proprietary or of a business nature. In the first, the municipality is not subject to suit, whereas in the second, it is. The legislature has divided municipalities into three classifications based on population (LRS 33:341): 1) cities, with populations of 5,000 or more; 2) towns, with populations of at least 1,000, but less than 5,000; and 3) villages, with populations of less than 1,000, but a minimum of 150.

In Louisiana, as in other states, each municipality is granted a charter which serves as the basis of its existence, determines the structure of its government and the functions in which it may engage. Charters in Louisiana are either Home Rule or one of the following: Lawrason, special, or legislative.

### Home Rule Charters

Like parishes, the Constitution grants general authority to any Louisiana municipality to draft, adopt or amend a home rule charter which may include the exercise of any power not denied by general law and not inconsistent with the constitution (House Legislative Services 1987). Home rule may be legislative or constitutional. Inasmuch as a legislative home rule charter may be changed by a subsequent legislature, municipalities achieve real home rule only under constitutional authorization. Two types of home rule are possible: 1) that which places only the governmental structure and organization within the control of the municipality; and 2) that which permits the municipality or parish to exercise powers and functions of a local nature as well as control over governmental organization and structure (Baker 1975). Of course, municipalities can never be completely free from state control, for both the state and federal constitutions prohibit the relinquishing of the police and other powers necessary for the health, welfare and safety of the people as a whole to local governments. Home rule municipalities are listed in Table 4.

### Other Charters

All three non-home rule types of charters have the same basic powers. Specifics of Lawrason, Special and Legislative charters are described below. Municipalities operating under each of these charters are shown in Table 4.

Prior to 1879, Louisiana's constitutions contained no restrictions with respect to the granting of legislative charters. Consequently, all municipal charters were enacted by special legislative act (special charters). The 1879 Constitution prohibited the legislature from enacting any local or special

law creating corporations or amending their charters; in 1882, the first general statute was enacted establishing procedures for municipal incorporation. In 1898, the legislature passed the Lawrason Act, a general legislative charter for all municipalities created after July 29, 1898. This Act set up a form of government for municipal corporations and defined their specific powers and duties.

Special charters are those which, prior to the adoption in 1952 of Article XIV, Section 40 of the 1921 Constitution, were granted directly to a municipality by the legislature in the form of a local act. Legislative charters are those in which the legislature has divided municipalities into classes based on population, with a charter for each class, and in some instances an option within each class, with authority in the legislature only to pass general legislation affecting an entire class (Baker 1975).

HOME RULE	OTHER CHARTERS*	
Baker Baton Rouge Covington Hammond Kenner Mandeville New Orleans Slidell Zachary	Abita Springs Albany Amite City Denham Springs Folsom French Settlement Gonzales Gramercy Greensburg Harahan Independence Jackson Kentwood Killian Livingston	Lutcher Madisonville* Montpelier Norwood Pontchatoula Port Vincent Roseland Slaughter Sorrento Springfield* Tangipahoa Tickfaw Walker Wilson

**TABLE 4: PONTCHARTRAIN BASIN MUNICIPAL GOVERNMENTS**

\* All "Other Charters" in this table are Lawrason with the exception of Madisonville and Springfield which have special charters.

## Generic powers of parishes and municipalities

Parishes and municipalities are authorized to zone, enact subdivision regulations, adopt building codes, implement miscellaneous ordinances, and participate in the National Flood Insurance Program for controlling activities that affect public health, safety, and welfare within their jurisdictions (Kean 1974; Mumphrey et al. 1976). One of the principal methods for guiding development is the enactment of ordinances that divide the community into zones and districts that can be used for only selected and predetermined purposes, thereby separating incompatible land uses. In addition to listing the actual types of activities which can take place in a designated area, zoning ordinances establish minimum and maximum standards. Zoning regulates the density of activities, structure heights, and the portion of the lot occupied by a building. Communities usually group activities into four basic land use categories: residential, commercial, industrial, and agricultural. These four categories can be subdivided into more specific groups, such as light or heavy industrial or single or multi-family zones. Zoning regulations are available as text and are accompanied by a map that shows the distribution of zones.

Performance zoning, a second method, allows for possibly conflicting uses on adjacent or nearby parcels by setting guidelines which prevent detrimental land use from adversely impacting on the neighbors. A property owner wishing to use a lot for other than the use characteristic of the area may do so as long as he meets zoning guidelines. Usually, small businesses are not permitted in residential areas; however, in a community using performance zoning, a small business may occur in a residential zone if it does not create noise, excessive traffic, or adversely affect the community in some other way. Although zoning should be used to shape new