

SUBCHAPTER F : WATER QUALITY EMERGENCY AND TEMPORARY ORDERS
§§35.301 - 35.303
Effective December 10, 1998

§35.301. Emergency and Temporary Orders Authorized.

The commission may issue temporary orders, and the commission or executive director may issue emergency orders, relating to the discharge of waste or pollutants into or adjacent to any water in the state under Texas Water Code, §5.509 when necessary to enable action to be taken more expeditiously than is otherwise provided by Texas Water Code, Chapter 26 to effectuate the policy and purposes of that chapter.

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§35.302. Application for Emergency and Temporary Orders to Discharge.

(a) A person desiring to obtain an order to discharge waste into the waters in the state under this subchapter shall submit an application in accordance with §35.24 of this title (relating to Application for Emergency or Temporary Order). The application must contain the information required by that section and the following:

(1) statements that:

(A) the order is necessary to enable action to be taken more expeditiously than is otherwise provided by Texas Water Code, Chapter 26, to effectuate the policy and purposes of that chapter;

(B) the discharge is unavoidable to:

(i) prevent loss of life, serious injury, or severe property damage;

(ii) to make necessary and unforeseen repairs to the facility; or

(iii) to ameliorate serious drought conditions to the extent consistent with the requirements of the federal Clean Water Act for authorization of the NPDES program.

(C) there is no feasible alternative to the proposed discharge;

(D) the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant; and

(E) the proposed discharge will not present a significant hazard to the uses that

may be made of the receiving water after the discharge;

(2) statements that there are no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass from occurring during normal periods of equipment downtime or preventive maintenance;

(3) a statement of the volume and quality of the proposed discharge;

(4) an explanation of measures proposed to minimize the volume and duration of the discharge;

(5) an explanation of measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use; and

(6) for temporary orders, a list of potentially affected persons in accordance with §305.48(a)(2) of this title (relating to Additional Contents for Applications for Wastewater Discharge Permits).

(b) A person desiring to obtain an order to discharge adjacent to waters in the state under this subchapter shall submit an application in accordance with §35.24 of this title. The application must contain the information required by that section and the following:

(1) statements that:

(A) the order is necessary to enable action to be taken more expeditiously than is otherwise provided by Texas Water Code, Chapter 26, to effectuate the policy and purposes of that chapter;

(B) the discharge is unavoidable to:

(i) prevent loss of life, serious injury, severe property damage, or severe economic loss;

(ii) ameliorate serious drought conditions; or

(iii) make necessary and unforeseen repairs to a facility;

(C) there is no feasible alternative to the proposed discharge;

(D) the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant; and

(E) the proposed discharge will not present a significant hazard to the area of or surrounding the discharge;

(2) a statement of the volume and quality of the proposed discharge;

(3) an explanation of measures proposed to minimize the volume and duration of the discharge;

(4) an explanation of measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use; and

(5) for temporary orders, a list of potentially affected persons in accordance with §305.48(a)(2) of this title.

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§35.303. Emergency Orders and Temporary Orders.

(a) The commission or executive director may issue emergency orders, and the commission may issue temporary orders, under this subchapter only if it is found that:

(1) the order is necessary to enable action to be taken more expeditiously than is otherwise provided by Texas Water Code, Chapter 26 to effectuate the policy and purposes of that chapter;

(2) for discharges into water in the state, the discharge is unavoidable to:

(A) prevent loss of life, serious injury, or severe property damage; or

(B) to ameliorate serious drought conditions, to the extent consistent with the requirements of the federal Clean Water Act for authorization of the NPDES program.

(3) for discharges adjacent to waters in the state, the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, to ameliorate serious drought conditions, or to make necessary and unforeseen repairs to a facility;

(4) there is no feasible alternative to the proposed discharge;

(5) the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(6) the proposed discharge will not present a significant hazard either to the uses that may be made of the receiving water after the discharge, or the area surrounding the discharge;

(7) the dates on which the proposed discharge will begin and end and the volume and quality of the proposed discharge are reasonable and attainable; and

(8) the measures proposed to minimize the volume and duration of the discharge and the measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use are reasonable.

(b) The issuing authority may issue emergency orders and temporary orders to discharge waste or pollutants into water in the state under this subchapter only if the discharge is from an NPDES or Texas pollutant discharge elimination system-permitted treatment facility.

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