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TCEQ
P.O. Box 13087
Austin, TX 78711-3087
Via hand delivery.

April 4, 2018

**Re: Hurricane Harvey Disaster Declaration dated March 16, 2018; Public Comment
Docket No. 2018-0005-PUB**

The undersigned organizations appreciate the opportunity to provide these comments. We would welcome the opportunity to discuss our recommendations further. Please contact Adrian Shelley at ashelley@citizen.org, 512-477-1155.

On March 16, 2018, Governor Greg Abbott issued a proclamation renewing the disaster declaration for sixty Texas Counties impacted by Hurricane Harvey. On August 28, 2017, consistent with the Governor's original disaster declaration, TCEQ Executive Director Richard Hyde submitted a Request for Suspension of TCEQ Rules that included some forty-six suspensions of TCEQ rules ranging from air pollution reporting and control to vehicle fuel standards to solid waste and wastewater. With each proclamation from Gov. Abbott extending the disaster declaration, these rule suspensions have also been extended.

The mission of the Texas Commission on Environmental Quality is "to protect our state's public health and natural resources consistent with sustainable economic development." TCEQ's enabling rules are necessary to achieve this mission. Suspension of rules leads to noncompliance by the regulated community, which thwarts the mission to protect public health.

Some rule suspensions may be necessary in the days and weeks following a disaster of the magnitude of Hurricane Harvey. We believe that many of the rule suspensions were never appropriate. We also believe that, more than six months after the hurricane, there is no justification for continued suspension of these forty-six rules. We have attached to this letter a point-by-point refutation of the justifications for these rule suspensions. While many of them were applicable on August 28 of last year, virtually all of them appear to be unjustified and unreasonable today.



We have three recommendations for how to proceed with these suspensions:

1. TCEQ must weigh the cost to public health of noncompliance against the value of continued rule suspensions.

Taking one rule as an example, the TCEQ requested suspension of 30 TAC Ch. 111, Subchapter A, Division 1 – Visible Emissions. This rule limits air pollution emissions of visible pollutants such as particulate matter, for example limiting visible emissions from flares to five minutes in any two-hour period. 30 TAC 111 (a)(4)(A). This rule is important to limit emissions of particulate matter which can cause nonfatal heart attacks; irregular heartbeat; aggravated asthma; decreased lung function; increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing; and premature death in people with heart or lung disease. A suspension of this rule—and indeed, of all of the suspended rules—carries grave consequences for public health. Companies that fail to comply with this rule will emit more particulate matter, which will cause sickness and death.

A rule of such importance for public health should not be suspended unnecessarily. We are not aware of any companies that are experiencing continued operational difficulties as a result of Hurricane Harvey that would necessitate suspension of this rule. TCEQ's own analysis of emissions events related to Hurricane Harvey covers the period Aug. 21 - Sept. 30, 2017 (See "Facilities Reporting Emissions During Hurricane Harvey: Number of Emission Events Reported from August 21 to September 30, 2017," map created by TCEQ Toxicology Division, 03/02/18). This suggests that, by TCEQ's own accounting, emissions events have not occurred as a result of Hurricane Harvey since September 30, 2017.

Given that emissions events are not still occurring as a result of Hurricane Harvey, this rule suspension is no longer justified. The suspension must be weighed against the cost to public health, which could be considerable. These considerations weigh in favor of ending the rule suspension. This is similarly true for most, if not all, of the suspended rules. Please see attached spreadsheet for a detailed analysis of each rule suspension.

2. TCEQ should provide information to the public about the continued use of rule suspensions.

A large group of environmental and public health advocates met with TCEQ officials about Hurricane Harvey on two occasions: September 12, 2017 and December 11, 2017. At the September 12 meeting, we were told that TCEQ was not aware of *any* company that had taken advantage of the suspension of 30 TAC § 101.201, Emissions Event Reporting and Recordkeeping Requirements. This was despite the fact that perhaps only 45 companies had reported events related to Harvey in the STEERS database and, by our reckoning, that there were some 800 companies in the hurricane's path.

Again, if TCEQ is not aware of companies taking advantage of these rule suspensions, they should be ended. If TCEQ is aware of rule suspensions being exercised by companies impacted by Harvey, it should make that information publicly available. The public has a right to know if rules have been suspended, leading to noncompliant actions by regulated industry that will have health or environmental consequences.



We are asking the TCEQ today to make public any information it has about companies failing to comply with suspended rules and the resulting health and environmental consequences.

3. If rule suspensions are not being utilized, TCEQ should recommend that they be ended.

If companies are not still taking advantage of rule suspensions, then those suspensions should be ended. Again, this is a matter of weighing the public health and environmental consequences of rule suspension and noncompliance with the needs of disaster response and recovery. We simply do not understand how most, if not all, of the rule suspensions could still be necessary more than six months after Harvey. TCEQ should take a hard look at each of the forty six-rule suspensions and the stated justification or “Impediment to Disaster Recovery.” If suspension is no longer justified, we request that the TCEQ recommend to the Governor that the rule suspension be discontinued. This should be done on a case-by-case basis for each rule suspension.

Conclusion

There were many stories in the days and weeks after Hurricane Harvey of courage, dedication, and a commitment to making Texas whole again. Part of this return to normalcy is a reinstatement of public health and environmental protections. TCEQ rule suspensions are no longer necessary, and the consequences to public health and the environment outweigh any justification for continued suspensions. We call on TCEQ to recommend an end to these rule suspensions and a resumption of the agency’s mission to protect public health and the environment.

Again, we appreciate the opportunity to provide these comments. If you wish to discuss these issue further, we can be reached by email at ashelley@citizen.org and phone at 512-477-1155. Juan Parras, Founder and Director of Texas Environmental Justice Advocacy Services, can be reached at parras.juan@gmail.com, 281-513-3221.

Attachment: Harvey Rule Suspensions Response.xlsx

Respectfully,

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