

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 9, 2020

Via U.S. Mail and E-Mail

The Honorable Erin Zwiener
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The Honorable Alma Allen
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The Honorable Jon Rosenthal
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The Honorable Gene Wu
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Dear Representatives Zwiener, Allen, Anchia, Canales, Deshotel, Gervin-Hawkins, Hinojosa, Rosenthal, and Wu:

We appreciate this opportunity to respond to the concerns and requests expressed in your June 4 letter.

TCEQ's use of its enforcement discretion to address the unique challenges posed by the COVID-19 pandemic is a narrow, case-by-case exercise. To be precise, it does not relax any regulatory requirement, whether in a permit, statute or rule. It does not suspend any requirement nor exempt any regulated entity from compliance. Rather, it is a choice by the agency not to pursue enforcement for certain violations that a regulated entity has identified to the agency, usually prospectively.

More specifically, it addresses only those violations that are unavoidable due to the pandemic or where compliance would create an unreasonable risk of transmitting COVID-19 or otherwise impede an appropriate response to the pandemic. In many cases, the agency also requires an alternative form of compliance, most commonly by extending deadlines for testing and reporting obligations. The agency has not been reluctant to deny inappropriate or overly broad requests.

TCEQ values transparency and fully appreciates the public's interest in information about the requests the agency has received for enforcement discretion. Indeed, the interest has been considerable. Moreover, the public has a legal right to this information under the Texas Public Information Act (the Act).

However, the Act also requires TCEQ to protect the interests of entities whose requests may contain information that is exempt from disclosure. That begins with TCEQ not prematurely disclosing information that these entities may seek to protect under the Act. We expect to publish much of the information that you have asked us to make public as entities elect not to assert claims of confidentiality or as the Office of the Attorney General rules on such claims.

As your letter indicates, TCEQ has already posted to its public website at least some information, albeit limited, for each of the now approximately 150 requests it has received. It did so voluntarily, in recognition of the public interest. Your letter asks that the agency continues to publish information about the requests with weekly updates. We have done so since April, with updates each Friday.

It is unclear to us what EPA might mean by "critical failure." However, TCEQ enforces numerous release reporting requirements, including for air emissions and for discharges that threaten state waters. That would include, but not be limited to, releases caused by equipment failures (critical or otherwise) or those that might constitute a major polluting event. TCEQ continues to require compliance with these reporting obligations.

While both the public and private sectors in Texas are currently transitioning to a different mode of responding to the novel coronavirus, the virus is still very much with us. We hope that transmission is slowing, but whatever the case, this virus will dictate the timeline for when regulatory activities can return to normal. We are sensitive to the fact that the virus has claimed the lives of more than 1,800 of our fellow Texans in just the last three months, and very nearly claimed the life of one of TCEQ's fine employees.

Finally, and respectfully, I am proud of the way TCEQ's employees have responded to this pandemic—and it has been no holiday. Staff in our Office of Compliance and Enforcement, in particular, have remained hard at work for their fellow Texans. Among other accomplishments,

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they have: transitioned to working remotely, developed new pandemic policy and guidance, responded to requests for enforcement discretion, responded to several media inquiries and numerous public information requests relating to this new policy and guidance—all while largely maintaining their normal enforcement activities.

Thank you again for your letter and for your attention to this matter. As we continue our efforts to publish additional detail about the requests that we have received for enforcement discretion, we are glad to work with you and your staffs to address any questions or concerns you may have. Please let us know how we can be of assistance.

Sincerely,

A handwritten signature in blue ink that reads "Jon Niermann". The signature is written in a cursive style with a horizontal line at the end.

Jon Niermann, Chairman
Texas Commission on Environmental Quality

Cc: Toby Baker, Executive Director
Ferrell Fields, Director, Governmental Relations