

## **Procedure for Requesting TCEQ Enforcement Discretion Relating to a Declaration of a State of Disaster by the Governor**

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The Texas Commission on Environmental Quality (TCEQ) is committed to working cooperatively and reasonably with the regulated community during all natural disasters. Therefore, when the Governor of Texas declares a state of disaster for a natural disaster under Tex. Gov't Code Section 418.014, the TCEQ may activate this procedure concerning enforcement discretion. When activated, the TCEQ will post notification of this procedure to an external agency webpage established for the disaster.

During the period of time this procedure is activated by the TCEQ, if a regulated entity with a site in a location subject to the declared disaster determines that compliance with certain regulations may prevent, hinder, or delay necessary actions needed to respond to the natural disaster, the regulated entity may request enforcement discretion from the TCEQ. Natural disaster related enforcement discretion is limited to sites physically located in an area under a disaster declaration and actual violations that arose from natural disaster impacts.<sup>1</sup> This includes necessary actions taken by the regulated entity in coping with the natural disaster, or actual violations that arose from the regulated entity's inability to take certain actions, such as collecting samples or timely filing reports, due to the natural disaster. Any discretion granted by the TCEQ is limited solely to the jurisdiction of the TCEQ and will not limit the U.S. Environmental Protection Agency's ability to enforce federal regulations. *See* Tex. Water Code Section 7.002.

Regulated entities bear the sole burden of demonstrating that noncompliance was unavoidable directly due to impacts from the declared natural disaster. Regulated entities must demonstrate they have taken all reasonable actions necessary to ensure compliance with environmental statutes, regulations, permits, and orders to protect the public health, safety, and environment. The determination of what constitutes taking all reasonable actions rests solely with the TCEQ. Furthermore, regulated entities must maintain records adequate to document activities related to any noncompliance under enforcement discretion, including details of the regulated entity's best efforts to comply. Title V Federal Operating permit deviations must be included on the appropriate deviation report in accordance with 30 Tex. Admin. Code Chapter 122. In addition, emissions events are subject to the reporting and recordkeeping requirements in 30 Tex. Admin. Code Chapter 101. Any delays in submission of required reports must be minimized and resume as soon as is feasible.

To request enforcement discretion during a declared disaster, regulated entities shall submit a request through the TCEQ web-based [Enforcement Discretion Request Form](#). The information required to be submitted includes the name, location, and regulated entity number (RN)/customer reference number (CN) for the site; the specific duration of the needed enforcement discretion; each specific rule/permit provision for which enforcement discretion is requested; a concise statement identifying the violation or compliance issue, including a justification demonstrating why compliance would have

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<sup>1</sup> In some natural disasters adverse impacts may extend beyond the boundaries of a declared disaster area. During an event, the TCEQ will consider, on a case-by-case basis, discretion requests related to facilities outside of an area under a disaster declaration.

otherwise prevented, hindered, or delayed necessary actions needed to respond to the disaster; and for each specific rule/permit provision a summary of corrective action taken to mitigate or eliminate the violation or compliance issue. During the natural disaster, if the Office of the Governor temporarily suspends statutes or rules under Tex. Gov't Code Section 418.016 and such statutes or rules are within the TCEQ's jurisdiction, a regulated entity may include any non-compliance related to a suspended provision in the enforcement discretion request for the TCEQ to make a full assessment of the situation and to provide a comprehensive and resolute response.

The TCEQ's goal is to provide an initial response to the regulated entity's request within 24 to 48 hours of receipt. Actual approval of a request may take longer depending upon the nature and breadth of the request. The TCEQ Area Director for the area in which the site/facility/RN is located will be the designated point of contact for questions, responses, and supplemental information. In certain discrete matters, the Deputy Director of the Division handling the request will be the point of contact. If the TCEQ grants a regulated entity's request for natural disaster-related enforcement discretion, the regulated entity must maintain records as required and should reference the enforcement discretion in any future deviation reports, other reports (*e.g.* discharge monitoring reports for Texas Pollutant Discharge Elimination System permits), and investigation correspondence as appropriate.

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