

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** November 23, 2021

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From: Craig Pritzlaff, Director
Office of Compliance and Enforcement

Docket No.: 2020-1173-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 60, Compliance History
Site Classification Changes Due to Exigent Circumstances
Rule Project No. 2020-049-060-CE

Background and reason(s) for the rulemaking:

Several large emergency incidents at industrial facilities in the past few years have caused significant impacts to public health and the environment, which have resulted in scrutiny of the compliance histories of the regulated entities involved in these incidents. The executive director is requesting authority to make designation to and reclassify a site's compliance history classification under 30 Texas Administrative Code (TAC) Chapter 60 in a manner different than the rules currently allow for a site involved in an emergency event that causes or results in exigent circumstances.

Scope of the rulemaking:

The executive director proposes revising Chapter 60 by adding a new section 30 TAC §60.4.

A.) Summary of what the rulemaking would do:

This new section would provide a process for the executive director to designate a site's compliance history classification as "under review," and to reclassify it to "suspended" if the executive director determines that exigent circumstances exist due to an event at a site, such as a major explosion or fire, that significantly impacts the surrounding community and environment, causes emergency response efforts by federal or state authorities to address pollutants, contaminants, or other materials regulated by the agency, and results in certain urgent or grave consequences.

B.) Scope required by federal regulations or state statutes:

This rulemaking is not required by federal regulations or state statutes.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

The rulemaking would be proposed under Texas Water Code (TWC), §5.753, concerning Standards for Evaluating and Using Compliance History; and TWC, §5.754, concerning Classification and Use of Compliance History, both of which authorize rulemaking to establish compliance history standards. Additional authority exists under TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

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Effect on the:

A.) Regulated community:

The proposed rulemaking may result in fiscal implications for businesses or individuals if they have a site that is involved in exigent circumstances which necessitates a federal or state emergency response and results in urgent consequences. The estimated fiscal impact resulting from this proposed rule would vary for each site that the executive director decides to designate as "under review" and reclassify as "suspended." Any costs will depend on the specific situations and if the applicant is prevented from obtaining an authorization.

B.) Public:

No fiscal implications are anticipated for the public. The public benefit anticipated would be improved transparency and a more accurate compliance history classification for a site at which an event causes or results in exigent circumstances.

C.) Agency programs:

No fiscal implications are anticipated for the agency or the state.

Stakeholder meetings:

No stakeholder meeting was held; however, a public hearing will be offered during the comment period in January 2022.

Potential controversial concerns and legislative interest:

There is significant interest in this proposed rule from legislative members, environmental interest groups, and the regulated community.

Would this rulemaking affect any current policies or require development of new policies?

This rulemaking would not necessarily affect any current policies or require development of new policies, but it could impact internal agency practices during implementation.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The purpose of this proposed rulemaking is to provide a more immediate and accurate measure of a site's performance following an exigent event. Without this rulemaking, if an exigent event occurs, an associated site's compliance history may not accurately account for the event.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: December 15, 2021

Anticipated *Texas Register* publication date: December 31, 2021

Anticipated public hearing date: January 27, 2022

Anticipated public comment period: December 31, 2021 - February 1, 2022

Anticipated adoption date: June 1, 2022

Agency contacts:

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Attachments:

None.

cc: Chief Clerk, 2 copies

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