

## NOTICE OF INTENT

### Department of Natural Resources Office of Mineral Resources

Mineral Resources, Alternative Energy Leasing and Dry Hole Credit (LAC 43:I. Chapter 11 and V. Chapter 4)

Pursuant to the power delegated under the laws of the state of Louisiana and, particularly Title 30 of the Louisiana Revised Statute of 1950, as amended, and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Secretary of the Department of Natural Resources hereby gives notice that rulemaking procedures have been initiated to promulgate rules for the Leasing of State Lands and Water Bottoms for the Exploration, Development and Production of Alternative Energy Sources, LAC 43:I. Chapter 11, and to repeal the Dry Hole Credit Program, LAC 43:V. Chapter 4.

The proposed regulation relative to alternative energy will detail the procedure which will be utilized in administering the leasing of state lands and water bottoms for the exploration, development and production of alternative energy, allowed for by R.S. 30:124. In addition, the repeal of the Chapter relative to the Dry Hole Credit Program will be repealed since the final date for filing applications for the credit was June 30, 2009 per Act 2005, No. 298 and Act 2009, No. 196.

#### Title 43

#### NATURAL RESOURCES

#### Part I. Office of the Secretary

#### Subpart 1. General

#### Chapter 11. Leasing State Owned Lands and Water Bottoms for the Exploration, Development and Production of an Alternative Energy Source

##### §1101. Authority

A. These rules and regulations are promulgated by the state Mineral and Energy Board (Board) in consultation with the Department of Transportation and Development (DOTD) pursuant to the Administrative Procedure Act as authorized by R.S. 41:1734.

B. A Port Authority's denial of the issuance of a state alternative energy source lease (AESL) shall be adjudicated in accordance with the Administrative Procedure Act as set forth at 49:991 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

##### §1102. Purpose

A. These rules and regulations are promulgated for the following purposes:

1. to implement the provisions and intent of the legislature as set forth in Chapter 14-A of Title 41 of the Louisiana Revised Statutes of 1950;

2. to establish procedures for the issuance and administration of leases for alternative energy source production on state lands and water bottoms;

3. to notify the lessee and third parties of obligations as required in this Chapter;

4. to ensure that alternative energy source activities conducted on state lands or water bottoms for energy related purposes are implemented in a safe and environmentally sound manner, in conformance with state laws, federal laws and other applicable laws and regulations, and the terms of the Alternative Energy Source Lease.

5. To institute reasonable fees for services performed by the Department of Natural Resources (DNR).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### §1103. Wind Energy and Geothermal Energy Alternative Energy Sources

A. The Alternative Energy Source Rules as set forth in Chapter 11, except as provided in §1125 and §2011, do not apply to wind energy or geothermal alternative energy sources.

B. An applicant for a wind energy lease must comply with the requirements as set forth in R.S. 41:1731 et seq.

C. An applicant for a geothermal energy lease must comply with the requirements as set forth in R.S. 30:800 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### §1104. Cash Bonus and Fees for Alternative Energy Source Leases

A. The state shall collect a cash bonus for all AESLs. In addition to the cash bonus, the board, through the Office of Mineral Resources (OMR), shall collect an administrative fee for such leasing in the amount of 10 percent of the total cash bonus paid. Such payments shall be due within 24 hours of award of the state Alternative Energy Lease.

B. The state may collect additional payments for an Alternative Energy Source Lease if authorized by statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 34:260 (February 2008)

#### Subchapter A. General Provision

##### §1107. Lease Authorization

A. Except as otherwise authorized by law, it will be unlawful for any person or business entity to explore for, drill, develop, construct, operate, or maintain any facility to produce, transport, or support the generation of electricity or other energy product derived from an alternative energy source on any part of state owned lands and water bottoms except under and in accordance with the terms of a lease issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

##### §1108. Acronyms

A. For the purposes of this Chapter, unless the terms are defined in a different Chapter or Subpart, the following acronyms shall apply.

1. OMR—the Office of Mineral Resources serving as staff to the state Mineral and Energy Board.

2. AESL—the state Alternative Energy Source Lease.

3. DNR—the Department of Natural Resources.

4. OSL—the Office of state Lands.
5. DWF—the Department of Wildlife and Fisheries and/or the Wildlife and Fisheries Commission.
6. Board—the state Mineral and Energy Board.
7. FERC—the Federal Energy Regulatory Commission as established pursuant to 42 U.S.C. §7171.
8. AESP—a project requiring an AESL.
9. DOTD—the Department of Transportation and Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1734.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1109. Definitions**

A. For the purposes of this Chapter, unless the terms are defined in a different Chapter or Subpart, the following terms shall have the following meanings. Terms defined in a different Chapter or Section shall have the meaning as defined in that Chapter, Subpart, or Section:

*Alternative Energy Source*—an energy source other than oil, gas, and other liquid, solid, or gaseous minerals. Including, but not limited to, wind energy, geothermal energy, solar energy, and hydrokinetic energy. It shall not include the cultivation or harvesting of biomass fuels or the use of state land or water bottoms for facilities which utilize biomass fuel to produce energy.

*Archaeological Resource*—any material remains of human life or activities that are at least 50 years of age and that are of archaeological interest (i.e., capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, or related topics through the application of scientific or scholarly techniques, such as controlled observation, contextual measurement, controlled collection, analysis, interpretation, and explanation).

*Best Available and Safest Technology*—the best available and safest technologies recognized within the respective industry, or by government, feasible wherever failure of equipment would have a significant affect on safety, health, or the environment.

*Best Management Practices*—practices recognized within the respective industry, or by government, as one of the best for achieving the desired output while reducing undesirable outcomes.

*Commercial Activities*—any and all activities associated with the generation, storage, or transmission of electricity or any other energy product from a project requiring an AESL (hereinafter referred to as “AESP”) on state lands or water bottoms, when such electricity or other energy product is intended for distribution, sale, or other commercial use, including, but not limited to, initial site characterization and assessment, facility construction, and project decommissioning.

*Decommissioning*—the removal of alternative energy source facilities or any other activity associated with the return of the lease site to a condition pursuant to the requirements of Subpart E of this Chapter. Excluded from this provision are technology-testing activities.

*Interstate Commerce*—any commercial transaction involving more than one state or the movement of goods with respect to the electric power and energy across state boundaries.

*Intrastate Commerce*—any commercial transaction or movement of goods with respect to the electric power and energy wholly within the state.

*Interstate Transmission*—the generation of electric power used for the transmission of electric energy in interstate commerce.

*Intrastate Transmission*—the generation of electric power used for the transmission of electric energy in intrastate commerce.

*Lease Applicant*—a person or business entity who is formally seeking an AESL in which the port; harbor and terminal district; or port, harbor, and terminal district has not granted prior written approval for the development of an alternative energy source.

*Legal Area*—state lands or water bottoms subject to a compromise agreement or legal adjudication.

*Lessee*—the holder of an AESL granted by the board, including any approved sub-lessee, assignee, or successor, or any person or business entity authorized by the holder of the lease or operator to conduct activities on the lease.

*Levee District*—defined pursuant to the definition set forth in R.S. 38:281(6).

*Marine*—the physical, atmospheric, and biological components, conditions, and factors that interactively determine the productivity, state, condition, and quality of the marine ecosystem. These include the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and in the state.

*Operator*—the individual, business, or other legal entity having control or management of activities on the leased acreage, including, but not limited to, the lessee or a third party designated by the lessee.

*Political Subdivision*—defined pursuant to the definition set forth in R.S. 42:1102(17).

*Port Authority*—the governing authority of any port; harbor and terminal district; or port, harbor, and terminal district.

*Revenue*—a bonus or other similar payment owed and/or paid by the lessee to the lessor as required under the lease. It does not include administrative fees such as those assessed for cost recovery, civil penalties, and forfeiture of financial assurance.

*Riverine*—relating to or situated on a river or riverbank.

*Secretary*—the Secretary of the Department of Natural Resources (DNR) or an official authorized to act on the Secretary’s behalf.

*Significant Archaeological Resource*—an archaeological resource that is eligible to be listed in the National Register of Historic Places, as defined in 36 CFR 60.4 or its successor.

*Site Assessment Activity*—preliminary activity(ies) performed by the lessee for the purpose of characterizing a site on state lands or water bottoms, in preparation of the installation of facilities. Such activities may include, but are not limited to, resource assessment surveys (e.g., meteorological and oceanographic) or technology testing.

*State*—the state of Louisiana, its subdivisions, agencies, departments, successors, predecessors, legal representatives, officers, agents, employees, and any other party or entity authorized to act on its behalf.

*State Agency*—defined pursuant to the definition set forth in R.S. 30:151.

*Vessel*—defined pursuant to the definition set forth in USC Title 1, Section 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1110. Rights Granted Pursuant to an Alternative Energy Source Lease**

A. A lease issued under this Section grants the lessee the right, subject to obtaining the necessary approvals, including, but not limited to, those required under the Federal Energy Regulatory Commission (FERC) hydrokinetic energy licensing process, and complying with all provisions of this Section, to occupy, and install and operate facilities on a designated portion of state owned lands or water bottoms for the purpose of conducting:

1. commercial activities related to the production of energy from an alternative energy source;
2. other limited activities that support, result from, or relate to the production of energy from an alternative energy source.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1111. Impediment to Louisiana's Waterways**

A. The AESP shall not adversely impact, impede, obstruct, or interfere with transportation infrastructures, the navigability of any waterway, or the use of the waterway by other users, nor shall it unreasonably interfere with maritime commerce or the recreational use of the waterway.

B. The AESP shall be designed to have minimum impact on the chemical, physical, biological integrity, and safety of the waterway.

C. The DOTD shall review the AESP to identify any adverse impacts the AESL will have on transportation and transportation infrastructures and submit its findings to the board prior to the opening of the AESL bid. Failure by DOTD to submit its findings to the board shall indicate to the board that the AESP has no adverse impact on transportation and transportation infrastructures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1112. Port Authority Approval Required**

A. No AESL which affects the following state owned lands and/or water bottoms shall be advertised or granted without prior written approval of a Port Authority:

1. lands held in title by a Port Authority or held by lease or servitude by a Port Authority;
2. public navigable waters that flow through any lands within the jurisdiction of a Port Authority. Approval pursuant to this Section shall not be unreasonably withheld unless the lease is detrimental to the needs of commerce and navigation.

B. No Port Authority shall receive compensation for its approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1113. Decision of Port Authority**

A. After the decision of the Port Authority has been made to either grant or deny the applicant's lease request, the board, through OMR, shall notify the AESL applicant of the Port Authority's decision via certified U. S. Postal Service First Class Mail, return receipt requested.

B. If the AESL request is denied by the Port Authority, the applicant shall have 60 days from receipt of the board notice to request an administrative hearing with the Division of Administrative Law, pursuant to Chapter 13-B, Title 49 of the Louisiana Revised Statutes of 1950 and Chapter 11.

C. The Port Authority shall contract with the Division of Administrative Law to conduct the administrative hearing.

D. The Port Authority which did not grant prior written approval for the proposed AESL shall have the burden of proof at the administrative hearing that the proposed AESL is detrimental to the needs of commerce and navigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1114. Federal Regulatory Commission**

A. No AESL for hydrokinetic energy development shall be granted which is inconsistent with the terms of a preliminary permit, license, exemption, or other authorization issued by FERC pursuant to its authority under the Federal Power Act, 16 U.S.C. 791a, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1115. Federal and State Laws**

A. The lessee, including successors and assigns, is subject to all applicable laws, statutes, rules, or regulations, whether state or federal, which deal with the subject matter of the lease during the term the AESL is in force and effect, whether in whole or in part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1116. Alternative Energy Source Project Design Safeguards**

A. The lessee or operator shall design its AESP and conduct all activities in a manner that ensures safety and which will not cause undue harm or damage to any structures and/or natural resources, physical, atmospheric, and biological components, including, but not limited to, those owned by the state, Port Authority, Political Subdivision, or Levee District.

B. The lessee and/or operator shall compile, retain, and make available to the board, DOTD, affected Port Authority, and Levee District, or its authorized representative, within the time specified by the board, any data or information related to the site assessment, design, or operations of the alternative energy source.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1117. Rights Granted and/or Denied by an Alternative Energy Source Lease**

A. No AESL shall include any rights to explore, drill, mine, develop, or produce for native oil, gas, or other liquid or gaseous hydrocarbons.

B. No usage of state lands or water bottoms for the development of a specific alternative energy source shall unreasonably interfere, as determined by the board, with the rights of oil and gas or other forms of an AESL.

C. The AESL shall not inhibit any activity, right, obligation or duty inherent to an oil and gas lease granted by the board.

D. The AESL shall not prevent the letting of leases of state owned lands or water bottoms for the purpose of developing its natural resources.

E. Notwithstanding any language of the AESL to the contrary, the rights granted exclusively to the alternative energy source lessee shall be subject to the surface usage for coastal restoration, reclamation or conservation projects promulgated, funded or effected through DNR and its divisions, whether solely or in conjunction with other state, local or federal governmental agencies or with private individuals or entities. The alternative energy source lessee, in the exercise of its exclusive rights granted pursuant to the AESL, shall utilize the best available technology so as to minimize interference with any surface usage entailed in the development, construction, and maintenance of coastal restoration, reclamation, and conservation projects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1118. Environmental Safeguards**

A. The lessee shall use the best management practice, the highest degree of care, the best available and safest technology and all proper safeguards required to prevent land or water pollution resulting from the construction, transportation, and operations of an alternative energy source.

B. The lessee shall use all means available to recapture escaped pollutants and shall be solely responsible for any and all damages to aquatic or marine or riverine life, wildlife, birds, or any public or private property resulting from the lessee's operations.

C. The lessee shall not discharge trash or debris into state waterways.

D. The lessee shall report all unpermitted discharges of pollutants in violation of federal or state laws to the Department of Environmental Quality, the board, through OMR, and any other appropriate agency, within the time required by federal, state or local laws, but not more than 24 hours from the occurrence, whichever is earlier.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1119. Adherence to Laws and Regulations**

A. The lessee shall comply with all applicable environmental laws and regulations and any other federal, state, or local law, regulation, standard, or resolution passed by the board, which may be applicable to alternative energy source activities. The board may require lessee to obtain any

environmental or other permits or licenses required before applying for an AESL.

B. The board shall have the option of terminating the AESL agreement should the lessee fail to abide by such rules, regulations and resolutions; provided, however, the board shall give the lessee written notice of any such violation and 10 days in which to correct such violation, in which event, should said violation not be corrected, the board, without further notice, may terminate the AESL agreement.

C. With respect to violations of rules, regulations, or resolutions of the federal government or its agencies, when the state is notified of a violation by the lessee, the board, through OMR, shall notify the lessee and may suspend operations under the AESL agreement while allowing the lessee a reasonable set time to resolve the issues with the appropriate federal authority, and, if resolution is not obtained in a reasonable time, terminate the AESL agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1120. Alternative Energy Source Lease Size**

A. The board shall determine the size of each lease based on the acreage required to accommodate the anticipated activities. The AESL shall include the minimum area that will allow the lessee sufficient space to develop the AESP and manage activities in a manner that is consistent with the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1121. Construction and Operations Plan (COP)**

A. In accordance with the requirements of this Chapter, all AESL applicants must submit to the board, or its authorized representative, a Construction and Operations Plan (COP). The COP shall describe the proposed construction, operations, and conceptual decommissioning plans under the AESL, and shall:

1. describe all planned facilities the lessee will construct and use for the AESP, including onshore and support facilities;

2. describe all proposed activities, including the proposed construction activities, commercial operations, and conceptual decommissioning plans for all planned facilities, including onshore and support facilities;

3. certify that the AESP conforms to all applicable laws, implementing regulations, lease provisions, and stipulations or conditions;

4. certify that the AESP does not cause undue harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, riverine, or human environment; or sites, structures, or objects of historical or archaeological significance;

5. Certify that the AESP does not adversely impact, interfere or impede the navigability of waterways nor interfere with the dredging or maintenance of a waterway for navigation purposes.

6. certify that the AESP does not adversely impact, interfere or impede other users of a waterway;

7. certify and demonstrate as needed that the AESP uses the best management practices and the best available and safest technology;

8. provide a detailed explanation showing how the AESP will not damage state owned lands and water bottoms and public or private property such as bridges, docks, and piers;

9. provide a detailed explanation of the waterway marking system that the lessee shall install to aid navigation by marking obstructions in the navigable waters of the state.

B. The board, through OMR, shall review the COP submitted by the lease applicant to determine if the COP contains all the required information. Additional information may be requested if it is determined that the information provided is not complete. If the lease applicant fails to provide the requested information, the AESL application may be denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1122. Navigation Aid**

A. The alternative energy source lessee shall construct, maintain, and operate at its own expense such lights and signals as may be directed by either FERC or the secretary of the department in which the Coast Guard is operating, and as may be required by the Port Authority or DOTD. The Port Authority or DOTD may only impose stricter navigation aid standards than those required by FERC or the Coast Guard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1123. State Indemnity**

A. The alternative energy source lessee shall defend, indemnify and hold harmless the state (and its designated officials) against any expenses, losses, costs, damages, claims (including, without limitation, claims for loss of life or illness to persons, or for damage to property), actions, proceedings, or liabilities of any kind, character or type arising out of or in any way connected to the AESL agreement as allowed by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1124. Easements and Rights-of-Way**

A. The lessee shall be responsible for securing authorization, easements, rights-of-way, leases or permission necessary to obtain access to state lands or water bottoms. The AESL agreement shall not provide access to any waterway.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1125. Notification Requirements**

A. The lessee shall notify the board in writing within five business days after the lessee files any action alleging insolvency or bankruptcy.

B. The lessee shall notify the board, through OMR, in writing within 30 days of any merger, name change, or change of address and contact information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **Subpart B. Lease Administration**

#### **§1129. Overview of an Alternative Energy Source Lease Acquisition Process**

A. Leases for the exploration, development and/or production of an alternative energy source on state lands or water bottoms under Chapter 14-A of Title 41 of the Louisiana Revised Statutes of 1950 shall be acquired from the board, through OMR, through a public bid process as set forth in this Chapter or as designated in a separate alternative energy source Subpart. The general steps in the AESL acquisition process are as follows:

1. registration;
2. pre-nomination requirements;
3. nomination of state lands or water bottoms for an AESL;
4. examination and evaluation of the nomination;
5. advertisement of state tract(s) offered for an AESL, including a request for bids and/or comments;
6. submission of bids on a state tract for an AESL;
7. examination and evaluation of bids for an AESL;
8. award of an AESL;
9. issuance and execution of an AESL.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1130. Registration**

A. All persons or business entities applying for an AESL shall register with the board, through OMR, prior to submitting an application and, thereafter, renew their registration annually by January 31.

B. Registration consists of submitting a completed official Prospective Leaseholder Registration Form (obtainable from the board, through OMR,) and appropriate documentation from the Louisiana Secretary of State's Office to the board, through OMR, as follows:

1. Individual/Sole Proprietorship—no additional documents required.
2. Corporation—Louisiana Secretary of State "Detailed Record" webpage indicating good standing status.
3. Limited Liability Company—Louisiana Secretary of State "Detailed Record" webpage indicating good standing status.
4. Partnership—Louisiana Secretary of State "Detailed Record" webpage indicating active status.

C. If a current alternative energy source lessee fails to renew its annual registration, the board may levy liquidated damages of \$100 per day until the unregistered lessee is properly registered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1131. Pre-Nomination Requirements**

A. Prior to any nomination of state lands or water bottoms for an AESL, the nominating party shall:

1. conduct research prior to nomination to determine and confirm that the state land or water bottoms are available for the AESL and are claimed by the state;

2. provide a copy of the compromise instrument(s), or judgment(s) that establish(es) the state ownership interest, if the state lands or water bottoms include a legal area;

3. certify that the user(s) of any active or non-released land use agreement granted by the state on nominated land or water bottoms has been notified of the proposed AESL;

4. provide an affidavit, in authentic form, attesting that:

a. there are no encumbrances, including, but not limited to, current state leases, areas nominated for lease, or pipeline rights-of-way on state lands or water bottoms.;

b. any and all users of state lands or water bottoms to be nominated for an AESL have been notified of the proposed AESL. The affidavit shall include:

i. the official name and/or number of the governing agreement;

ii. the official name of the state entity that granted the governing agreement.

5. it is the responsibility of the alternative energy source applicant to consult and coordinate with the Port Authority with jurisdiction over lands or navigable water bottoms located within, or immediately adjacent to, the proposed AESL tract. An AESL cannot be issued without the written approval of the Port Authority with jurisdiction within the AESL area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

### **§1132. Nomination of State Lands and Water Bottoms for an Alternative Energy Source Lease**

A. Interested, registered parties shall nominate state lands and water bottoms for an AESL by submitting a proposal (hereinafter referred to as a "nomination") by application to the board, through OMR, in the appropriate form required. Each nomination shall include the following:

1. an official letter of application;

2. any title documentation obtained by the nominating party pursuant to §1131.A;

3. a written property description of the nominated acreage including the following:

a. the gross acreage amount of state lands or water bottoms, inclusive of any DWF property that may be contained within the nomination area;

b. the net acreage amount of state lands or water bottoms, exclusive of any DWF property that may be contained within the nomination area;

c. the net acreage amount of any DWF property that may be contained within the nomination area;

d. provide the following property description for state lands and water bottoms:

i. use bearing, distance and X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), to accurately and clearly describe the nominated acreage. Determine whether the acreage to be nominated falls in the North Zone or the South Zone of the Louisiana Coordinate System of 1927 and provide this information in the nomination package. A single nomination may contain acreage that falls partially in the North Zone and partially in the South Zone. However, the nominated acreage shall be allocated to the zone wherein the majority of the acreage falls and use that zone's coordinates (see R.S. 50:1);

4. a plat of the nominated acreage using the most recent background imagery and using X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable). Each plat shall include:

a. an outline of the nominated acreage with a designated point of beginning and corners using X-Y coordinates that exactly match the X-Y coordinates for the point of beginning and corners provided in the written property description, clearly labeled therein;

b. an outline of the state lands and/or water bottoms included within the nomination area, clearly labeled along with the amount of acreage contained therein;

c. an outline of any DWF property, school indemnity lands, tax adjudicated lands, vacant state lands, White Lake, or legal areas, included within the nomination area, clearly labeled along with the acreage amount contained in each;

d. an outline of each active or non-released land use agreement granted by the state, including, but not limited to, an AESL, state mineral lease, state operating agreement, state exclusive geophysical agreement, state non-exclusive seismic permit, state right-of-way, and/or state surface/subsurface agreement, as well as any nomination tract approved for advertisement or advertised as offered for a state mineral lease, state operating agreement, or state exclusive geophysical agreement abutting, adjacent to, intersecting, and partially/wholly enclosed in the nomination area, clearly labeled with its official number along with the acreage amount contained therein.

e. all water bodies, clearly labeled;

f. all section, township and range information;

g. An outline of all Port Authority in the nomination area with jurisdictional boundaries clearly delineated.

5. A summary of all environmental issues, including the potential environmental impacts resulting from the construction, operation, and placement of the alternative energy source and other facilities and equipment necessary for the exploration, development and production of an alternative energy source, and the steps proposed to minimize and mitigate the environmental impact, along with any supporting environmental impact documentation.

6. A list of governmental entities, including each federal, state, parish or local governmental entity, having jurisdiction in the nomination area, and for each, the contact person's name, title, office address, telephone and fax numbers, and email address, as well as the type of legal authority, if any, acquired or to be acquired from the governmental entity. Included in this list shall be all Port Authority districts in the nomination area with complete contact information.

7. A copy of the preliminary permit, license, exemption, or other authorization issued by FERC pursuant to its authority under the Federal Power Act, 16 U.S.C. 791a, et seq., if required.

8. A summary of the overall specified AESP, including status of site control (progress with leasing and/or permitting other properties within the entire AESP boundaries) and application process with the transmission provider, as well as a time frame for the project to become operational.

9. A summary of the alternative energy source development proposed on the state lands or water bottoms sought to be leased, including a plat, the layout of the

specified alternative energy source power and transmission facilities, proposed alternative energy source equipment information (size, location, number, type and depth of installation, turbine make, and nameplate power production capacity), placement information of equipment, whether the alternative energy source will be affixed to existing platforms or state owned structures or, if there will be a necessity to construct new platforms, selection criteria used, and supporting infrastructure.

10. The status and timeline of the major milestones in the AESP development, production, and decommissioning.

11. The measures proposed to reduce risk to the state, including, but not limited to, a summary of compliance with any and all standards established by state, national and international agencies, institutes, commissions or associations and any other entity responsible for establishing the alternative energy source industry standards. Standards for the alternative energy source development/operations include, but are not limited to, turbine safety and design, power performance, noise/acoustic measurement, mechanical load measurements, blade structural testing, power quality, and siting.

12. A summary of how the use of the state lands or water bottoms for the development and production of the alternative energy source will be coordinated with other users of the state lands or water bottoms, including the operation of ports, harbors, or terminal districts, shipping and recreational interests, dredging operations, and navigation safety.

13. A summary of contingency plans and emergency shut-down procedures to be followed, including the circumstances to initiate such procedures, in the event of danger or damage to life, water craft or facilities as a result of collision, dredging, anchorage, search and rescue operations, or unforeseen events.

14. A summary of the procedure for installation, recovery and repair of damaged turbines and equipment with minimal impact to navigation, shipping and recreational interests.

15. A summary of all study results, including copies of the complete final study reports, and all study data acquired by the applicant in a format agreeable to OMR, for all studies conducted by the applicant, for the area described in the lease application.

16. Any other information and documentation required by the board through OMR.

B. Each of the above items shall be submitted in original paper form. Additionally, a CD-ROM or DVD (hereinafter referred to as the "Nomination Disk") clearly labeled "AESL Nomination Disk" shall be submitted. Each Nomination Disk shall be affixed with the applicant and project names thereon and shall contain an electronic version of Item 3.d. above as a Word .doc file and Item 4. above as a .pdf file. Each Nomination Disk shall also contain a .dxf file which shall contain only the boundary of the nominated acreage, consisting of a single line, no additional lines, labels, text, or graphics, and shall be constructed of individual line segments between vertices. The X-Y coordinates in the .dxf file must exactly match those in the written property description and the plat.

C. The nominating party of an AESL shall observe the following restrictions:

1. Only bearing, distance and X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), shall be used and coordinates shall accurately and clearly describe the nominated acreage. If a single nomination contains acreage that is split between the North and South Zones, the nominated acreage shall be allocated to the zone containing the majority of the acreage pursuant to R.S. 50:1.

2. No more than 2,500 acres of state lands or water bottoms may be nominated in a single nomination.

D. Any other additional information required pursuant to §1121 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

### **§1133. Examination and Evaluation of Nomination for an Alternative Energy Source Lease**

A. Upon verification by the board, through OMR, that the AESL nomination complies with legal, procedural and technical requirements, as well as with any current policies and practices:

1. The board, through OMR, shall evaluate the AESL nomination. If the nomination is acceptable, OMR shall:

a. place the AESL nomination tract on the board Nomination and Tract Evaluation Committee Agenda for the next regular scheduled board meeting;

b. recommend to the board, pursuant to §1168, that a public bid process be conducted to advertise the nomination.

2. The board, through OMR, shall remove the acreage from commerce for the purpose of an AESL until the final outcome of the nomination is determined.

3. The board, through OMR, shall make available, after board approval, via the OMR website at [www.dnr.louisiana.gov](http://www.dnr.louisiana.gov), the nomination application as outlined in §1163.

4. The Office of State Lands (OSL), Department of Wildlife and Fisheries (DWF), and DOTD shall:

a. review the proposed location of the AESL;

b. certify to the board if there are other leases of any kind at the proposed lease location;

c. if there is an existing lease, the respective agency(ies) shall provide copies to the board of the lease(s).

5. The board, through OMR, shall transmit the nomination package and all other lease certifications to the secretary of DNR for evaluation.

B. An applicant may withdraw a nomination during the examination and evaluation process if notification is transmitted prior to the tract being officially advertised for an AESL by submitting a written request to OMR, Attention: Leasing Section, P.O. Box 2827, Baton Rouge, LA 70821-2827.

C. An applicant may not withdraw after the tract has been advertised without approval of the board. To obtain approval, the applicant shall submit a letter requesting withdrawal of the nomination to the board. If the board approves the request, the nomination fee payment shall not be refunded.

D. The decision of the Port Authority, when required in accordance with §1112 shall be submitted in written form. The Port Authority shall have 60 calendar days from the date the board approves the nomination to submit to the board,

through OMR, a written decision to either grant or deny the AESL application. Failure of the Port Authority to submit a decision to the board, through OMR, within a specified time limit shall be considered a denial of the AESL application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1134. Advertisement of a State Tract Offered for an Alternative Energy Source Lease and Request for Bids**

A. The board, through OMR, shall publish an advertisement of the state tract offered for an AESL and request for bids in the official journal of the state and official journal(s) of the parish(es) where the land(s) is/are located, and, at its discretion, no less than 60 and no more than 120 days prior to the date for the public opening of bids. The advertisement shall contain the following, which shall constitute judicial advertisement and legal notice pursuant to Chapter 5 of Title 43 of the Louisiana Revised Statutes of 1950:

1. a legal description of the nominated acreage;
2. the official tract number of the nominated acreage;
3. the gross and net amount of state lands or water bottoms nominated;

4. the date, time and place where the sealed bids will be received and publicly opened. Once a bid is submitted, it may not be withdrawn or cancelled. The board does not obligate itself to accept any bid. Bid acceptance or rejection is at the sole discretion of the board which reserves the right to reject any and all bids or to grant an AESL on any portion of state lands or water bottom tracts advertised and to withdraw the remainder of the tract.

B. All state AESLs shall be executed upon the terms and conditions provided in the current official state AESL form with any attached rider(s).

C. Notwithstanding any provisions to the contrary in any state AESL awarded or in any rider attached thereto, the lease awarded shall be granted and accepted without any warranty of title and without any recourse against the Lessor whatsoever, either expressed or implied. Further, Lessor shall not be required to return any payments received under the state AESL awarded or be otherwise responsible to the state alternative energy source lessee therefore.

D. Some tracts available for AESL may be situated in the Louisiana Coastal Zone as defined in R.S. 49:214 et seq., and may be subject to guidelines and regulations promulgated by DNR, Office of Coastal Management, for operations in the Louisiana Coastal Zone.

E. Prior to commencing construction, each state alternative energy source lessee and state AESL operator shall have a general liability insurance policy in a form acceptable to the board as set forth in Subpart D of this Chapter.

F. Prior to commencing construction, each state alternative energy source lessee and state AESL operator shall provide financial security in a form acceptable to the board as set forth in Subpart D of this Chapter.

G. Lessor excepts and reserves the full use of the leased premises and all rights with respect to surface and subsurface for any and all purposes except for those granted to the state alternative energy source lessee, including the use of the leased premises for the exploration, production

and development of oil, gas and other minerals by the lessor, its mineral lessees, grantees or permittees. Co-users of the leased premises shall agree to coordinate plans and cooperate on activities to minimize interference with other operations to the extent possible.

H. To protest the board leasing of a state tract for an AESL, the protesting party shall submit a formal letter of protest to the board at least seven days prior to the scheduled board meeting to consider the AESL on the tract (generally, the lease sale date). The letter of protest shall reference the appropriate tract number, parish, and board lease sale date, as well as set forth the source and nature of the title claimed, how and when acquired, and by what legal process.

I. A party may request proof that a tract was advertised in the official state and parish journals using the official Request for Proof of Publication Form published by OMR. Proof of publication consists of certified copies of the affidavits from the official state and parish journals attesting to publication. There is a fee of \$40 for providing proof of publication for a tract.

J. Within 20 days of the advertisement of the state tract, any person or entity may submit written comments to the board, through OMR, at the following address: Department of Natural Resources, Office of Mineral Resources, Attn: Leasing Section, P.O. Box 2827, Baton Rouge, LA 70821-2827.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1135. Submission of Bids on Tracts Offered for an Alternative Energy Source Lease**

A. Interested registered parties shall submit sealed bids on the entirety of the state tract nominated and advertised as offered for an AESL to the board, through OMR, in the form it requires by the bid submission deadline (no later than 12 p.m. Central Time on the Tuesday immediately prior to the Wednesday board lease sale at which the tracts are offered, unless otherwise noticed). Each bid shall be accompanied by any other documentation and/or information required.

B. Only those bidders who are registered prospective leaseholders with OMR as set forth under §3003 of this Chapter shall be allowed to bid on tracts for the purpose of obtaining an AESL from the state.

C. A party interested in bidding on a state tract for an AESL shall prepare a bid package that includes the items listed below. The bidder shall place all of the items required to be included in the bid package in an envelope, completely seal the envelope, write the official tract number on the outside of the envelope, and notate the following on the outside of the envelope: "Sealed Bid for State AESL is Enclosed". This envelope should include:

1. an official bid form available from OMR. Provide one original signed paper copy only;
2. a summary of experience including, at a minimum, the number of years of the bidding party's experience in the development and production of the specified alternative energy source and project descriptions. Experience with the specific AESP involving government lands and water bottoms shall be specified;
3. the proposed bid package shall set forth the following:



a. a summary of the overall business plan of the proposed alternative energy source development, including size of operation, development costs, marketing of the project, market prices, and status of a power purchase agreement;

b. a summary of the overall specified AESP, including status of site control (progress with leasing and/or permitting other properties within the entire AESP boundaries) and application process with the transmission provider, as well as a time frame for the project to become operational;

c. a summary of the alternative energy source development proposed on the state lands or water bottoms sought to be leased, including a plat, the layout of the specified alternative energy source power and transmission facilities, proposed alternative energy source equipment information (size, location, number, type and depth of installation, turbine make, and nameplate power production capacity), placement information of equipment, and whether the alternative energy source will be affixed to existing platforms or state owned structures or will there be a necessity to construct new platforms, selection criteria used, and supporting infrastructure;

d. the status and timeline of the major milestones in the AESP development, production, and decommissioning;

e. the name of the company that will operate the AESP and its relationship, if any, to the applicant;

f. a summary of the expected revenue and cash flow for the AESP on state lands or water bottoms, including a detailed list of assumptions;

g. the measures proposed to reduce risk to the state, including, but not limited to, a summary of compliance with any and all standards established by state, national and international agencies, institutes, commissions or associations and any other entity responsible for establishing the alternative energy source industry standards. Standards for the alternative energy source development/operations include, but are not limited to, turbine safety and design, power performance, noise/acoustic measurement, mechanical load measurements, blade structural testing, power quality, and siting;

h. a summary of how the AESP will ensure the viability of the state's natural resources, including, but not limited to, fish, wildlife and botanical resources, provide a continuing energy source for the citizens and businesses of Louisiana, promote economic development through job retention and creation in the state, and promote a clean and lasting environment;

i. a summary of how the use of state lands or water bottoms for the development and production of the alternative energy source will be coordinated with other users of state lands or water bottoms, including the operation of ports, harbors, or terminal districts, shipping and recreational interests, dredging operations, and navigation safety;

j. a summary of contingency plans and emergency shut down procedures to be followed, including the circumstances to initiate such procedures, in the event of danger or damage to life, water craft or facilities as a result of collision, dredging, anchorage, search and rescue operations, or unforeseen events;

k. a summary of the procedure for installation, recovery and repair of damaged turbines and equipment with

minimal impact to navigation, shipping and recreational interests;

1. any other additional information required pursuant to §1121 of this Chapter;

4. a comprehensive summary of all environmental issues including, but not limited to, the environmental impact resulting from the construction, placement, operation and removal of the alternative energy source's facilities and equipment necessary for the development and production of the alternative energy source, and the steps proposed to minimize the environmental impact, along with any supporting environmental impact documentation.;

5. a list of project participants who are or will be participating in the planning, development, construction, operation, maintenance, remediation, and/or decommission phases of the proposed project, and a brief description of each participant's role;

6. a summary of project financing which shall include, at a minimum, identification of the sources of financing and a discussion of financing;

7. a list of governmental entities, including each federal, state, parish and local governmental entity having jurisdiction in the nomination area, including the name of the contact person, his/her title, office address, telephone and fax numbers, and email address, as well as the type of legal authority, if any, acquired or to be acquired from the governmental entity;

8. a summary of all study results, including copies of the complete final study reports and all study data acquired by the applicant, in a format agreeable to OMR, for all studies conducted by the applicant, for the area described in the lease application;

9. a summary detailing the project's impact and mitigation required to protect the historical and archaeological resources of the area.

D. The applicant shall deliver the sealed bid package to the board, through OMR, by either hand-delivery or traceable delivery service. The sealed bid package must be physically in the possession of appropriate OMR personnel by the bid submission deadline (generally no later than 12 p.m. Central Time on the Tuesday immediately prior to the Wednesday board lease sale at which the tracts are offered unless otherwise noticed).

E. Once a bid is submitted, it may not be withdrawn or cancelled. The board is not obligated to accept a bid. Bid acceptance or rejection is at the sole discretion of the board who reserves the right to reject any and all bids or to grant an AESL on any portion of the state tract advertised and to withdraw the remainder of the tract.

F. When two or more parties submit a joint bid, the parties shall designate the undivided percent interest of each party on the official bid form. The interests, so designated, shall be stipulated in any lease that may be awarded. Failure to designate the undivided percent interest of each joint bidder shall result in the board assigning equal interests to each bidder.

G. When two or more parties submit a joint bid, the parties shall designate on the official bid form, as well as on a separate form, the name of the principal AESL lessee, who shall be authorized to act on behalf of all co-lessees, including, but not limited to, the authority to release. The principal AESL lessee shall be stipulated in any lease that may be awarded.

H. A bid for an AESL shall exclude all rights not specifically granted in any AESL subsequently awarded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1136. Protest of an Alternative Energy Source Lease**

A. If a party wants to protest the issuance of an AESL for a state tract, the party shall submit a formal letter of protest to the board at least seven days prior to the board's scheduled meeting to consider the AESL on the tract (generally, the lease sale date). The letter of protest shall reference the appropriate tract number, parish, and board lease sale date, as well as set forth the source and nature of the title claimed, how and when acquired, and by what legal process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1137. Examination and Evaluation of Bids for an Alternative Energy Source Lease**

A. Sealed bids for a state AESL shall be publicly opened and read aloud on the date advertised for the public opening of bids (generally, the lease sale date at which the tract is offered) in the LaBelle Room, also known as the Conservation and Mineral Resources Hearing Room, located on the first floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA. The board shall defer action on the bids for the AESL until completion of the pending examination and evaluation of the bids by its staff, but no more than 120 calendar days after the opening of the bid. The board staff shall examine and evaluate the bids to confirm compliance with legal, procedural and technical requirements, as well as with any current policies and practices, based on available data and analyses.

B. If examination of the successful bid acreage amount reveals that there is more or less state acreage than the amount bid on, without exceeding the boundaries advertised, the dollar amount (bonus) shall be adjusted accordingly.

C. The board has the authority to accept or reject any bid.

D. The cash bonus and the administrative fee paid shall be negotiated and transmitted for processing in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1138. Award of an Alternative Energy Source Lease**

A. At the next regular board meeting following conclusion of the staff's examination and evaluation of the bids for an AESL, after the staff has technically briefed the board in executive session as to the merit of the bids and the approval of the COP, the board shall reconvene in open session at the lease sale. The OMR designee shall publicly announce the staff's recommendations to the board as to which bids should be accepted and which bids should be rejected, and providing the reasons for rejection. The board shall announce its AESL award decision at the lease sale.

B. Information, including bids, all required authorizations and approvals, and award of any AESL shall be published in the DNR Strategic Online Natural Resources Information System ("SONRIS").

C. The cash bonus and administrative fee, as required pursuant to §1104, shall be due within 24 hours of the award of the AESL. Payments shall be made payable to the "Office of Mineral Resources" via certified funds, bank money order, cashier's check, bank wire, or Automated Clearing House (ACH) transfer. Failure to submit payments within 24 hours of the award of the AESL shall be deemed forfeiture by the applicant of the AESL.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1139. Issuance and Execution of an Alternative Energy Source Lease**

A. OMR shall assign an AESL number to each lease awarded by the board, prepare the AESL as awarded, and mail no less than three original copies, properly executed by the board, to the alternative energy source lessee, via certified USPS mail, return receipt requested.

B. Upon receipt of the lease package via certified mail, the alternative energy source lessee will have 20 days from the date on the certified mail receipt or, if no date is affixed thereon, from the date the board, through OMR, receives the certified mail receipt, to return to the board, through OMR, one fully executed original lease contract and the recordation information from each parish wherein it is recorded. Failure to return one fully executed original lease contract and the recordation information from each parish wherein the lease is recorded to the board, through OMR, within 20 days may result in forfeiture of the AESL, including the dollar amount (bonus) and 10 percent administrative fee. Failure to follow the notarization requirements of R.S. 35:12 shall cause the lease to be rejected.

C. Any party may request proof that a particular AESL granted by the board was timely executed by using the official form available from OMR. Proof of timely execution of lease consists of a certificate issued by the board, through OMR, certifying that the lease was received by the board, through OMR, duly executed by the lessee, within the allotted 20 day period. There is a fee of \$5 for providing proof of timely execution of a lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1140. Alternative Energy Source Lease Operations**

A. An AESL on state lands or water bottoms shall have a maximum initial term of five years and continue thereafter, as long as the alternative energy source operations are being conducted without interruption and electric power is being generated and used in significant quantities for the commercial transmission of electric energy and applicable fees are paid to the board, through OMR, in a timely manner.

B. All AESLs shall be executed upon the terms and conditions provided in the current official AESL with any attached rider(s).

C. Notwithstanding any provisions to the contrary in any AESL awarded or in any rider attached thereto, the lease awarded shall be granted and accepted without any warranty of title and without any recourse against the Lessor whatsoever, either expressed or implied. Further, Lessor shall not be required to return any payments received under the AESL awarded or be otherwise responsible to the lessee.

D. Lessor accepts and reserves the full use of the leased premises and all rights with respect to its surface and subsurface for any and all purposes except for those granted to the lessee, including the use of the leased premises for the exploration, production and development of oil, gas and other minerals by the Lessor, its mineral lessees, grantees or permittees. Co-users of the leased premises shall agree to coordinate plans and cooperate on activities to minimize interference with other operations to the extent possible.

E. Prior to commencing construction, each lessee and AESL operator shall obtain a general liability insurance policy in a form acceptable to the board as set forth in §5003 of this Chapter.

F. Prior to commencing construction, each lessee and AESL operator shall provide financial security in a form acceptable to the board as set forth in §5001 of this Chapter.

G. Lessee hereby agrees that in exercising the rights granted under the AESL, it will comply with and be subject to all current applicable laws and regulations, including, but not limited to, environmental laws, ports and waterways laws, energy laws, and those validly adopted or issued, by the U.S. and its agencies, by the state of Louisiana and its agencies, and by any applicable local or parish government. Lessee further agrees that it will comply with all minimum water quality standards validly adopted by governmental authorities with respect to pollution, noxious chemicals, and waste being introduced into affected water areas.

H. Any contract entered into for the lease of state lands for any purpose shall require that access by the public to public waterways through the state lands covered by the lease shall be maintained and preserved for the public by the lessee. This provision shall not prohibit the secretary of the state agency having control over the property from restricting access to public waterways if the secretary determines that a danger to the public welfare exists. This provision shall not apply in cases involving title disputes.

I. The alternative energy source lessee operator shall schedule a pre-operations meeting with and submit an operations package to the board, through OMR, at least 30 days prior to commencement of construction. The operation package shall contain the following additional items:

1. notice of beginning of AESL operations;
2. proof of financial assurance as set forth in Subpart D of this Chapter;
3. an updated list of project participants;
4. any other information or documentation required by the board, through OMR.

J. At the expiration of the primary term, production of alternative energy source electric power shall be required to maintain the lease in force. If the lessee is producing alternative energy source generated electric power, the lease shall continue in force as long as production of generated electric power continues without lapse of more than 180 days, unless the suspension is due to a suspension order. Any lapse in production of generated electric power greater than 180 days may, at the board's discretion, result in the termination of the lease.

K. Lessee shall survey the exact locations of any physical improvements that it has made upon the property including, but not limited to, turbines and mounting structures, controller boxes, foundations, roads, overhead and underground electrical wires, communication lines, poles and cross members, and substations and transmission

facilities, and shall further show the areas of land containing the improvements on the survey.

L. Any and all alternative energy source data collected during the term of the lease by the alternative energy source lessee shall be provided to the board, through OMR, every six months. All information maps, plots, and other data provided to the board, through OMR, shall be deemed public record except where the record is designated as confidential by law. Any record determined to be confidential shall not be released to any agency or entity absent a valid court order from a court of competent jurisdiction.

M. Periodic reporting may be required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1141. Transfer of Interest in or Assignment of an Alternative Energy Source Lease**

A. Prior to execution and recordation of a transfer of interest in or assignment of an AESL, a prospective transferee or assignee of an AESL shall schedule a pre-transfer meeting with and submit a transfer package to the board, through OMR, no later than the board's regular meeting for the month prior to the board's regular meeting at which the item is to appear on the board's docket for approval.

B. No transfer or assignment in relation to any AESL shall be valid unless approved by the board prior to the transfer or assignment. Failure to obtain board approval of any transfer or assignment of an AESL prior to transfer or assignment shall subject the transferor or assignor and the transferee or assignee, jointly, severally and in solido, to liquidated damages of \$100 per day, beginning on the first day following the execution of the transfer or assignment.

C. Transfers or assignments shall not be granted to prospective leaseholders that are not currently registered with OMR as set forth under §1159 of this Chapter.

D. The transfer package shall contain the following items:

1. an official letter from FERC approving the transfer of the federal energy license, if required;
2. two original, unexecuted, unrecorded transfer or assignment instruments designating the operator and the principal alternative energy source lessee authorized to act on behalf of all co-lessees with proof of designation attached.;
3. a Designation of Principal State Alternative Energy Source Lessee and Operator Form completed by each prospective leaseholder;
4. a separate Statement of Conveyance of Alternative Energy Source Lease Form completed for each AESL impacted by the transfer. Each form shall reflect only the gross working interest in the lease existing before and after the conveyance (no net revenue interests shall be considered or reported);
5. a proposed plan of operations that includes all items set forth in §1135.C.3.a.-1. of this Chapter;
6. any environmental impact documentation supplementing and updating §1132.A.5 of this Chapter;
7. a list of project participants who are or will be participating in the planning, development, construction, operation, maintenance, remediation, and/or decommission

phases of the proposed AESP, and a brief description of each project participant's role;

8. a summary of project financing which shall include, at a minimum, identification of the sources of financing and a discussion of the financing;

9. a list of governmental entities, including each federal, state, parish and local governmental entity that has jurisdiction in the leased area and for each, the contact person's name, title, office address, telephone and fax numbers, and email address, as well as the type of legal authority, if any, acquired or to be acquired from the governmental entity;

10. if AESL operations have commenced, proof of general liability insurance held by the transferee/assignee in a form acceptable to the board as set forth in §1154 of this Chapter and proof of financial assurance from the transferee/assignee in a form acceptable to the board as set forth in §1153 of this Chapter;

11. a docket fee in the amount of \$100 made payable to the "Office of Mineral Resources" to cover the cost of preparing and docketing transfers or assignments of an AESL. A personal or business check shall be acceptable;

12. any other information and documentation required.

E. An assignment or other transfer made by lessee which has been approved by the board does not relieve the original lessee, or any of its successors or assigns, of any and all obligations, duties, or responsibilities incurred under the terms of the AESL.

F. No assignment or transfer of an AESL shall be valid unless a provision has been made by the assignor or transferor and assignee or transferee to have the financial security and insurance set forth in this Chapter maintained in full force and effect following the assignment or other transfer into the authority of the assignee. Written evidence of the maintenance of the required financial security and insurance shall be presented together with the assignment or other transfer at the same time as submitted for the board's approval. The same shall hold true for each and every successive assignment or transfer of an interest in the AESL.

G. Upon board approval of the transfer or assignment, the transferor/assignor or transferee/assignee shall record the approved transfer instrument and the approval resolution in the appropriate parish(es) per the approval resolution and shall furnish the board, through OMR, with an original certified copy of the recorded instrument from the respective clerk of court office(s).

H. Upon board approval, the transfer or assignment instrument shall be executed, in authentic form, by both transferor and transferee/assignor and assignee [and spouse(s), if appropriate]. As an alternative, the transferee/assignee [and spouse(s), if appropriate] may execute an acceptance by assignee form, executed in authentic form, with a copy attached to each of the transfer instruments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1142. Partial or Full Release of an Alternative Energy Source Lease**

A. Upon expiration or termination of an AESL, in whole or in part, for any reason, the principle alternative energy source lessee shall execute and record an appropriate

instrument of release within 90 days of expiration or termination in each parish wherein the leased premises are located and shall provide the board, through OMR, with a copy of the recorded instrument of release from each parish wherein it is recorded properly certified by the recorder for that parish. In the event the principle alternative energy source lessee fails to comply, all other active joint-lessees shall be jointly and solidarily liable for liquidated damages in the amount of \$100 per day commencing on day 91 after expiration or termination. The lessee(s) shall also be responsible for reasonable attorney fees and costs incurred should litigation be required for AESL cancellation.

B. The release instrument shall contain the AESL number and shall be signed by the principle alternative energy source lessee, with the signature duly witnessed and notarized. Failure to follow the notarization requirements of R.S. 35:12 shall be grounds for rejection of the release instrument.

C. Should a lessee wish to release only a portion of the leased acreage, the lessee shall contain the whole of the retained acreage within a single contiguous block of acreage.

1. For a partial release only, the lessee shall also provide the following items:

a. a written property description, fully justified, using Microsoft Word. The first part shall describe and provide the amount of state owned acreage released. The second part shall describe and provide the amount of state owned acreage retained. X-Y coordinates shall be based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable), shall be used, starting with an X-Y point of beginning and using distance and bearings to each X-Y corner or turning point. Calculations, closures and ties to existing AESLs that comply with generally accepted surveying standards shall be used;

b. a plat that clearly delineates the boundaries of and sets forth the state owned acreage amount released and the state owned acreage amount retained. An 8½" x 11" paper copy of the most recent edition of the 7½ minute USGS Quadrangle Map (scale 1" = 2000' or 1" = 3000'; or the block system of 1" = 4000', if applicable) shall be used. X-Y coordinates based on the Louisiana Coordinate System of 1927, North or South Zone (as applicable) shall be used, starting with an X-Y point of beginning and using distance and bearings to each X-Y corner or turning point. Calculations, closures and ties to existing AESLs that comply with generally accepted surveying standards shall be used;

2. Each of the above items shall be submitted in original paper form. Additionally, a CD-ROM or DVD ("AESL Release Disk") clearly labeled "AESL Release Disk" shall be submitted. Each AESL Release Disk shall be affixed with the lessee and project names thereon and shall contain an electronic version of Item C.1. above as a Word.doc file and Item C.2. above as a .pdf file. Each Nomination Disk shall also contain a .dxf file which shall contain only the boundary of the acreage portion to be released and that portion to be retained, each consisting of a single line, no additional lines, labels, text, or graphics, and shall be constructed of individual line segments between vertices. The X-Y coordinates in the .dxf file must exactly match those in the written property description and the plat.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

### **Subpart C. Alternative Energy Source Lease Suspension or Cancellation**

#### **§1145. Partial or Full Suspension of an Alternative Energy Source Lease**

A. The board, or an authorized representative of the board, may order a suspension after notice and opportunity for a hearing of the AESL under the following circumstances:

1. when necessary to comply with judicial decrees prohibiting some or all activities under the AESL;
2. when continued activities pose an imminent threat of serious or irreparable harm or damage to natural resources, life (including human and wildlife), property, the marine, coastal, riverine, or human environment, or sites, structures, or objects of historical or archaeological significance;
3. when the alternative energy source operations adversely impact, impede, obstruct, or interfere with the navigability of any waterway, the use of the waterway by other users, or interfere with maritime commerce or the recreational use of the waterway;
4. lessee or its operator fails to comply with an applicable law, regulation, order, resolution, or provision of the AESL.

B. If the board, or its authorized representative, orders a suspension under Paragraph A.2. or A.3. of this Subpart, and the lessee wishes to resume activities, the board, or its authorized representative, may require the lessee to conduct a site-specific study to evaluate the cause of the harm, the potential damage, and/or the available mitigation measures.

1. The lessee shall be responsible for payment of the site-specific study.
2. The lessee shall furnish one paper copy and one electronic copy of the site-specific study and results to the Board or its authorized representative.
3. The board, or its authorized representative, will make the results available to other interested parties and to the public.
4. The board, or its authorized representative, will use the results of the site-specific study and any other information that becomes available:
  - a. to determine if the suspension order should be lifted;
  - b. to determine any actions that the lessee must take to mitigate or avoid any damage to natural resources, life (including human and wildlife), property, the marine, coastal, riverine, or human environment, or sites, structures, or objects of historical or archaeological significance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1146. Suspension Order**

A. The board, or its authorized representative, shall issue a suspension order in accordance with the following procedures:

1. The suspension order may be in oral form or in writing.
2. The board, or its authorized representative, will send the lessee a written suspension order as soon as practicable after issuing an oral suspension order.

3. The written order shall explain the reasons for issuance and describe the effect of the suspension order on the AESL and any associated activities. The board, or its authorized representative, may authorize certain activities or require the removal of certain equipment at the lessee's expense during the period of the suspension, as set forth in the suspension order.

4. The lessee shall have the right to have a hearing at the next scheduled board meeting to petition for the revocation of the suspension order.

B. A suspension order shall last for the period specified in the order. If the board determines that the circumstances responsible for initiation of the suspension order cannot be resolved within a reasonable time period, the board may initiate cancellation of the AESL.

C. A suspension order shall not extend the terms of the AESL for a time period equal to the period of time the lessee is prohibited from conducting activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1147. Equipment Removal Order or Cancellation of an Alternative Energy Source Lease**

A. The board shall cancel any AESL issued under this Part upon proof that the AESL was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee.

B. The board may cancel an AESL issued under this Part if the board determines, after notice and opportunity for a hearing, that the lessee has failed to comply with any applicable provision of these rules, any order of the board, or any term, condition or stipulation contained in the AESL, and that the failure to comply continued for 30 days (or other period the board specifies) after lessee received notice from the board or its authorized representative of non-compliance.

C. The board may cancel the AESL and/or require the lessee to suspend its operations and remove all equipment at lessee's cost from the state lands or water bottoms at any time if the state determines, after the lessee has been given notice and a reasonable opportunity to be heard, that:

1. continued operations under the AESL will cause serious harm or damage to biological resources, property, oil, gas or other mineral resource development activities, the environment (including, but not limited to, the human environment), impede, obstruct or adversely impact navigation or use of the waterway, have a detrimental affect on vessel safety, or if required for the dredging of the waterway;

2. the threat of harm or damage, the impediment or obstruction on navigation, or the detrimental effect on vessel safety exists within an unacceptable limit and cannot be eliminated or reduced to an acceptable limit within a reasonable period of time;

3. the economic advantages of cancellation outweigh the economic advantages of continuing either the AESL in effect or continued operations under the AESL.

D. Failure of the alternative energy source lessee to comply with an order of the board, or its authorized representative, to remove any and/or all equipment or suspend operations by the date specified, shall subject the lessee to a civil penalty of \$300 per day and shall continue to accrue on a daily basis until lessee complies with the order.

E. The civil penalty shall be paid into the Mineral and Energy Operation Fund on behalf of the board.

F. The state may remove any or all equipment whenever the lessee has failed to comply with the removal order of the board and the lessee shall reimburse the state for all necessary costs incurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1148. Effect of a Suspension Order on an Alternative Energy Source Lease**

A. During the time the board, or its authorized representative, evaluates a lessee's request for removal of the suspension issued under §4003 of this Chapter, the lessee must continue to fulfill its payment obligation until the end of the original term of the AESL. If the board or its authorized representative's evaluation goes beyond the end of the original term of the AESL, the term of the AESL shall be extended for the period of time necessary for the board, or its authorized representative, to complete its evaluation of the removal of suspension request. During this extended period of time, the lessee shall not be required to make payments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **Subpart D. Financial Assurance Requirements**

##### **§1153. Financial Assurance Instrument**

A. Before the board may issue an AESL or approve an assignment of an existing AESL, the lessee or proposed assignee must provide either:

1. a lease-specific bond in an amount set by the board, in an amount no less than \$500,000;
2. an approved financial assurance instrument in the amount required in Paragraph A.1 of this Subpart and as authorized by the board pursuant to §1155.

B. Each bond or other financial assurance must guarantee compliance with all terms and conditions of the AESL. The board may require the lessee to provide a new bond, or it may require the lessee to increase the amount of its existing bond to satisfy any additional financial assurance requirements. lessee shall comply with this requirement by providing either:

1. a certificate of deposit issued exclusively to DNR in a form prescribed by the board from a financial institution acceptable to the board;
2. a performance bond issued exclusively to DNR in a form prescribed by the board from a financial institution acceptable to the board;
3. a line of credit available exclusively to DNR, with DNR bearing no liability, in a form prescribed by the board issued by a financial institution acceptable to the board.

C. The board may require supplemental financial assurance in an amount determined by the board for a specific AESP.

D. The lessee will be considered in compliance with the financial assurance requirements under this Subpart if the lessee's designated lease operator provides a lease-specific bond in the amount required in Paragraph A.1. of this Subpart or other approved financial assurance that

guarantees compliance with all terms and conditions of the AESL.

E. The dollar amount of the minimum, lease-specific financial assurance in Paragraphs A.1. and B. of this Subpart will be adjusted to reflect changes in the Consumer Price Index-All Urban Consumers ("CPI-U") or an industry-equivalent index if the CPI-U is discontinued.

F. No CPI-U adjustment may be made within the five year period following the adoption of this rule. Subsequent CPI-U based adjustments may be made every five years thereafter.

G. The lessee may not terminate the period of liability of the financial assurance instrument or cancel the financial assurance instrument. The financial assurance must continue in full force and effect even though an event has occurred that could diminish or terminate a surety's obligation under state law.

H. Evidence of financial assurance is required to be submitted by January 31 of each calendar year. Failure to submit updated evidence of financial assurance may cause the board, through OMR, to levy liquidated damages of \$100 per day until such evidence is received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

##### **§1154. Insurance Requirement**

A. The lessee shall purchase and maintain, for the duration of the AESL, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the lessee.

B. The lessee shall obtain at its own cost and expense the following insurance placed with insurance companies authorized to do business in the state with A.M. Best ratings of A-:VI or higher. This rating requirement may be waived for workers compensation coverage only.

1. Workers Compensation. Workers Compensation Insurance shall be in compliance with the Workers Compensation Law of the state of the contractor's headquarters. Employers Liability is included with a minimum limit of \$500,000 per accident/per disease/per employee. If work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage shall be included and the Employers Liability limit increased to a minimum of \$1,000,000. A.M. Best's insurance company rating requirement may be waived for workers compensation coverage only.

2. Commercial General Liability. Commercial General Liability Insurance, including Personal and Advertising Injury Liability, shall have a minimum limit per occurrence of \$1,000,000 and a minimum general aggregate of \$2,000,000. The Insurance Services Office (ISO) Commercial General Liability Occurrence Coverage Form CG 00 01 (current form approved for use), or equivalent, is to be used in the policy. A claims-made form is unacceptable.

C. The General Liability Coverage policies shall contain, or be endorsed to contain, the following provisions.

1. The state, OMR, and the board, its officers, agents, employees and volunteers shall be named as an additional

insured as regards negligence by the contractor and/or the lessee. ISO Form CG 20 10 (current form approved for use), or equivalent, is to be used when applicable. The coverage shall contain no special limitations on the scope of protection afforded to the state, OMR, and the board.

2. The lessee's insurance shall be primary as respects the state, OMR, and the board, its officers, agents, employees and volunteers. Any insurance or self-insurance maintained by the state, OMR, and the board, shall be excess and non-contributory of the lessee's insurance.

3. Any failure of the lessee to comply with reporting provisions of the policy shall not affect coverage provided to the state, OMR, and the board, its officers, agents, employees and volunteers.

4. The lessee's insurance shall apply separately to each insured against whom claim is made or suit is initiated, except with respect to the policy limits.

D. The Workers Compensation and Employers Liability Coverage Policies shall contain, or be endorsed to contain, the following provisions.

1. The insurer shall agree to waive all rights of subrogation against the state, OMR, and the board, its officers, agents, employees and volunteers for losses arising from or in connection with the lessee's operation and use of the leased premises.

E. The lessee shall provide verification of insurance coverage in the following manner.

1. The lessee shall furnish OMR with certificates of insurance reflecting proof of required coverage. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be received and approved by OMR before work commences and upon any AESL renewal thereafter.

2. In addition to the certificates, the contractor and the lessee shall submit the declarations page and the cancellation provision endorsement for each insurance policy. OMR reserves the right to request complete certified copies of all required insurance policies at any time.

3. Upon failure of the lessee to furnish, deliver and maintain insurance as provided above, the AESL, at the election of the board may be suspended, discontinued or terminated. Failure of the lessee to purchase and/or maintain any required insurance shall not relieve the lessee from any liability or indemnification.

F. All certificates of insurance of the lessee shall reflect the following.

1. The lessee's insurer will have no right of recovery or subrogation against the state, all state departments, agencies, boards, commissions, port authority, political subdivision, and levee district. It is the intention of the parties that the lessee's insurance policies shall protect both parties and shall be the primary coverage for any and all losses that occur under the AESL.

2. The state, OMR, and the board, its officers, agents, employees and volunteers shall be named as an additional insured as regards negligence by the contractor, the lessee or the operator of the AESP. ISO Form CG 20 10 (current form approved for use), or equivalent, is to be used when applicable.

3. The insurance companies issuing the policy or policies shall have no recourse against the state, all state departments, agencies, boards, commissions, port

authorities, political subdivisions, and levee districts for payment of any premiums or for assessments under any form of the policy or policies.

G. If at any time an insurer issuing any policy does not meet the minimum A.M. Best rating, the lessee shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another certificate of insurance as required. Upon failure of the lessee to furnish, deliver and maintain insurance as provided above, the AESL, at the election of the board or OMR, may be suspended, discontinued or terminated. Failure of the lessee to purchase and/or maintain any required insurance shall not relieve the lessee from any liability or indemnification under the AESL.

H. Any deductibles or self-insured retentions must be declared to and accepted by OMR. Any and all deductibles shall be assumed in their entirety by the lessee.

I. All property losses caused by the actions of the lessee shall be adjusted with and made payable to the state of Louisiana.

J. The lessee or the lessee's insurer shall submit updated proof of insurance as required by this Subpart to OMR by January 31 of each calendar year. If lessee or lessee's insurer fails to submit proof, OMR may levy liquidated damages in the amount of \$100 per day until proof is received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1155. Financial Assurance Amount Determination**

A. The board's determination of the amount of the financial assurance required shall be based on estimates of the lessee's cost to meet all accrued lease obligations, including, but not limited to, decommissioning.

B. The amount of the supplemental and decommissioning financial assurance requirements, if required by the board, shall be determined on a case-by-case basis. The amount of the financial assurance shall be no less than the amount required to meet all lease obligations, including:

1. the projected amount of rent and other payments due to the state for a 12 month period commencing the date the funds become necessary;
2. any past due rent and other payments;
3. any other monetary obligations;
4. the estimated cost of facility decommissioning, as required in Subpart E of this Chapter.

C. If the lessee's cumulative potential obligations or liabilities increase or decrease, the board may adjust the amount of financial assurance or supplemental financial assurance required. In no event shall the board decrease the dollar amount less than the minimums required in §5001 and §5003 of this Chapter. If the board proposes adjusting the amount of financial assurance required, OMR will notify the lessee of the proposed adjustment and provide the lessee an opportunity to comment.

D. Based on the information and statements provided by the lessee at the hearing, the board may modify the dollar amount required. The board may not modify the dollar amount required below the minimums required in §1153 and §1154 of this Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1156. Bankruptcy or Lapse of Financial Assurance or Insurance**

A. If the lessee becomes bankrupt or insolvent, or if the approved financial assurance expires for any reason, the lessee shall:

1. notify the board or its authorized representative within five business days of the expiration of existing financial assurance and/or insurance. Lessee's failure to renew or obtain new financial assurance and/or insurance prior to the expiration of existing financial assurance and/or insurance shall automatically suspend all rights granted to the lessee under the AESL. Lessee's failure to obtain coverage within 90 days after termination of the required security and/or insurance shall result in termination of the AESL;

2. notify the board or its authorized representative within five business days of the initiation of any judicial or administrative proceeding alleging insolvency or bankruptcy;

3. notify the board or its authorized representative within five business days after the lessee learns of any action filed alleging that the lessee's surety, or third-party guarantor, is insolvent or bankrupt.

B. If the approved financial assurance and/or insurance expire for any reason:

1. prior to the cancellation of the security or insurance required by this Subpart, if the lessee does not provide the Lessor evidence that a new security or insurance has been obtained meeting all of the requirements of this Subpart, all rights granted to the lessee under the AESL shall automatically and, without further notice to the lessee, be suspended;

2. the lessee shall immediately suspend operations under the AESL except for those operations necessary to maintain the safety of already ongoing operations. The lessee shall provide evidence to the board or its authorized representative by providing sufficient documentation demonstrating the reinstatement of the requisite security and/or insurance;

3. upon the reinstatement of the requisite security and/or insurance, the lessee will be allowed to resume operations;

4. should lessee fail to obtain coverage within 90 days after termination of the required security and/or insurance, the AESL shall terminate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1157. Financial Assurance Company Rating**

A. The financial assurance must be supplied by a company to whom A.M. Best Company has given not less than an "A" rating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**Subpart E. Decommissioning Requirements**

**§1161. Decommissioning Liability**

A. Lessees, successors and/or assignees are jointly and solidarily responsible for meeting the decommissioning

obligations for facilities on each AESL, including all obstructions, as the obligations accrue and until each obligation is met.

B. The decommissioning obligation will begin when a lessee, sub-lessee, assignee, or successor installs, or constructs equipment for the AESP, including, but not limited to, a facility, turbine, support structure, cable, or pipeline, or when the lessee, sub-lessee, assignee, or successor creates an obstruction to other uses of state lands or water bottoms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1162. Decommissioning General Requirements**

A. Before decommissioning the facilities under an AESL, the lessee shall submit a decommissioning application and receive approval from the board or its authorized representative.

B. Following approval of the decommissioning application, the lessee shall submit a decommissioning notice at least 15 days prior to commencement of decommissioning activities. The decommissioning shall begin no later than 45 days following the approval of the decommissioning application.

C. Within one year following termination of an AESL, the lessee shall:

1. remove or decommission all facilities, turbines, support structures, cables, pipelines, and obstructions associated with the AESL;

2. clear the waterway and the water bottoms of all obstructions created by alternative energy source activities on the leased area. The board may require the lessee to immediately remove any and all obstructions effecting navigation and commerce of the waterway.

D. If the lessee, sub-lessee, assignee, successor, subcontractor, or any agent acting on behalf of lessee discovers any archaeological resource while conducting decommissioning activities, the party performing the decommissioning activities shall immediately cease bottom-disturbing activities within 1,000 feet of the discovery and report the discovery to the board, through OMR, within 72 hours of the discovery. Any party having knowledge of the discovery shall keep the location of the discovery confidential, except to report it to OMR, and shall not take any action that may adversely affect the archaeological resource unless instructed by OMR.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

**§1163. Decommissioning Application Time Requirements**

A. The lessee shall submit a decommissioning application upon the earliest of the following dates:

1. two years prior to the expiration of the AESL;
2. ninety days after completion of the commercial activities on an AESL;
3. ninety days after cancellation, relinquishment, or other termination of the AESL.

B. Lessee shall justify any difference(s) existing between the decommissioning application and the approved COP submitted pursuant to §1135 of this Chapter.



C. The board may reject any proposed modification to the decommissioning plan as submitted and approved in the COP and require the lessee to comply with the most stringent plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1164. Decommissioning Notice**

A. The board, through OMR, shall advertise notice of the receipt of any decommissioning application pertaining to an AESL in the local newspaper where the AESL is located and in the official state journal. Such advertisement shall identify:

1. the title and address of OMR.;
2. the name, title, address, and telephone number of an OMR representative from whom additional information and/or documentation may be obtained;
3. the name and address of the entity submitting the decommissioning application;
4. the name and physical location of the affected facility;
5. the name of the affected waterway;
6. the activities involved in the decommissioning action;
7. the most recent approved decommissioning plan;
8. a brief description of the appropriate comment procedures;
9. the date, time and place of any scheduled hearing;
10. the procedure(s) for requesting a hearing.

B. The board, through OMR, shall provide at least 30 days for public comment.

C. The board, through OMR, shall provide notice of the proposed decommissioning application to each affected state agency and Port Authority within five business days of receipt of the decommissioning application. The comment period for affected state agencies and Port Authorities shall expire at the close of the public comment period.

D. The board may refuse to accept any recommendations for the decommissioning application submitted by a state agency and/or Port Authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1165. Decommissioning Application Information Requirements**

A. The lessee, sub-lessee, assignee, or successor shall include the following information in the decommissioning application:

1. Identification of the applicant, including:
  - a. names and addresses of the lease operator and lessee;
  - b. name and telephone number of lessee's contact person;
  - c. name, address, telephone number, and name of contact of the companies which issued the required financial assurance instruments and required insurance.
2. Identification and description of the facilities, turbines, support structures, cables, and/or pipelines lessee plans to remove or proposes to leave in place.

3. A proposed decommissioning schedule for the lease, including the expiration or relinquishment date and proposed month and year of removal.

4. A description of the removal methods and procedures, including the types of equipment, vessels, and moorings to be removed (e.g., anchors, chains, lines).

5. A description of the lessee's site clearance activities.

6. The lessee's plans for transportation and disposal or salvage of the removed facilities, turbines, support structures, cables, or pipelines and any required approvals.

7. A description of any resources, conditions, or activities that could be affected by or could affect the proposed decommissioning activities. The description shall confirm compliance with the National Environmental Protection Act ("NEPA") and other relevant federal, state and local laws.

8. The results of any recent biological surveys conducted in the vicinity of the leased area.

9. Mitigation measures secured to protect archaeological and sensitive biological features during removal activities.

10. A description of measures to prevent the unauthorized discharge of pollutants, including marine or riverine trash and debris, onto state lands or into waters.

11. A determination of lessee's intent to use divers to survey the leased area after removal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1166. Process of Decommissioning Application**

A. Upon lessee's compliance with §1165 of this Chapter, OMR or other state agencies may request a technical and environmental review based on a comparison of the decommissioning application and the decommissioning general concept in the approved COP.

B. The lessee may be required to revise the COP and begin the appropriate NEPA analysis and/or other regulatory reviews, as required, if OMR or other state agencies determine that the lessee's decommissioning application would:

1. result in a significant change in the impacts previously identified and evaluated in the COP;
2. require any additional federal or state permits;
3. propose activities not previously identified and evaluated in the COP.

C. During the review process, OMR or other state agencies may request additional information if it determines that the information provided is insufficient to complete the review process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1167. Decommissioning Removal Requirements**

A. The lessee must remove all equipment, including, but not limited to, facilities, turbines, support structures, pipeline, and cables, and shall comply with the decommissioning requirements as set forth by the U.S. Army Corps of Engineers. The lessee shall also comply with any additional or more stringent decommissioning requirements mandated by the board, through OMR.

B. Within 60 days after the removal of a facility, the lessee shall verify to the board, through OMR, that it has removed all equipment required to be removed and that it has cleared the state lands and water bottoms of all obstructions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1168. Decommissioning Report**

A. Within 60 days after lessee has completed the decommissioning requirement and has restored the lease site by the removal of all alternative energy source equipment, including, but not limited to, facilities, turbines, support structures, cables, or pipelines, lessee shall submit a written report to the board, through OMR, that includes the following:

1. a summary of the removal activities, including the date removal activities were completed;
2. a description of any mitigation measures taken by lessee;
3. if lessee used explosives, a statement signed by lessee's authorized representative certifying that the types and amounts of explosives utilized were consistent with those in the approved decommissioning application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **§1169. Failure to Comply with Decommissioning Requirements**

A. The lessee shall comply with the decommissioning requirements as set forth in the approved decommissioning plan. If lessee fails to comply with the decommissioning requirements:

1. the board shall require the lessee to forfeit the financial assurance provided pursuant to §1153 and §1155 of this Chapter;
2. the lessee shall remain liable for the removal or disposal costs and shall be responsible for all accidents or damages, including reasonable attorney fees expended by the state to defend claims resulting from lessee's failure to comply with decommissioning requirements;
3. the board, or its authorized representative, may take legal action to enforce the decommissioning requirements. The lessee shall be liable for all reasonable attorney fees expended by the board or its authorized representative required to enforce the decommissioning obligations;
4. the lessee shall remain the owner of all facilities and/or equipment installed and used in the alternative energy project. The state shall have the right to remove any and all of the facilities and/or equipment at the expense of the lessee.

B. Failure of the alternative energy source lessee to comply with decommissioning obligations to remove all equipment by the date specified in the approved decommissioning plan shall subject the lessee to a civil penalty of \$300 per day and shall continue to accrue on a daily basis until the date the lessee has complied with the decommissioning obligation.

C. The civil penalty shall be paid into the Mineral and Energy Operation Fund on behalf of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

#### **Subpart F. Special Hydrokinetic Rules**

##### **§1175. FERC Authority**

A. This Subpart shall apply only to hydrokinetic energy source projects which fall under the jurisdiction of the Federal Power Commission pursuant to the Federal Power Act, 16 U.S.C. 791a, et seq.

B. In the event there is a conflict with the requirements of this Subpart with any requirements under Chapter 11, the requirements set forth in this Subpart shall govern.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

##### **§1176. Hydrokinetic Lease Compliance**

A. All applicants must first obtain approval by FERC for the issuance of a preliminary permit, license, exemption, or other authorization for the development of hydrokinetic energy. The lessee may use the documents submitted and approved by FERC to satisfy the following requirements.

1. The COP may satisfy the requirements of §1121 of this Chapter.
2. The Coast Guard recommendations may satisfy the requirements of §1145 of this Chapter and any information required concerning navigational safety and maritime security.
3. The report on fish, wildlife, and botanical resources may satisfy the information required of §1135.C.3.h. of this Chapter to determine the project's impact and mitigation required to protect the fish, wildlife and botanical resources.
4. The report on historical and archaeological resources may satisfy the information required of §1135.C.9. of this Chapter to determine the project's impact and mitigation required to protect the historical and archaeological resources of the area.
5. The report on socio-economic impacts may satisfy the requirements of §1135.C.3.h. of this Chapter.
6. The report on environmental impact may satisfy the requirements of §1132.A.5. and §1135.C.4. of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

##### **§1177. Submission of Bid for Hydrokinetic Energy Source Lease**

A. All interested registered parties who hold a valid preliminary permit, license, exemption, or other authorization issued by FERC pursuant to its authority under the Federal Power Act, 16 U.S.C. 791a, et seq., shall submit a bid package on the entirety of the State tract nominated and advertised for State hydrokinetic energy source lease to the board, through OMR, in the form OMR requires by the advertised deadline. Each bid package shall be accompanied by any other documentation and information required.

B. An official bid form is available from OMR. Applicant must provide one originally signed paper copy and no electronic copy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:124.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Mineral Resources, LR 37:

## Part V. Office of Mineral Resources

### Chapter 4. Dry Hole Credit Program

#### §401. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1608 (September 2006), repealed LR 37.

#### §403. Application for Status as a Dry Hole Credit Well

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1609 (September 2006), repealed LR 37.

#### §405. Assignment of a Dry Hole Credit

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1610 (September 2006), repealed LR 37.

#### §407. Application for Status as a Pre-Qualifying Well

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1610 (September 2006), repealed LR 37.

#### §409. Application for Status as a Royalty Relief Receiving Well

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1611 (September 2006), repealed LR 37.

#### §411. Extending the Dry Hole Credit Offset beyond Thirty-Six Months

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1613 (September 2006), repealed LR 37.

#### §413. Termination of Dry Hole Credit Offset

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1613 (September 2006), repealed LR 37.

#### Family Impact Statement

1. What effect will this Rule have on the stability of the family? The proposed Rule will not affect the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the action proposed is strictly a State leasing function.

#### Public Comments

Interested persons may submit written comments to Byron Miller, Geologist Supervisor, Office of Mineral Resources, Department of Natural Resources, P.O. Box 2827, Baton Rouge, LA 70821-2827, or by facsimile to (225) 242-3499. All comments must be submitted by 4:30 p.m., September 23, 2011. This proposed regulation is available on the internet at <http://dnr.louisiana.gov> and is available for inspection at the DNR office from 8 a.m. until 4:30 p.m.: 617 N. Third Street, Eighth Floor, Baton Rouge, LA 70802.

Robert D. Harper  
Undersecretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Mineral Resources, Alternative Energy Leasing and Dry Hole Credit

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule amendments create an Alternative Energy Source Leasing Program and repeal the Dry Hole Credit Program.

An Alternative energy source, as defined by Acts 875 and 930 of the 2010 Regular Legislative Session, includes but is not limited to, wind energy, geothermal energy, solar energy and hydrokinetic energy. The Department of Natural Resources anticipates that alternate energy source leasing activity will be minimal over the next two years.. However, the Federal Energy Regulatory Commission (FERC) may issue licenses for hydrokinetic energy projects beginning in late 2013. FERC issued licenses may result in hydrokinetic energy leasing activity in the Mississippi River and Atchafalaya River beginning in late 2013.

Since the Office of Mineral Resources has an ongoing mineral leasing operation for state onshore and offshore lands and water bottoms, it is anticipated alternative energy source leasing activity can be easily absorbed with existing resources. The Office of Mineral Resources cannot quantify the implementation costs to any other state or local governing units.

The proposed rule amendments repealing the Dry Hole Credit Program (Act 298 of the 2005 regular Legislative Session and Act 196 of the 2009 Regular Legislative Session) will have no impact on state or local governmental unit expenditures.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule amendments creating the Alternative Energy Source Leasing Program will impact revenue collections to the State General Fund and Self-generated Revenues of the department.

The Department of Natural Resources anticipates that alternative energy source leasing activity will be minimal over the next two years, with hydrokinetic energy leasing activity possibly beginning in late 2013. Hydrokinetic energy

development activity will likely be limited to “first of its kind” demonstration or proof of concept projects. The economics of hydrokinetic energy projects are unknown, but likely marginal at this point. Therefore, revenue in the early years of implementation of this developing resource base will be minimal. The cash bonus collected for alternative energy source leases will be deposited to the State General Fund and the administrative fee in the amount of ten percent (10%) of the cash bonus will be deposited as Self-Generated Revenues to the department.

Estimated revenues in 2013-14 may be \$3,179,000 assuming the following: a total of 3 hydrokinetic energy project sites in Louisiana for an estimated total of 2,890 acres leased (site 1: expansion of the test site requiring an additional 660 acres, site 2: 805 acres, and site 3: 1,425 acres) with an estimated cash bonus of \$1,000/acre (2,890,000) plus 10% administrative fee (\$289,000).

The above estimates assume that the State Mineral and Energy Board would receive \$1,000/acre in cash bonuses for alternative energy source leases. However, cash bonus amounts will be dictated by market conditions.

The repeal of the Dry Hold Credit Program will have no impact on revenue collections of the state or local governmental units.

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The costs and/or economic benefits to others cannot be quantified at this time. The program should have a positive effect on alternative energy exploration and development activity. Alternative energy source development will provide a continuing utility-scale clean energy source for citizens and businesses; support economic development through job retention and creation; and promote a clean environment in Louisiana.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The effect on competition and employment cannot be quantified at this time. If the program is successful in encouraging exploration and development, increased employment in the alternative energy section will occur.

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Deputy Assistant Secretary  
1108#022

Evan Brasseau  
Staff Director  
Louisiana Fiscal Officer