

US EPA ARCHIVE DOCUMENT

EMERGENCY AND TEMPORARY ORDERS AND PERMITS

30 TAC § 35.402

affected persons in accordance with §305.48(a)(2) of this title.

Source: The provisions of this §35.302 adopted to be effective December 10, 1998, 23 TexReg 12413.

§ 35.303. Emergency Orders and Temporary Orders

(a) The commission or executive director may issue emergency orders, and the commission may issue temporary orders, under this subchapter only if it is found that:

(1) the order is necessary to enable action to be taken more expeditiously than is otherwise provided by Texas Water Code, Chapter 26 to effectuate the policy and purposes of that chapter;

(2) for discharges into water in the state, the discharge is unavoidable to:

(A) prevent loss of life, serious injury, or severe property damage; or

(B) to ameliorate serious drought conditions, to the extent consistent with the requirements of the federal Clean Water Act for authorization of the NPDES program.

(3) for discharges adjacent to waters in the state, the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, to ameliorate serious drought conditions, or to make necessary and unforeseen repairs to a facility;

(4) there is no feasible alternative to the proposed discharge;

(5) the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(6) the proposed discharge will not present a significant hazard either to the uses that may be made of the receiving water after the discharge, or the area surrounding the discharge;

(7) the dates on which the proposed discharge will begin and end and the volume and quality of the proposed discharge are reasonable and attainable; and

(8) the measures proposed to minimize the volume and duration of the discharge and the measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use are reasonable.

(b) The issuing authority may issue emergency orders and temporary orders to discharge waste or pollutants into water in the state under this subchapter only if the discharge is from an NPDES or Texas

pollutant discharge elimination system-permitted treatment facility.

Source: The provisions of this §35.303 adopted to be effective December 10, 1998, 23 TexReg 12413.

SUBCHAPTER G. SOLID WASTE AND URANIUM BY-PRODUCT EMERGENCY ORDERS

§ 35.401. Emergency Orders for Non-hazardous Solid Waste Activities and Underground Injection of Uranium By-product Materials

(a) The commission or executive director may issue a mandatory or prohibitory emergency order under Texas Water Code, §5.512, regarding any activity of solid waste management within its jurisdiction, if it determines that an emergency exists requiring immediate action to protect public health and safety or the environment.

(b) An emergency order issued under this section shall not exceed 90 days, but may be renewed once.

(c) An emergency order affecting an underground injection control permit may be issued for a time no longer than that required to prevent the hazard, and may not be renewed. The injection authorized by the emergency order may not result in the movement of fluids into underground sources of drinking water.

Source: The provisions of this §35.401 adopted to be effective December 10, 1998, 23 TexReg 12413.

§ 35.402. Emergency Actions Concerning Hazardous Waste

(a) Whenever there is good reason to believe that the storage, processing, or disposal of hazardous waste should be authorized to alleviate an imminent and substantial endangerment to human health or safety or the environment; and if there are no alternative, permitted facilities reasonably available for the proper management of the waste, the commission or executive director, on its own motion, or at the request of the executive director or any other party, may issue an emergency order under Texas Water Code, §5.512, authorizing the processing, storage, or disposal of the hazardous waste at a nonpermitted facility or at a permitted facility with no authorization under its permit to receive the hazardous waste in need of immediate management.

(b) In addition to the information required under §35.24 of this title (relating to Application for Emergency or Temporary Order) a party, other than the executive director, requesting such an emergency order shall include a description of any alternatives investigated.

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(c) The executive director shall review the request and may require the requesting party to supply additional information as may be reasonably required to assist in making the findings set out in subsection (a) of this section.

(d) An emergency order issued under this section:

- (1) shall not exceed 90 days in duration;
- (2) shall clearly specify the hazardous wastes to be received, and the manner and location of their processing, storage, or disposal;
- (3) may be terminated by the commission at any time without notice and hearing if it determines that termination is appropriate to protect human health or the environment;
- (4) shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste); and
- (5) for underground injection control permits issued under this section, shall be for no longer duration than required to prevent the hazard. The injection authorized may not result in the movement of fluids into underground sources of drinking water.

(e) Public notice shall accompany the emergency order, shall allow at least 45 days for public comment, and shall be given at least 30 days before the hearing on the emergency order. Public notice of the order may be given at the same time as public notice and opportunity for comment on the order, and the two notices may be combined. The notice shall include:

- (1) the name and address of the applicant;
- (2) the name and location of the hazardous waste management facility;
- (3) a brief description of the wastes involved;
- (4) a brief description of the action authorized or to be authorized, and the reasons for authorization;
- (5) the duration of the emergency order; and
- (6) the name and address of the commission (the office granting the order).

Source: The provisions of this §35.402 adopted to be effective December 10, 1998, 23 TexReg 12413.

§ 35.501. Emergency Orders Relating to Radioactive Substances

(a) When an emergency exists as a result of a matter under the commission's jurisdiction that requires immediate action to protect the public health or safety or the environment, the commission or executive director may issue an emergency order under Texas Water Code, §5.516, and Texas Health and Safety Code, §401.056.

(b) The commission or executive director may issue an emergency order directing any action or corrective measure needed to correct or remove the threat to public health or safety or the environment when the commission or executive director determines that radioactive substances under its jurisdiction threatens the public health or safety or the environment and that the licensee managing the radioactive substances is unable to remove the threat.

(c) An emergency order issued under this section takes effect immediately. A person to whom an emergency order is directed shall comply immediately with that order.

(d) The emergency order shall be delivered to the person to whom the order is directed by hand delivery or by certified mail, return receipt requested. Affidavit of personal service, proof of mailing to the proper address, or the receipt shall be conclusive evidence of service.

(e) If the commission or executive director issues the emergency order without notice or hearing, the commission shall provide the person to whom the order is directed an opportunity for a hearing on written request within 30 days of the date of the order. If a hearing is requested, notice of the hearing shall be given to the person to whom the order is directed by hand delivery or certified mail, return receipt requested, at least ten days before the hearing. A requested hearing shall be held not earlier than the 11th day and not later than the 20th day following the date of receipt of the hearing request.

(f) All provisions of the emergency order shall remain in full force and effect during the pendency of a hearing, unless otherwise altered by the commission. At the conclusion of the hearing and after the proposal for decision is made, the commission shall make a determination to affirm, modify, or revoke the emergency order and may modify, revoke, or suspend the license based on the determination made.