

set forth in section 5112. In this way, any increase in HAP emissions will be minimized and therefore, any impact on minority communities living close to industries involved in trades of VOC increases for NO<sub>x</sub> reductions would also be minimized. The effect of IPT in minority communities is most appropriately taken into account during the proceedings on a particular proposed NNSR permit.

Analysis of impacts under existing authority and subsequent review by EPA under Title V of the Act (Permits), help to ensure that these rules will not result in disproportionately high and adverse environmental or human health effects on minority or low-income communities. As the Administrator stated in her Memorandum of August 9, 2001, "Environmental statutes provide many opportunities to address environmental risks and hazards in minority communities and/or low-income communities." This includes the Act, particularly the "alternative sites analysis." Under section 173(a)(5) of the Act, an alternative sites analysis must be conducted for each NNSR permit, which requires consideration of, among other things, the "social costs" of the construction or modification, e.g., the disparate impact on minority communities. The Louisiana regulation implementing this requirement, LAC 33:III.504.D.7, contains the same requirement:

As a condition for issuing a permit to construct a major stationary source or major modification in a nonattainment area, the public record must contain an analysis \* \* \* of alternate sites, sizes, production processes, and environmental control techniques and demonstrate that the benefits of locating the source in a nonattainment area significantly outweigh the environmental and social cost imposed.

The LDEQ is also subject to the "IT" requirements which were articulated by the Louisiana Supreme Court in a case concerning the decision to issue a hazardous waste permit to the IT Corporation. *Save Ourselves, Inc. v. Louisiana Environmental Control Comm'n*, 452 So. 2d 1152 (La. 1984) (IT). Under the IT requirements, which would apply to NNSR offsets, LDEQ addresses whether:

1. The potential and real adverse environmental effects of the proposed project have been avoided to the maximum extent possible;
2. A cost-benefit analysis of the environment impact costs balanced against the social and economic benefits of the project demonstrates that the latter outweighs the former; and
3. There are alternative projects or alternative sites or mitigating measures

which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable. *In the Matter of Rubicon, Inc.*, 670 So.2d 475, 483 (La. App. 1996).

While the weighing of costs and benefits required under the IT decision has been interpreted as a "rule of reasonableness," the IT Court and subsequent courts have noted that "[t]he DEQ's role as the representative of the public interest does not permit it to act as an umpire passively calling balls and strikes for adversaries appearing before the Secretary; the rights of the public must receive active and affirmative protection at the hands of DEQ." *Matter of American Waste and Pollution Control Co.*, 642 So.2d 1258, 1262 (La. 1994) (internal punctuation omitted) (quoting IT, 452 So.2d at 1157).

In sum, we believe the disparate impacts alleged by LEAN will be addressed in individual permit proceedings, at which time factual information regarding the scope of the impact and the affected community will be available. Moreover, EPA is entitled to review each Title V permit, and thus can object even in the absence of a citizen petition if a Title V permit fails to comply with applicable requirements of the Act or SIP. For example, in this instance environmental justice issues could be considered and addressed through section 173(a)(5), as discussed above. Thus, we may address environmental justice issues raised by NNSR permits as part of the Title V permit review process. Even where the Agency does not have authority to object to a Title V permit, it may consider environmental justice issues raised by the permit. Such a review may lead to EPA addressing such issues in another manner, such as investigation of Title VI complaints or coordination with States on appropriate resolutions. We are committed to ensuring compliance with the applicable requirements of the Act and the State's SIP through the permit review process, the State's standard for TAPs, which we believe are protective of human health and the environment. Since any trade would be linked to a nonattainment new source review permit, public notice would be mandatory and the public would have the opportunity to request a public hearing on the proposed project. Further, the information in the LDEQ banking database, defined at LAC 33:III.605, will be available to the public upon request. We believe that such opportunities do provide for effective public participation, enhance local communities' involvement, and address

potential environmental justice concerns.

The commenter makes a number of statements about the demographics and health of poor and minority populations in the BR area. However, the commenter does not provide EPA with any concrete references or resources to support its position. For these reasons, we disagree with the commenter that this final action will result in environmental injustice or disparate impacts.

*Comment #8:* LEAN commented that delayed or incomplete implementation of Louisiana's hazardous air pollutant program and the proposed rescission of the NO<sub>x</sub> exemption are LDEQ's first steps toward reducing the level of public protection from a wide array of toxics and carcinogens which qualify as VOCs. LEAN continues by commenting that rescission of the NO<sub>x</sub> exemption will allow inter-pollutant trading.

*Response to Comment #8:* We refer the commenter to our response to comment #7 of this document.

In addition, section 112 of the Act requires EPA to regulate emissions of HAPs from a published list of industrial sources referred to as "source categories." As required under the Act, EPA has developed a list of source categories that must meet control technology requirements for these toxic air pollutants. The EPA has developed (or is developing) NESHAP regulations for all industries that emit one or more of the pollutants in significant quantities. We believe these efforts and the State's Chapter 51 rules have partly contributed to the significant reductions of VOC and toxic emissions, within the BR area, as presented in our response to comment #4 of this document. The Table of completed toxics regulations and relevant information is available at <http://www.epa.gov/ttn/atw/mactfnl.html>.

We are taking this final action pursuant to section 182(f) and 182(b)(1) of the Act. Although the rescission of the NO<sub>x</sub> exemption may have implications for permitting, we are not taking action on IPT in this rulemaking. Our approval of Louisiana's IPT program was based on a recent photochemical grid modeling conducted for the BR area and was a separate rulemaking. See 67 FR 61260 (September 30, 2002).

*Comment #9:* LEAN commented that LDEQ and its constituents in the regulated community intended to "scam" EPA to avoid NNSR in the BR area by requesting the NO<sub>x</sub> exemption, and that the State produced inconsistent theories, using the same modelers, about the cause of ozone nonattainment for approximately 8 years.