

Hurricane Harvey: TCEQ Guidance for Hurricane Harvey

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PRACTICES Environmental

By August 23, 2017 Proclamation, the Governor of the State of Texas declared that Tropical Depression (now Hurricane) Harvey poses a threat of imminent disaster in 30 counties in and around the Texas coast beginning August 23, 2017. In response, the Executive Director of the Texas Commission on Environmental Quality (TCEQ), in a press release, directed regulated entities to its guidance [here](#). This guidance discusses legal ramifications of the Governor's proclamation and steps regulated entities should and may take during this disaster.

Among other things, the TCEQ has suspended a number of its rules in the 30 counties identified in the Governor's Proclamation for the duration of the disaster. The TCEQ explains that "no additional approval from TCEQ is necessary for activities directly related to disaster prevention or response." It goes further to indicate that "[r]esponse actions pursuant to the guidance should include all reasonable actions necessary and prudent to facilitate, maintain, or restore fuel production and/or distribution, within the State of Texas, directly related to Hurricane Harvey." The agency explains that "the Regulatory Guidance does not negate the need to obtain any required permits or authorizations, nor the need to comply with all regulatory and statutory requirements, unless otherwise specified in the guidance."

TCEQ notes that "Texas law provides a defense against an enforcement action where the regulated entity can establish that the violation was caused solely by an act of God, war, strike, riot, or other catastrophe." TEX.WATER CODE § 7.251. It clarifies that regulated entities:

- Must take all necessary steps to prevent or minimize any increased risk to human health and safety and to the environment.
- Must at all times apply best engineering and pollution control practices as required by applicable standards.
- Should follow their standard operating procedures as well as startup, shutdown, and maintenance activities, requirements and plans, to the extent feasible.
- Should keep records of all activities that they believe are covered by this defense.

Please do not hesitate to contact the [Environmental Practice Group](#) of Haynes Boone for assistance relating to this guidance.