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Governor Greg Abbott  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711-2428

September 20, 2019

**Re: Rescind environmental rule suspensions following Tropical Storm Imelda**

Dear Governor Abbott:

I am writing in response to the “Request for Suspension of TCEQ Rules”<sup>1</sup> and the “Additional Request for Suspension List”<sup>2</sup> dated September 19, 2019. Environmental rule suspensions are bad public policy and have no place in disaster declarations. After Hurricane Harvey, the Texas Commission on Environmental Quality (TCEQ) and the governor’s office suspended 46 environmental rules and allowed those rule suspensions to continue for seven months without explanation. When we requested these suspensions be lifted in a letter dated April 4, 2018 (attached), TCEQ complied with that request, again without explanation.

The September 19, 2019 suspension request lists verbatim the same forty-six environmental rules that were suspended during Hurricane Harvey. The additional request lists twenty-four subchapters of rules for suspension, making this request far broader than the one that occurred after Hurricane Harvey. Because environmental rules suspensions are counter to TCEQ’s mission and bad public policy, and because the TCEQ has never articulated why these rule suspensions are necessary to disaster recovery, we request that they be immediately rescinded.

Texas has more natural disasters than any other state in the union.<sup>3</sup> Texas also has one of the highest concentrations of industrial facilities anywhere in the world. When people live near industrial activity, as they do in Texas, great care must be taken to protect their health and well-being. Sometimes public health concerns conflict with the economic interests of corporations. In these situations, Texas has an obligation to protect the health of people over corporate profits.

In a response to the TCEQ rule suspension request addressed to TCEQ Executive Director Toby Baker from Jordan A. Rodriguez, Policy Advisor, Office of Governor Greg Abbott, authority for rule suspensions is cited at Texas Government Code § 418.016, which states in paragraph (a) that:

The governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict

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<sup>1</sup> See <https://www.tceq.texas.gov/assets/public/response/floods/tropical-storm-imelda/suspension-of-tceq-rules-09.19.19.pdf>.

<sup>2</sup> See <https://www.tceq.texas.gov/assets/public/response/floods/tropical-storm-imelda/additional-request-for-suspension-list-09.19.19.pdf>.

<sup>3</sup> See <https://www.ncdc.noaa.gov/billions/events/US/1980-2018>.



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compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.<sup>4</sup>

The statute contemplates that rule suspensions can be used if strict compliance with rules would “in any way prevent, hinder, or delay necessary action[.]”

Environmental rule suspensions must be weighed against public health and environmental protections. Any suspensions must be narrowly tailored in time and effect.

As we demonstrate in the attachment to this letter, we believe that the state’s interest in protecting public health and the environment militates in favor of leaving rules in place. We also believe that TCEQ enforcement discretion provides all of the leeway that companies need to react appropriately to disasters and disaster recovery.

The Texas Commission on Environmental Quality is the state agency tasked with enforcing environmental rules in Texas. TCEQ’s mission 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. The TCEQ must carefully weigh any suspension of rules against this mission. If a less consequential option—such as the use of enforcement discretion—is available, TCEQ should use that option and avoid rule suspensions.

The TCEQ, like most administrative agencies, has discretion when deciding which violations of law and regulation to enforce against. Although there is no explicit statutory or regulatory grant of enforcement discretion, this discretion is universally acknowledged to exist and is exercised daily by TCEQ.<sup>5</sup>

We believe that exercise of enforcement discretion, not environmental rule suspensions, is the appropriate action to provide companies with the flexibility they need to respond to disasters. Again, the Local Government Code states that rule suspensions are appropriate only “if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.”<sup>6</sup>

It is not necessary for TCEQ to issue blanket suspensions of rules in order to alert companies that they don’t have to adhere to strict compliance at the expense of coping with a disaster. We recommend that TCEQ issue guidance recommending enforcement discretion for rule violations that occur as a result of disasters or disaster response. The TCEQ should issue a new policy

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<sup>4</sup> Local Government Code § 418.016(a) (2017).

<sup>5</sup> See, e.g., “Breakdowns in Enforcement,” Environmental Integrity Project and Environment Texas (July 7, 2017) (available at <https://environmenttexas.org/sites/environment/files/reports/Breakdowns%20in%20Enforcement%20Report%20%282%29.pdf>) (demonstrating that, between 2011 and 2016, fewer than three percent of air pollution emissions violations were enforced against).

<sup>6</sup> Local Government Code § 418.016(a) (2017).



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stating it will not enforce against violations if the violator can demonstrate that compliance was not possible due to a disaster.

Rather than suspending rules when disaster declarations occur, the state should issue the guidance we recommend and communicate to companies the existence of enforcement discretion. This would alert companies that strict compliance with rules is not necessary if it “would in any way prevent, hinder, or delay necessary action in coping with a disaster.” This would obviate the need for rule suspensions.

In the attached document, we have explained our rationale for why each environmental rule suspended after Hurricane Harvey—the same forty-six rules included in the first suspension after Imelda—should not be suspended. As a general matter, we oppose the suspension of each and every one of these rules and we request that their suspension be immediately rescinded. We also ask the agency to articulate why it believes a rule suspension was necessary, and why the use of enforcement discretion is not adequate to provide companies the leeway they need to cope with a disaster.

As a final note, the TCEQ and the Governor should appreciate that blanket rule suspensions can carry unintended consequences. As we stated after Hurricane Harvey and the seven month rule suspension that followed, the TCEQ should expect that any enforcement actions it undertakes for violations that occurred during a rule suspension will lead the offending companies to offer the rule suspensions as a defense against enforcement. This means that the TCEQ will have to prove that violations were not the consequence of the Trical Storm Imelda disaster or disaster recovery. This additional burden of proof can be expected for any enforcement actions related to any of the rules that have been suspended. This is likely to create an additional administrative burden for the state.

It might be argued that leaving rules in place during a disaster would open companies to liability for violations that occurred as a result of the disaster. TCEQ’s liberal use of enforcement discretion should eliminate that concern. It is simply not necessary to suspend environmental rules as part of a disaster declaration. We urge the Texas Commission on Environmental Quality and the Governor to immediately lift the present environmental rule suspension.

## **Conclusion**

In the days and weeks after a natural disaster, Texans are widely known to pull together and work toward recovery. Suspending regulations sends the wrong message about the importance of environmental and public health protections. It implies that they are an impediment to doing business, when in fact they are necessary protections of the environment and public health. Furthermore, suspending rules gives companies a defense against noncompliance, even if their actions were unrelated to a disaster.

Please lift the environmental rule suspensions immediately. The TCEQ can rely on enforcement discretion to excuse defensible deviations that occurred as a result of disaster response.



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Again, we appreciate the opportunity to provide these comments. If you wish to discuss this issue further, I can be reached by email at [ashelley@citizen.org](mailto:ashelley@citizen.org) and by phone at 512-477-1155.

**Attachments:** Imelda Rule Suspension Response.

April 4, 2018 letter regarding Harvey rule suspension.

Respectfully,

A handwritten signature in black ink, appearing to read "Adrian Shelley".

Adrian Shelley

Director, Public Citizen's Texas Office

30 TAC Chapter	Title	Impediment to Disaster Response	Response to Rule Suspension dated Sept. 19, 2019
101	General Air Quality Rules		
	<p>SUBCHAPTER F (Divisions 1 and 2): Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities</p> <p>§101.201 Emissions Event Reporting and Recordkeeping Requirements</p> <p>§101.211 Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements</p>	<p>Unauthorized emissions as a result of hurricane effects, such as lightning, floods, fires, wind or wind-blown damage, and power outages would meet the definition of an emissions event, therefore, suspending the reporting and recordkeeping requirements would remove a potential impediment to disaster response.</p>	<p>Recordkeeping and reporting requirements do not take priority over disaster response and should not be interpreted as an impediment to disaster response. TCEQ has enforcement discretion it can exercise to excuse companies from any requirements that were not fulfilled as a result of a disaster or disaster recovery.</p> <p>TCEQ has stated that recordkeeping and reporting was not impacted during Hurricane Harvey, as has provided evidence of recordkeeping and reporting of air emission events into the STEERS database in the days after Harvey. (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).</p> <p>Because suspending recordkeeping and reporting rules is not necessary to ensure adequate disaster response and recovery, this rule should not be suspended. The TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.</p>
111	Control of Air Pollution From Visible Emissions and Particulate Matter		

	<p>SUBCHAPTER A: Visible Emissions And Particulate Matter Division 1 - Visible Emissions</p>	<p>Compliance with the specified source visible emissions requirements, or alternate opacity limits, for particulate matter may not be possible as a result of hurricane effects, such as lightning, floods, fires, wind or wind-blown damage, and power outages and suspending these requirements would remove a potential impediment to disaster response.</p>	<p>TCEQ enforcement discretion can be used to excuse companies from violations of this rule that resulted from a disaster or disaster recovery. Rather than providing a blanket rule suspension, TCEQ should narrowly use its enforcement discretion when a facility can demonstrate that compliance was not possible due to a disaster.</p> <p>Because suspending this rule is not necessary to ensure adequate disaster response and recovery, this rule should not be suspended. TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.</p>
	<p>Division 4 - Materials Handling, Construction, Roads, Streets, Alleys, And Parking Lots</p>	<p>Compliance with the requirements for the control of air pollution from visible emissions and particulate matter from materials handling, construction, roads, streets, alleys, and parking lots may not be possible as a result of hurricane effects, such as lightning, floods, fires, wind or wind-blown damage, and power outages and suspending these requirements would remove a potential impediment to disaster response.</p>	<p>See reply to 30 TAC Ch. 111.</p>
	<p>Division 5 - Emissions Limits On Nonagricultural Processes</p>	<p>Compliance with the emissions limits on nonagricultural processes for the control of air pollution from visible emissions and particulate matter may not be possible as a result of hurricane effects, such as lightning, floods, fires, wind or wind-blown damage, and power outages and suspending these requirements would remove a potential impediment to disaster response.</p>	<p>See reply to 30 TAC Ch. 111.</p>

	<p>SUBCHAPTER B: Outdoor Burning</p> <p>§111.201 General Prohibition</p> <p>§111.203 Definitions</p> <p>§111.217 Requirements for Certified and Insured Prescribed Burn Managers</p>	<p>Activities in response to hurricane effects, such as lightning, floods, fires, wind or wind-blown damage, and power outages will require the disposal of waste and debris, which often may be accomplished through outdoor burning. Emissions from outdoor burning are regulated by the above rules, and suspending the rules would remove a potential impediment to disaster response, specifically related to expediency of a response.</p>	<p>TCEQ should narrowly tailor this rule suspension to apply to circumstances in which outdoor burning is absolutely necessary for disaster response or recovery.</p> <p>After a disaster declaration, TCEQ should review this rule suspension before each monthly extension of the declaration and determine whether this suspension is still necessary.</p>
114	<p>Control of Air Pollution from Motor Vehicles</p> <p>SUBCHAPTER H: Low Emission Fuels</p>		
	<p>Division 1 – Gasoline Volatility</p> <p>§114.301 Control Requirements for Reid Vapor Pressure</p>	<p>Suspension is requested to the extent of the terms of any fuel waivers issued by EPA in response to TCEQ requests. To date, EPA has issued fuel waivers on August 25 and 26, 2017. The suspension and waiver would assist in the effort to have adequate fuel supplies in the region.</p>	<p>TCEQ should narrowly tailor this rule suspension to apply only when necessary to comply with federal fuel waivers.</p> <p>After a disaster declaration, TCEQ should review this rule suspension before each monthly extension of the declaration and determine whether this suspension is still necessary.</p>
	<p>Division 2 – Low Emission Diesel</p> <p>§114.312 Low Emission Diesel Standards</p>	<p>Suspension is requested to the extent of the terms of any fuel waivers issued by EPA in response to TCEQ requests. To date, EPA has issued fuel waivers on August 25 and 26, 2017. The suspension and waiver would assist in the effort to have adequate fuel supplies in the region.</p>	<p>See reply to 30 TAC 114.</p>
115	<p>Control Of Air Pollution From Volatile Organic Compounds</p>		
	<p>SUBCHAPTER B:</p> <p>General Volatile Organic Compound Sources</p>		

			<p>TCEQ enforcement discretion can be used to excuse companies from violations of this rule that resulted from a disaster or disaster recovery. Rather than providing a blanket rule suspension, TCEQ should narrowly use its enforcement discretion when a facility can demonstrate that compliance was not possible due to a disaster.</p> <p>Because suspending this rule is not necessary to ensure adequate disaster response and recovery, this rule should not be suspended. TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.</p>
	Division 1 - Storage Of Volatile Organic Compounds	Unauthorized emissions may occur due to improper storage of VOC material as a result of hurricane effects, such as lightning, floods, fires, wind or wind-blown damage, and power outages and suspending the VOC storage requirements would remove a potential impediment to disaster response.	
	Division 4 - Industrial Wastewater	Unauthorized emissions may occur due to an affected source category not complying with the industrial wastewater rules as a result of hurricane effects, such as lightning, floods, fires, wind or wind-blown damage, and power outages and suspending these requirements would remove a potential impediment to disaster response.	See reply to 30 TAC 115.
	Division 5 - Municipal Solid Waste Landfills	Operation of a municipal solid waste landfill in compliance with the nonmethane organic compounds emission rate for the landfill may not be possible as a result of hurricane effects, such as lightning, floods, fires, wind or wind-blown damage, and power outages and suspending these requirements would remove a potential impediment to disaster response.	See reply to 30 TAC 115.
	<p>SUBCHAPTER C:</p> <p>Volatile Organic Compound Transfer Operations</p> <p>Division 1 - Loading And Unloading Of Volatile Organic Compounds</p> <p>Division 3 - Control Of Volatile Organic Compound Leaks From Transport Vessels</p>	Unauthorized emissions may occur due to VOC transfer operations as a result of hurricane effects, such as lightning, floods, fires, wind or wind-blown damage, and power outages and suspending these requirements would remove a potential impediment to disaster response.	See reply to 30 TAC 115.



	<p>SUBCHAPTER D:          Petroleum Refining, Natural Gas Processing, And Petrochemical Processes          Division 1 - Process Unit Turnaround And Vacuum-Producing Systems In Petroleum Refineries          Division 2 - Fugitive Emission Control In Petroleum Refineries In Gregg, Nueces, And Victoria Counties          Division 3 - Fugitive Emission Control In Petroleum Refining, Natural Gas/Gasoline Processing, And Petrochemical Processes In Ozone Nonattainment Areas</p>	<p>Unauthorized emissions may occur due to various petroleum refining, natural gas processing, or petrochemical processes not complying with the industrial wastewater rules as a result of hurricane effects, such as lightning, floods, fires, wind or wind-blown damage, and power outages and suspending these requirements would remove a potential impediment to disaster response.</p>	<p>See reply to 30 TAC 115.</p>
	<p>SUBCHAPTER F:          Miscellaneous Industrial Sources</p>		
	<p>Division 1 - Cutback Asphalt</p>	<p>Unauthorized emissions may occur due to use of conventional cutback asphalt not in compliance with VOC solvent content requirement as a result of hurricane effects, such as lightning, floods, fires, wind or wind-blown damage, and power outages and suspending these requirements would remove a potential impediment to disaster response.</p>	<p>See reply to 30 TAC 115.</p>
	<p>Division 3 - Degassing Of Storage Tanks, Transport Vessels, And Marine Vessels</p>	<p>Unauthorized emissions of VOCs may occur as a result of hurricane effects, such as lightning, floods, fires, wind or wind-blown damage, and power outages and suspending these requirements would remove a potential impediment to disaster response.</p>	<p>See reply to 30 TAC 115.</p>
117	<p>Control Of Air Pollution From Nitrogen Compounds</p>		
	<p>SUBCHAPTER D:          COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS          Division 1 - Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources</p>	<p>Compliance with the combustion control requirements for nitrogen compounds at minor sources in the Houston-Galveston-Brazoria ozone nonattainment area may not be possible as a result of hurricane effects, such as lightning, floods, fires, wind or wind-blown damage, and power outages and suspending these requirements would remove a potential impediment to disaster response.</p>	<p>See reply to 30 TAC 115.</p>

	<p>SUBCHAPTER E:  MULTI-REGION COMBUSTION CONTROL  Division 1 - Utility Electric Generation In East And Central Texas  Division 2 - Cement Kilns  Division 3 - Water Heaters, Small Boilers, And Process Heaters  Division 4 - East Texas Combustion</p>	<p>Compliance with the combustion control requirements for nitrogen compounds at: utility electric generation in East and Central Texas; cement kilns; water heaters, small boilers, and process heaters; and stationary gas-fired reciprocating internal combustion engines at any stationary source of nitrogen oxides in a county covered by the proclamation may not be possible as a result of hurricane effects, such as lightning, floods, fires, wind or wind-blown damage, and power outages and suspending these requirements would remove a potential impediment to disaster response.</p>	<p>See reply to 30 TAC 115.</p>
	<p>SUBCHAPTER F:ACID MANUFACTURING  Division 1 - Adipic Acid Manufacturing  Division 2 - Nitric Acid Manufacturing--Ozone Nonattainment Areas  Division 3 - Nitric Acid Manufacturing--General</p>	<p>Compliance with the combustion control requirements for nitrogen compounds at adipic and nitric acid production units may not be possible as a result of hurricane effects, such as lightning, floods, fires, wind or wind-blown damage, and power outages and suspending these requirements would remove a potential impediment to disaster response.</p>	<p>See reply to 30 TAC 115.</p>
285	<p>On-Site Sewage Facilities</p>		
	<p>SUBCHAPTER A: General Provisions</p>	<p>Subchapter A contains requirements for the construction, repair, and operation of on-site sewage facilities. Suspending the rules will allow expedited construction and repair of on-site facilities and may remove a potential impediment to disaster recovery.</p>	<p>See reply to 30 TAC 115.</p>
	<p>SUBCHAPTER D: Planning, Construction and Installation Standards for OSSFs  §285.35 Emergency Repairs</p>	<p>Subchapter D contains notification requirements related to the emergency repair of on-site sewage facilities. Suspending the rules may remove a potential impediment to disaster recovery.</p>	<p>Notification requirements do not take priority over disaster response and should not be interpreted as an impediment to disaster response. TCEQ has enforcement discretion it can exercise to excuse companies from any requirements that were not fulfilled as a result of a disaster or disaster recovery.</p> <p>Because suspending notification rules is not necessary to ensure adequate disaster response and recovery, this rule should not be suspended. TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.</p>

293	Water Districts		
	<p>SUBCHAPTER F: Actions Relating to Construction Projects and Purchase of Facilities</p> <p>§293.62 Construction Related Documents To Be Submitted to the Agency</p> <p>§293.63 Contract Documents for Water District Projects</p>	<p>Section 293.62 contains requirements for submitting specific documents and reports to the executive director for approval during the construction of district facilities financed with bond proceeds. Section 293.63 requires districts to solicit bids for construction projects. Suspending these rules may remove a potential impediment to disaster recovery.</p>	<p>TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.</p>
	<p>SUBCHAPTER G: Other Actions Requiring Commission Consideration for Approval</p> <p>§293.83 District Use of Surplus Funds for Any Purpose and Use of Maintenance Tax Revenue for Certain Purposes</p> <p>§293.84 District Use of Escrowed Funds</p>	<p>Section 293.83 requires districts to obtain executive director approval prior to using surplus funds from a bond issuance. Section 293.84 requires executive director approval prior to a district using bond funds that have been placed in escrow. Suspending these rules may remove a potential impediment to disaster recovery.</p>	<p>TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.</p>
304	Watermaster Operations		
	<p>SUBCHAPTER B: Regulation of the Use of State Water or Watercourses</p> <p>§304.13. Requirement for Measuring Devices</p> <p>§304.15. Declarations of Intent to Divert, Transport, or Release Water</p>	<p>Secton 304.13 requires diverters in watermaster areas to install and maintain measuring devices. Measuring devices can be impacted by flooding and other storm components and suspending rules will allow facilities to replace measuring devices when conditions stabilize and are safe. Section 304.15 requires diverters in watermaster areas to notify the TCEQ in advance of diverting. Suspending this requirement will allow facilities to focus on other disaster recovery activities.</p>	<p>Notification requirements do not take priority over disaster response and should not be interpreted as an impediment to disaster response. TCEQ has enforcement discretion it can exercise to excuse companies from any requirements that were not fulfilled as a result of a disaster or disaster recovery.</p> <p>Because suspending notification rules is not necessary to ensure adequate disaster response and recovery, this rule should not be suspended. TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.</p>
305	Consolidated Permits		

	SUBCHAPTER P: Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System(TPDES) Permits	Subchapter P adopts federal regulations for TPDES permits. Wastewater treatment facilities in storm damaged areas may temporarily not be able to comply with these standards and suspending the rules may remove a potential impediment to disaster recovery.	TCEQ enforcement discretion can be used to excuse companies from violations of this rule that resulted from a disaster or disaster recovery. Rather than providing a blanket rule suspension, TCEQ should narrowly use its enforcement discretion when a facility can demonstrate that compliance was not possible due to a disaster.  Because suspending this rule is not necessary to ensure adequate disaster response and recovery, this rule should not be suspended. TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.
307	Texas Surface Water Quality Standards	Chapter 307 sets forth general criteria that apply to surface water in the state and specifically apply to substances attributed to waste discharges or human activities. Wastewater treatment facilities in storm damaged areas may temporarily not be able to comply with these standards and suspending the rules may remove a potential impediment to disaster recovery.	See reply to 30 TAC 305.
309	Domestic Wastewater Effluent Limitation and Plant Siting		
	SUBCHAPTER A: Effluent Limitations	Subchapter A establishes effluent quality limitations for treated domestic sewage which will be required of permittees as appropriate to maintain water quality in accordance with the commission's surface water quality standards. Wastewater treatment facilities in storm damaged areas may temporarily not be able to comply with these standards and suspending the rules may remove a potential impediment to disaster recovery.	See reply to 30 TAC 305.

	SUBCHAPTER C: Land Disposal of Sewage Effluent	Subchapter C contains requirements for the land disposal of sewage effluent. Land disposal activities in storm damaged areas may temporarily not be able to comply with these standards and suspending the rules may remove a potential impediment to disaster recovery.	See reply to 30 TAC 305.
312	Sludge Use, Disposal, and Transportation		
	SUBCHAPTER F: Disposal of Water Treatment Sludge	Subchapter F requires a permit to dispose of water treatment sludge. Suspending the rules will allow additional entities to dispose of water treatment sludge and may remove a potential impediment to disaster recovery.	TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.
	SUBCHAPTER G: Transporters and Temporary Storage Provisions	Subchapter G requires sludge transporters to register with the TCEQ. Suspending the rules will allow additional transporters to transport sludge and may remove a potential impediment to disaster recovery.	TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.
314	Toxic Pollutant Effluent Standards		
	SUBCHAPTER A: Toxic Pollutant Effluent Standards and Prohibitions	Chapter 314 adopts by reference 40 Code of Federal Regulations, Part 129, Subpart A, concerning toxic pollutant effluent standards and prohibitions. Wastewater treatment facilities in storm damaged areas may temporarily not be able to comply with these standards and suspending the rules may remove a potential impediment to disaster recovery.	TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.
321	Control of Certain Activities by Rule		
	SUBCHAPTER B: Concentrated Animal Feeding Operations	Subchapter B contains requirements for the land application of manure, sludge, or wastewater resulting from concentrated animal feeding operations. Operations in storm damaged areas may temporarily not be able to comply with these standards and suspending the rules may remove a potential impediment to disaster recovery.	TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.

327	Spill Prevention and Control	Chapter 327 applies to discharges or spills that result in a release to the environment within the territorial limits of the State of Texas, including the coastal waters of this state and requires all accidental discharges or spills of treated or untreated wastewater shall be reported within 24 hours of the occurrence. Suspending the rules may remove a potential impediment to disaster recovery.	TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.
330	Municipal Solid Waste		
	<p>SUBCHAPTER A: General Information</p> <p>§330.1 Purpose and Applicability</p> <p>§330.3 Definitions</p> <p>§330.5 Classification of Municipal Solid Waste Facilities</p> <p>§330.7 Permit Required</p> <p>§330.9 Registration Required</p> <p>§330.11 Notification Required</p> <p>§330.13 Waste Management Activities Exempt from Permitting, Registration, or Notification</p> <p>§330.15 General Prohibitions</p> <p>§330.17 Technical Guidelines</p> <p>§330.23 Relationships with Other Governmental Entities</p> <p>§330.25 Relationship with County Licensing System</p>	These rules provide the requirements for authorizations and prohibitions applicable for storage, processing, removal, or disposal of any solid waste. These provisions could impede a facility's responses to Hurricane Harvey, especially in regard to debris removal and storage.	TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.
	SUBCHAPTER C: Municipal Solid Waste Collection and Transportation	Subchapter C contains rules for public and private waste collection and transportation systems. Operations in storm damaged areas may temporarily not be able to comply with these standards and suspending the rules may remove a potential impediment to disaster recovery.	TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.

	<p>SUBCHAPTER D: Operational Standards for Municipal Solid Waste Landfill Facilities</p> <p>§330.133 Unloading of Waste (for unloading, processing, and storage in buffer zones)</p> <p>§330.141(b) Easements and Buffer Zones (for unloading, processing, and storage in buffer zones only)</p> <p>§330.147 Disposal of Large Items</p> <p>§330.167 Ponded Water (suspend 7-day repair timeframe during this event)</p> <p>§330.169 Waste in Enclosed Containers or Enclosed Vehicles Accepted at Type IV Landfills</p> <p>§330.171 Disposal of Special Wastes</p>	<p>Subchapter D contains rules on the operational standards for MSW landfills facilities. Operations in storm damaged areas may temporarily not be able to comply with these standards and suspending the rules may remove a potential impediment to disaster recovery.</p>	<p>TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.</p>
	<p>SUBCHAPTER E: Operational Standards for Municipal Solid Waste Storage and Processing Units</p> <p>§330.211 Approved Containers</p>	<p>Subchapter E contains rules for the operational standards of MSW storage and processing units. Operations in storm damaged areas may temporarily not be able to comply with these standards and suspending the rules may remove a potential impediment to disaster recovery.</p>	<p>TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.</p>
	<p>SUBCHAPTER M: Location Restrictions</p> <p>§330.543(b) Buffer Zones</p>	<p>Subchapter M describes what activities can occur in easements and buffer zones. Due to the disaster, storage and processing could occur in buffer areas but not easements.</p>	<p>TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.</p>
	<p>SUBCHAPTER T: Use of Land Over Closed MSW Landfills</p>	<p>Subchapter T is should be suspended to allow storage and processing over closed MSW landfills, but not for the disposal of waste.</p>	<p>TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.</p>
331	Underground Injection Control		

	<p>SUBCHAPTER D: Standards for Class I Wells Other than Salt Cavern Disposal Wells</p> <p>§331.64 Monitoring and Testing Requirements</p>	<p>The operational requirements regarding continuous monitoring and immediate investigation of alarms could be impeded by Hurricane Harvey.</p>	<p>Monitoring requirements do not take priority over disaster response and should not be interpreted as an impediment to disaster response. TCEQ has enforcement discretion it can exercise to excuse companies from any requirements that were not fulfilled as a result of a disaster or disaster recovery.</p> <p>Timely investigation of alarms is necessary to protect public health and safety. This is particularly true in the days during and after a disaster. Rather than providing a blanket rule suspension, TCEQ should narrowly use its enforcement discretion when an operator can demonstrate that compliance was not possible due to a disaster.</p> <p>Because suspending these rules is not necessary to ensure adequate disaster response and recovery, they should not be suspended. If TCEQ intends to suspend these rules in the future, it should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.</p>
334	Underground and Aboveground Storage Tanks		
	<p>SUBCHAPTER A: General Provisions</p> <p>§334.5 General Prohibitions for Underground Storage Tanks (USTs) and UST Systems</p>	<p>This rule prohibits the delivery of fuel/gasoline to an underground storage tank (UST) without a valid delivery certificate. Suspension of this requirement for UST operators that have certificates that are scheduled to expire could help maintain the flow of fuel to the public.</p>	<p>TCEQ should narrowly tailor this rule suspension to apply only when necessary to comply with federal fuel waivers.</p> <p>After a disaster declaration, TCEQ should review this rule suspension before each monthly extension of the declaration and determine whether this suspension is still necessary.</p>



	<p>SUBCHAPTER D:  Underground and Aboveground Storage Tanks  §334.72 Reporting of Special Releases  §334.75 Reporting and Cleanup of Surface Spills and Overfills  §334.76 Initial Response to Releases</p>	<p>These rules require certain reporting requirements and certain response actions be completed within 24 hours of a release which may not be possible in a disaster situation. Temporarily suspending the rules may remove an impediment to disaster recovery.</p>	<p>Reporting requirements do not take priority over disaster response and should not be interpreted as an impediment to disaster response. TCEQ has enforcement discretion it can exercise to excuse companies from any requirements that were not fulfilled as a result of a disaster or disaster recovery.</p> <p>Time sensitive response actions are necessary to protect public health and safety. This is particularly true in the days during and after a disaster. Rather than providing a blanket rule suspension, TCEQ should narrowly use its enforcement discretion when an operator can demonstrate that compliance was not possible due to a disaster.</p> <p>Because suspending these rules is not necessary to ensure adequate disaster response and recovery, they should not be suspended. TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.</p>
	<p>SUBCHAPTER F: Aboveground Storage Tanks  §334.125 General Prohibitions and Requirements for Aboveground Storage Tanks (ASTs)  §334.127 Registration for Aboveground Storage Tanks (ASTs)</p>	<p>The first rule prohibits the delivery of fuel/gasoline to an above ground storage tank (AST) without a valid delivery certificate. The second rule requires registration of an AST. Suspension of these rules could enable TXDOT and others to stage AST and receive fuel deliveries for the public and for emergency responders.</p>	<p>TCEQ should narrowly tailor this rule suspension to apply only when necessary to comply with federal fuel waivers.</p> <p>After a disaster declaration, TCEQ should review this rule suspension before each monthly extension of the declaration and determine whether this suspension is still necessary.</p>
335	Industrial Solid Waste and Municipal Hazardous Waste		

	<p>SUBCHAPTER A: Industrial Solid Waste and Municipal Hazardous Waste in General  §335.2(d)(5) Permit Not Required for Nonhazardous Industrial Solid Waste (NHISW) Transfer Facility  §335.5 Deed Recordation of Waste Disposal  §335.6. Notification Requirements.</p>	<p>If waste stored for less ten days in containers a permit is not required for a (NHISW) transfer facility. TCEQ could allow for storage of (NHISW) for more than ten days.  Recommend waiving deed recordation for disposal of animals if 10 or fewer carcasses are buried on one property and the regional office is notified (this is currently in guidance). Waive the requirement to provide notice to the executive director in writing prior to the event.  Recommend waiving requirement for notification 90 days prior to engaging in disposing, processing, or recycling of industrial solid waste on site. This will remove potential impediments to disaster recovery.</p>	<p>Notice and recordkeeping requirements do not take priority over disaster response and should not be interpreted as an impediment to disaster response. TCEQ has enforcement discretion it can exercise to excuse companies from any requirements that were not fulfilled as a result of a disaster or disaster recovery.   Because suspending these rules is not necessary to ensure adequate disaster response and recovery, they should not be suspended. TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach."</p>
	<p>SUBCHAPTER C: Standards Applicable to Generators of Hazardous Waste  §335.69 Accumulation Time</p>	<p>Certain hazardous waste generators are allowed to store hazardous waste for a 90-day time period. These timeframes may be difficult to meet and impede facilities' responses to Hurricane Harvey and storage and transportation of wastes.</p>	<p>TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.</p>
	<p>SUBCHAPTER D: Standards Applicable to Transporters of Hazardous Waste  §335.94 Transfer Facility Requirements</p>	<p>Hazardous waste transfer facilities may store hazardous waste for 10 days. These timeframes may be difficult to meet and impede facilities' responses to Hurricane Harvey and storage and transportation of wastes.</p>	<p>See reply to 30 TAC 335, Subchapter C.</p>
	<p>SUBCHAPTER K:  Hazardous Substance Facilities Assessment and Remediation  §335.346 Removals and Preliminary Site Investigations</p>	<p>This rule regards the steps that are required to perform partial or total removals at facilities that are either listed on the Registry or proposed for listing on the Registry. There are likely situations where the impacts of the storm will necessitate emergency removal actions to protect human health and these removal actions will need to occur before or concurrent with potentially responsible party notification or comment.</p>	<p>See reply to 30 TAC 335, Subchapter C.</p>

	<p>SUBCHAPTER N: Household Hazardous Wastes §335.403 General Requirements for Household Hazardous Waste Collections</p>	<p>This rule requires operators to notify the executive director before collecting household hazardous waste. Operations in storm-damaged areas may not be able to immediately comply with these standards. Suspending the rules may remove a potential impediment to disaster recovery.</p>	<p>Notice requirements do not take priority over disaster response and should not be interpreted as an impediment to disaster response. TCEQ has enforcement discretion it can exercise to excuse companies from any requirements that were not fulfilled as a result of a disaster or disaster recovery.</p> <p>Because suspending these rules is not necessary to ensure adequate disaster response and recovery, they should not be suspended. TCEQ should demonstrate why suspension is necessary to ensure proper disaster response, and why use of enforcement discretion to excuse violations that occurred as a result of a disaster would not be an appropriate alternative approach.</p>
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*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](mailto: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](mailto: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](mailto:parras.juan@gmail.com), 281-513-3221.

**Attachment:** Harvey Rule Suspensions Response.xlsx

Respectfully,

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Juan Parras  
Founder and Director, Texas Environmental Justice Advocacy Services

Adrian Shelley  
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Reverend James Caldwell  
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