

SUBCHAPTER K: AIR ORDERS
§§35.801 - 35.809
Effective July 20, 2006

§35.801. Emergency Orders Because of Catastrophe.

The commission or executive director may issue emergency orders under Texas Water Code, §5.515, to authorize immediate action for the addition, replacement, or repair of facilities or control equipment, or the repair or replacement of roads, bridges, or other infrastructure, and authorizing associated emissions of air contaminants, whenever a catastrophe necessitates such construction and emissions otherwise precluded under the Texas Clean Air Act. For purposes of this section, a catastrophe is an unforeseen event including, but not limited to, an act of God, an act of war, severe weather conditions, explosions, fire, or other similar occurrences beyond the reasonable control of the applicant, which renders a facility or its functionally related appurtenances, or a road, bridge, or other infrastructure, inoperable.

Adopted June 28, 2006

Effective July 20, 2006

§35.802. Application for an Emergency Order.

The owner or operator of a facility, as that term is defined in Texas Health and Safety Code, §382.003, desiring to obtain an order 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) a statement that the proposed construction and emissions are essential to prevent loss of life, serious injury, severe property damage, loss of a critical transportation thoroughfare, or severe economic loss not attributable to the applicant's actions, and are necessary for the addition, replacement, or repair of facilities or control equipment, or repair or replacement of roads, bridges, or other infrastructure, necessitated by a catastrophe;
- (2) a description of the catastrophe;
- (3) a statement that there are no practicable alternatives to the proposed construction and emissions;
- (4) a statement that the emissions will not cause or contribute to a condition of air pollution;
- (5) a statement that the proposed construction and emissions will occur only:
 - (A) on the property where the catastrophe occurred;

(B) on other property owned by the owner or operator of the damaged facility, which produces the same intermediates, products, or by-products, provided that no more than a *de minimus* increase will occur in the predicted concentration of the air contaminants at or beyond the property line at such other property; or

(C) for public works projects needed to rebuild or repair damaged roads, bridges, or other infrastructure destroyed during a catastrophe;

(6) a description of the proposed construction and the type and quantity of air contaminants to be emitted;

(7) an estimate of the dates on which the proposed construction and emissions will begin and end;

(8) an estimate of the date on which the facility will begin operation;

(9) a statement that any construction or modification will not interfere with the attainment or maintenance of national ambient air quality standards or violate applicable portions of the control strategy; and

(10) any other information or item the executive director may require to support or explain the need for, or to expedite the issuance of, an emergency order; including information regarding the applicability of and compliance with any federal requirements for new or modified sources.

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§35.803. Public Notification.

The commission or executive director shall publish notice of the issuance of an emergency order in the *Texas Register* as soon as practicable after issuance of the order. If the order is issued prior to a hearing, the order shall fix a time and location for a hearing which is to be held as soon as practicable after the order is issued. Notice of any hearing shall be published in a newspaper of general circulation in the nearest municipality not later than ten days before the hearing. Notice of the issuance and notice of the hearing may be consolidated for publication in the newspaper.

Adopted November 18, 1998

Effective December 10, 1998

§35.804. Issuance of Order.

The commission or executive director may issue an order under this subchapter if it is found that:

(1) the proposed construction and emissions are essential to prevent loss of life, serious injury, severe property damage, loss of a critical transportation thoroughfare, or severe economic loss not attributable to the applicant's actions and are necessary for the addition, replacement, or repair of facilities or control equipment, or repair or replacement of roads, bridges, or other infrastructure, that is necessitated by a catastrophe;

(2) there are no practicable alternatives to the proposed construction and emissions;

(3) the emissions will not cause or contribute to a condition of air pollution;

(4) any construction or modification will not interfere with the attainment or maintenance of national ambient air quality standards or violate applicable portions of the control strategy;

(5) the proposed construction or emissions will occur only:

(A) on property where the catastrophe occurred;

(B) on other property owned by the owner or operator of the damaged facility, which produces the same intermediates, products, or by-products, provided that no more than a *de minimus* increase will occur in the predicted concentration of the air contaminants at or beyond the property line at such other property; or

(C) for public works projects needed to rebuild or repair damaged roads, bridges, or other infrastructure destroyed during a catastrophe;

(6) the time limits in the order for the beginning and completion of the proposed construction and emissions are reasonable; and

(7) the schedule in the order for submission of a complete permit application is reasonable.

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§35.805. Contents of an Emergency Order.

In addition to the requirements of §35.26 of this title (relating to Contents of Emergency or Temporary Order), an emergency order issued under this subchapter shall contain at least the following:

(1) a description of the emergency construction and emissions to be authorized;

(2) reasonable time limits for the beginning and the completion of the proposed construction and emissions;

(3) authorization for action only:

(A) on the property where the catastrophe occurred;

(B) on other property owned by the owner or operator of the damaged facility, which produces the same intermediates, products, or by-products, provided that no more than a *de minimus* increase will occur in the predicted concentration of the air contaminants at or beyond the property line at such other property; or

(C) for public works projects needed to rebuild or repair damaged roads, bridges, or other infrastructure destroyed during a catastrophe;

(4) the requirement that any construction or modification will not interfere with the attainment or maintenance of national ambient air quality standards or violate applicable portions of the control strategy; and

(5) a schedule for submission of a complete construction permit application under provisions of Texas Clean Air Act, Chapter 382.

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§35.806. Requirement to Apply for a Permit or Modification.

The owner or operator of a facility for which an emergency order has been issued under this subchapter shall submit an application within 60 days of issuance of the order under Texas Water Code, §5.515; TCAA, §382.0518; and Chapter 116, Subchapter B of this title (relating to New Source Review Permits). The application shall be reviewed and acted upon by the executive director without regard to construction activity authorized by the emergency order. The appropriate permit fee shall be due and payable under §§116.140, 116.141, and 116.143 of this title (relating to Permit Fees). Costs and expenses related to additions, replacement, or repair of facilities or control equipment shall not be a consideration in any determination in the review of this application.

Adopted November 18, 1998

Effective December 10, 1998

§35.807. Affirmation of an Emergency Order.

The commission shall affirm a proposed or issued order if the applicant shows at the hearing, by a preponderance of the evidence, that:

(1) the proposed construction and emissions are essential to prevent loss of life, serious injury, severe property damage, loss of a critical transportation thoroughfare, or severe economic loss not attributable to the applicant's actions and are necessary for the addition, replacement, or repair of facilities or control equipment, or repair or replacement of roads, bridges, or other infrastructure, that is necessitated by a catastrophe;

- (2) there are no practicable alternatives to the proposed construction and emissions;
- (3) the emissions will not cause or contribute to a condition of air pollution;
- (4) any construction or modification will not interfere with the attainment or maintenance of national ambient air quality standards or violate applicable portions of the control strategy; and
- (5) the proposed construction or emissions will occur only:
 - (A) on property where the catastrophe occurred;
 - (B) on other property owned by the owner or operator of the damaged facility, which produces the same intermediates, products, or by-products, provided that no more than a *de minimus* increase will occur in the predicted concentration of the air contaminants at or beyond the property line at such other property; or
 - (C) for public works projects needed to rebuild or repair damaged roads, bridges, or other infrastructure destroyed during the catastrophe;
- (6) the time limits in the order for the beginning and completion of the proposed construction and emissions are reasonable; and
- (7) the schedule in the order for submission of a complete permit application is reasonable.

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Effective July 20, 2006

§35.808. Modification of an Emergency Order.

The commission shall modify a proposed or issued order if the hearing record shows that:

- (1) construction and emissions otherwise precluded under the Texas Clean Air Act are essential to prevent loss of life, serious injury, severe property damage, loss of a critical transportation thoroughfare, or severe economic loss not attributable to the applicant's actions and are necessary for the addition, replacement, or repair of facilities or control equipment, or repair or replacement of roads, bridges, or other infrastructure, that is necessitated by a catastrophe;
- (2) there is no practicable alternative to such construction and emissions; and
- (3) modification of certain terms of the proposed or issued order is necessary to make the order, construction, and/or emissions meet the requirements stated in §35.807 of this title (relating to Affirmation of an Emergency Order).

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§35.809. Setting Aside an Emergency Order.

The commission shall set aside a proposed or issued order if it is not shown, in accordance with §35.807 of this title (relating to Affirmation of an Emergency Order) or §35.808 of this title (relating to Modification of an Emergency Order), that the order should be either affirmed or modified and adopted as modified.

Adopted November 18, 1998

Effective December 10, 1998