



TCEQ and EPA Release COVID-19 Enforcement Discretion Guidance

by Sam Ballard

Due to the COVID-19 outbreak, the TCEQ and EPA have taken action to lessen the burden on regulated entities, including Municipal Solid Waste facilities, by releasing guidance on submitting requests for enforcement discretion.

On March 18, 2020, TCEQ released guidance directing regulated entities to submit enforcement discretion requests if they are unable to comply with environmental regulations due to COVID-19. Requests should include the following: (1) a concise statement supporting the request for enforcement discretion; (2) the anticipated duration of need for enforcement discretion; and (3) the citation of the rule/permit provision for which enforcement discretion is requested. Regulated entities must also maintain records sufficient to document activities related to noncompliance under enforcement discretion, including details of the regulated entity's best efforts to comply.

The guidance shows that regulated entities need to be proactive in avoiding non-compliance and taking steps to reach compli-

ance in these situations. Enforcement discretion requests should be directed to the Office of Compliance & Enforcement and its Deputy Director, Ramiro Garcia at OCE@tceq.texas.gov and Ramiro.Garcia@tceq.texas.gov. The TCEQ guidance can be located at <https://www.tceq.texas.gov/response/covid-19/tceq-preparedness-responsibilities-covid-19>. TCEQ is typically responding to requests within 48 hours.

In addition, on March 26, 2020, the EPA issued guidance similar to TCEQ's related to its enforcement discretion measures. The guidance retroactively applies to any COVID-19 related compliance issues beginning on March 13, 2020 and contains similar enforcement discretion request criteria as the TCEQ guidance. With respect to administrative settlement agreements and consent decrees, the guidance states that if parties are unable to meet an enforceable obligation, the parties should utilize the notice procedures in the agreement, including any force majeure notice provisions, as applicable.

(Continued on page 4)

Table of Contents

Message from the President	3
Update on Texas Legislature and State Leadership During the COVID-19 Pandemic	6
Job Opportunities	7
Managing Workplace Stress During COVID-19	8 – 11

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(effective Sept. 1, 2019)

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Message from the President

by Richard McHale

Message from the President,



As each of you and your organizations adjust your operations to deal with the Covid-19 pandemic, we have also had to make some changes at TxSWANA. Due to the uncertainty surrounding the future of the virus, social distancing orders, and how the event will impact budgets across the state and country, we have decided to cancel the TxSWANA Annual ROAD-E-O that was to be held next month in Austin. While this event is much anticipated by our members and their staffs, we had to make the tough decision to cancel it this year because ultimately, the health and safety of everyone is our paramount concern. We are just one of many chapters that have decided to cancel our events this year and as a result, the SWANA International ROAD-E-O, that was to be hosted in El Paso this year, has also been cancelled. While this is disappointing, let's use this time to make sure our employees and families are safe and healthy, our customers continue to receive high quality services, and our future ROAD-E-O competitors sharpen their skills to be the best of the best!

We certainly hope that we return to a sense of normalcy soon and as we do, we hope you will be able to attend WasteCon, which is still currently planned for December 7-10, 2020 in Grapevine, TX. The theme of that show, which was prophetically decided upon well before the pandemic, is "Embracing Disruption". I would venture to guess there may be a session or two that talks about this virus and how it has impacted us. TxSWANA is also busy planning our next annual conference which will be held in Lubbock, in April of 2021. As we get closer to that date, we will have more information for you regarding sponsorships and attendance.

Stay safe, stay healthy, as this too shall pass!

Sincerely,

Richard McHale

(Continued from page 1)

Of note, the EPA guidance does not apply to criminal violations or the prevention and reporting of accidental releases. Furthermore, the guidance does not apply to activities that are carried out under the Superfund program or the Resource Conservation and Recovery Act (“RCRA”). Rather, the EPA issued separate guidance on April 10, 2020 addressing all EPA field activities, including cleanup under the Superfund program, RCRA corrective action, the Oil Pollution Act, the Underground Storage Tank program, and the Toxic Substances Control Act PCB cleanup provisions. That particular guidance indicates that the EPA will decide on a case-by-case basis whether it is necessary to modify a party’s performance obligations or cleanup schedule under an existing enforcement order due to “site-specific circumstances,” the “type of work that is affected by COVID-19,” and the “applicable enforcement instrument.”

Regulated Entities should submit EPA enforcement discretion requests to the Office of Enforcement and Compliance Assurance and the regional EPA office with jurisdiction over the regulated activity. The EPA guidance can be located at <https://www.epa.gov/enforcement/covid-19-implications-epas-enforcement-and-compliance-assurance-program>.

Given that enforcement consequences in these situations can vary significantly, regulated entities should diligently consider whether noncompliance has occurred at the state or federal level due to COVID-19. If so, the requesting entity would need to prepare a submission that accurately identifies:

- the potential noncompliance;
- how the noncompliance is related to COVID-19;
- what actions the entity has taken to attempt to comply;

- how long the noncompliance is anticipated to continue; and
- what actions the entity will take to minimize the impact of the noncompliance.

In preparing such requests, it is important to keep in mind the following types of potential causes to link a COVID-19 impact:

- Worker shortage;
- Travel restrictions and social distancing restrictions at facilities that are consistent with announcements by the U.S. Centers for Disease Control and Prevention (“CDC”) and orders by state and local officials;
- Lack of key staff and contractors;
- Unavailable testing laboratories; and
- Worker and third-party resource shortages that affect a facility’s ability to meet reporting obligations or milestones under consent decrees.

Regulated entities should diligently document any compliance issues that may be impacted by COVID-19 and evaluate whether an enforcement discretion request is warranted. In the meantime, we hope you, your family, friends, and co-workers are staying safe and healthy.

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If you have any questions concerning legislative issues or would like additional information concerning the firm’s legislative tracking and monitoring services or legislative consulting services, please contact Ty Embrey at (512) 322-5829 or tembrey@lglawfirm.com.

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Update on Texas Legislature and State Leadership During the COVID-19 Pandemic

by Ty Embry

Governor Abbott, other state leaders and the Texas Legislature are working on a daily basis to try and help the citizens of Texas deal with our new and difficult reality during the COVID-19 Pandemic. The normal rhythm to the legislative process and preparation for the next Regular Session of the Texas Legislature has been significantly altered as legislative leaders attempt to deal with the current issues being created by the COVID-19 Pandemic.

Governor Abbott has issued thirteen (13) Executive Orders since March 19 to lead the response to the pandemic at the state level. Governor Abbott's Executive Orders include Executive Order GA-14 published on March 31 that addressed the statewide continuity of essential services and activities through April 30, 2020, including social distancing guidelines. Governor Abbott also issued several Executive Orders to gradually re-open Texas using a phased-in approach as well as Executive Order GA-17 to create the Governor's Strike Force to Open Texas. Governor Abbott has typically held press conferences with state agency officials and legislative leaders several times a week to update the citizens of Texas on the State's efforts to deal with the pandemic.

Lieutenant Governor Dan Patrick announced the formation of 6 Work Groups made up of Texas State Senators "to discuss the challenges the state will face in the next legislative session as a result of the COVID-19 Pandemic, including economic impact and budgeting; public schools; food supply chain; health and hospitals and pandemic preparedness issues. Lt. Governor Patrick also created a task force chaired by Dallas businessman Brint Ryan to work on strategies for restarting the Texas economy when the time is right.

Texas Senate and House staff members as well as Lt. Governor Patrick's and Speaker Bonnen's staff

members underwent training to help answer phone calls received by the Texas Workforce Commission related to unemployment claims. The Texas Workforce Commission has received an unprecedented number of phone calls and unemployment claims over the last month.

As far as preparation for the next regular session of the Texas Legislature that is scheduled to begin in January 2021, the Texas Senate and Texas House have stopped holding committee hearings in the short term to hear testimony and receive information on the various subjects, issues, and charges that the committees were assigned by Lt. Governor Patrick and Speaker Bonnen as part of the Legislature's social distancing effort. With the U.S. Census occurring in 2020, legislators were anticipating address redistricting matters during the 2021 Regular Session as the Legislature typically does in the Regular Sessions immediately following the Federal Government conducting the U.S. Census. The Legislature is also usually holding hearings and working on the state budget at this time in preparation for the upcoming Regular Session but that work has been reduced due to the COVID-19 pandemic. The state budget that legislators will be working on in the coming months and during the Regular Session will be particularly challenging with the economic ramifications of the COVID-19 pandemic coupled with the drop in oil and gas prices in the 2020 which impacts the amount of tax revenue the State of Texas receives from the production and sale of oil and gas.

If you have any questions concerning legislative issues or would like additional information concerning the firm's legislative tracking and monitoring services or legislative consulting services, please contact Ty Embrey at (512) 322-5829 or tembrey@lglawfirm.com.

JOB OPPORTUNITIES

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CITY ENGINEER
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These positions and others are added and removed as positions become available and/or are filled. For more information on possible job openings, please visit the TXSWANA web site under NEWS, LINKS, & JOBS. Please visit TXSWANA at: <http://www.txswana.org>



Managing Workplace Stress During COVID-19



by David Vartian, University Park

If you are like me, your work schedule has changed and you find that you have more time to focus on your interests. Although I am not much of a TV or movie person, I've been told that I can watch my share and yours of shows like CNBC and other news channels. So during this COVID hibernation, in between my binge watch of CNBC and other news outlets, I have searched for information relating to work and the focus on both productivity and safety in the workplace.

As I did so, several articles and issues surfaced and began to intrigue me more and more. I know we have discussed *Workplace Stress* in some of our safety programs and articles has been discussed. It is a good topic to re-examine as we continue to focus on our safety programs and issues to better affect our teams.

Life certainly took an alarming turn in March. First came the toilet paper hoarding, then the social media memes, and then the real worries about food, sanitizer and medical mask shortages, followed by lockdowns worldwide and stay at home orders for about 95 percent of Americans. AS a result of the COVID-19 pandemic many businesses closed their doors, leading to a dramatic increase in the national unemployment rate and according to the US Bureau of Labor and Statistics, it was the largest over the month increase in the rate since 1975. The effects have hit every industry including ours in the public sector with furloughs, layoffs and other budgetary issues.

In professions such as ours, there's plenty of workplace stress due to COVID-19, from adapting to new working arrangements, having the kids home, employees who may get sick and much more. Many employees are experiencing

stressors unlike any they have had to face before. They will need their Supervisors, Managers, Directors and HR to help them through both the obvious and the less obvious challenges.

The world feels crazy right now, but here are a few ways we can help employees manage workplace stress during COVID-19.

What can organizations do to help reduce employee stress due to COVID-19?

Everyone is feeling the strain of having to adjust to this new, uncertain reality in a way that goes beyond job stress. An article written by David Kessler, a noted grief expert detailed that "we're feeling a number of different griefs....The loss of normalcy; the fear of economic toll; the loss of connection. This is hitting us and we're grieving. Collectively. We are not used to this kind of collective grief in the air."

Kessler goes on to name another type of grief, anticipatory grief, which focuses on the uncertainty of the future and shatters our sense of safety. So even if nobody in your organization is sick and you haven't let any employees go, your employees probably worry

(Continued on page 9)



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(Continued from page 8)

about that possibility. Or maybe they are a manager and they worry about being the bearer of bad news, if the time comes, or of being fired themselves. There's also the very real and tragic grief of losing a loved one to this virus.

What Can We Do?

The number one thing you can do to help your employees manage stress during COVID-19 is communicate. Communicate so they know what their options are and that they do have options. Making sure your employees know who to contact when they have questions about benefits, time-off policies, working from home, or other assistance programs you offer as they will be key in reducing overall workplace anxiety and COVID-19-related job stress. While your leadership position has always been to take care of employee well-being, employees might not have recognized you in this role—so tell them.

Open up the lines of communication. In practical terms, your COVID-19 stress management plan might need to include some sort of information campaign using email, newsletters, an internal web page, or company announcements dedicated to answering COVID-related questions.

To specifically address the issue of grief and emotional well-being, your organization's communications about COVID-19 stress management need to include resources on employee self-care. Remind your employees to take advantage of their health care benefits, particularly with regards to mental health. If you have an Employee Assistant Program (EAP) make sure everyone knows how to access it. EAPs are free for employees and anonymous, alleviating the financial stress and social stigma that can be associated with seeking mental health counseling.

If your organization is having to let em-

ployees go, there are many resources available either via internet or your HR Department to assist you and them.

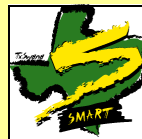
What are specific challenges that may cause employees stress when working from home?

Normally, working from home offers many benefits, from increased productivity to better work-life balance. But this situation isn't normal. Many businesses have had to transition practically overnight to a fully remote workforce, meaning that it's not just a few people here and there calling in to meetings. It's everyone having to figure out how to communicate and work together in this new arrangement—and an even heavier load on those who support them, such as IT and HR professionals.

Additionally, many employees are working from home with spouses, partners, roommates, or kids in the same space. It's not just that people have traded a busy office for a busy home environment. Employees face unprecedented pressure on top of social distancing: homeschooling, limited privacy, health concerns of friends and family, all combined with unique workplace urgency.

Employees just aren't going to be able to separate their personal lives from their work which increases the likelihood of burnout. To combat this, your organization will need to issue clear directives about respecting when employees are on or off the clock (whether that's literally, in the case of hourly and non-exempt workers, or figuratively, in the case of salaried and exempt workers).

Along with giving your employees tips for adjusting to remote work, edu- (Continued on page 10)



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(Continued from page 9)

cate managers on the best practices for dealing with remote employees, so they're better able to mentor and support their teams. Basically, keep remote employees engaged and emotionally healthy, communicate standards for staying in touch during the workday, retain or rebuild team culture, and keep long-term objectives rather than hourly output in mind.

What are the specific challenges for employees who have to work onsite?

Most Solid Waste Professionals can be vulnerable at this time for we often interact with the general public and our peers while conducting our daily tasks and facing risks and stress at the front lines of the pandemic. They likely do not have training or experience in dealing with an outbreak situation, which may leave them feeling helpless or trapped between personal safety and financial obligation.

These workers have to worry about getting infected by someone at work, protecting their family from illness when they come home, and working with the public at a time of high panic and stress. Meanwhile, they have all the same personal challenges as the remote employees we discussed in the previous section: respecting social distancing, caring for children home from schools, worrying about loved ones getting sick, etc. Their stress can't be ignored.

What We Can Do?

Workplace safety has to be your top priority. In the case of our organizations, that responsibility may fall to our safety professionals, supervisors and managers who get direction from department directors who, collectively oversee safety as part of their broader role. But safety is often the responsibility of the entire organization.

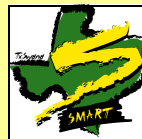
That means ensuring employees wash their hands and have access to basic hygiene supplies, like hand sanitizer or soap and warm water. You'll need to enforce regular disinfection of high-touch areas and also ensure managers are communicating proper hygiene to every team member. All of these recommendations come from the Center for Disease Control's (CDC) COVID-19 guidance to businesses. You can find more detail on their website.

The CDC has also recommended that people wear masks in public. These can be cloth or homemade masks. While organizations (other than hospitals) are under no obligation to provide such masks, you should allow employees to wear them, especially if they are at high risk of contagion due to age or health. If our customers express concerns about employees wearing masks, direct them to the CDC's guidelines for wearing masks and assure them that this measure helps protect them, too.

What is the best way to help an employee who has health concerns related to COVID-19?

COVID-19 is highly contagious, and it's very possible that some of your employees might get sick. This will cause job-related stress even if employees only experience mild symptoms. Current health guidelines recommend that those infected separate themselves entirely from family, friends, and even pets, and then remain in quarantine for seven days after their last symptom. Family members who become ill may require constant care, meaning employees might need to take time off to care for them.

In addition to these (Continued on page 11)



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(Continued from page 10)

worries, the heightened state of fear stigmatizes those who have been infected as somehow morally at fault. This puts us all in danger because, as professor Valeria Earnshaw explains, “stigma undermines efforts at testing and treating disease. People who worry that they will be socially shunned if they are sick are less likely to get tested for a disease or seek treatment if they experience symptoms.”

What Can We Do?

Most importantly, tell your employees to stay home if they don't feel well or if they or someone they live with exhibits any COVID-19 symptoms. If employees are worried about taking time off, check to see if they qualify for the new policy recently put in place by the U.S. government. Among other provisions, the Families First Coronavirus Response Act (FFCRA) guarantees paid sick leave for employees at small businesses with fewer than 500 employees.

If one of your employees does test positive (or has symptoms), the CDC's guidelines state that “employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA).” Making this policy known to your employees will also help them feel more comfortable reporting exposure or illness, thus making everyone safer.

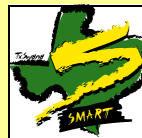
If employees can still work but need to self-isolate, consider being more flexible with allowing remote work. This is assuming your organization hasn't already moved everyone to working from home or that the position can be done remotely, of course. But take an objective look at your operation before dismissing these requests. Working from home helps employees adhere to social distancing recom-

mendations and worry less about exposure to the virus, thus alleviating COVID-19 job stress. Allowing employees to work remotely can also show how your organization values employee health more than preserving the status quo.

Focus on What You Can Do, Not What You Can't

Going back to Kessler's concept of anticipatory grief, much of the stress is compounded by feeling helpless in the face of this pandemic. Health and government guidelines shift and change with the developing crisis, employers try to adapt, and employees can end up feeling caught in the middle. And while you as a person in a leadership position within your organization can't fix every problem, nor should you be expected to, your continued communication and support will be invaluable to help your employees find their way through this pandemic. If they feel like they have support for their job stress, they'll feel better equipped to face the rest of the crisis.

This article and related information is offered by your Safety Management Resource Team (SMART) with the anticipation that each and every day we, as Solid Waste Professionals champion the cause of solid waste occupational safety as we provide a necessary service to the communities we serve. If you would like any additional safety information, please feel free to use your SMART Committee as a resource. Feel free to reach out. If you would like any solid waste safety related information please see our page on the TxSWANA website or contact David Vartian at dvartian@uptexas.org.



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MEMBERSHIP UPDATE

We Welcome the Following New Members (through May 1, 2020)

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Norman Barbosa	City of Denton	Terrance Moore	City of Houston
Edward C. Budimier	NTMWD	John Niedecken	New Earth LLC
Mike Campbell	Envent Technologies	John L. O'Steen	Texoma Area Solid Waste Authority Inc
Damian Cauley	City of Houston	Manish Vijay Pawar	West Haven, CT
Israel Chavarria	City of Denton	Padmi Ranasinghe	Arlington, TX
Eddie Duran	City of GrandPrairie	Brendan Ryan	Town of Westwood, MA
Shawn Fields	City of Houston	Jose Saucedo	City of Grand Prairie
Clifton Gillespie	City of Dallas	Stenning Schueppert	Austin, TX
Wes Glakas	Rehrig Pacific Company	Chance Seely	Republic Services
Sunakshi Hada	UTA Arlington	Simon Vickers	Stillwater, OK
Rodney W. Helmuth	City of Brownwood	Allison Wing	City of Denton
Joseph Johnston	Wylie, TX	Umme Zakira	Texas A & M Univ
Jodie Ledat	City of University Park		

Calendar of Events

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MEETINGS

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July 17	Denton
Aug. 21	Dallas
Sept. 18	Lubbock
Oct. 9	El Paso
Nov. 20	Corpus Christi

2020 TXSWANA Road-e-o

June 19-20, 2020

CANCELLED

2020 SWANA International Road-e-o

Oct. 10, 2020

CANCELLED

2020 SWANA WasteCon

Dec. 7-11

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