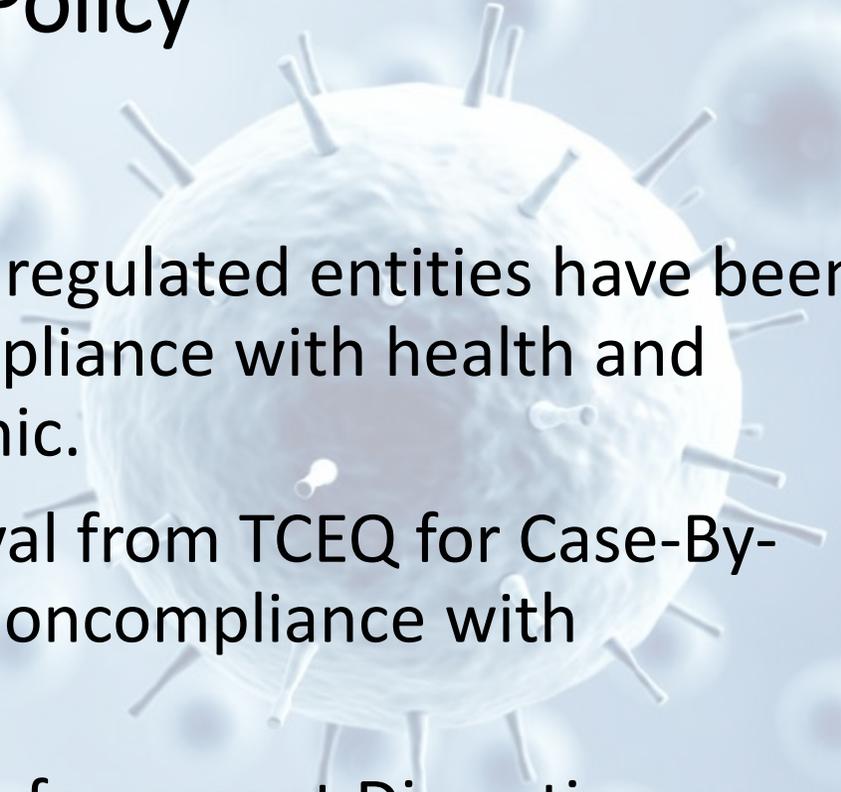


**NORMALIZATION OF THE ABNORMAL:**  
*Looking at the Pandemic, the Economy, and  
the Regulatory Environment in Texas*

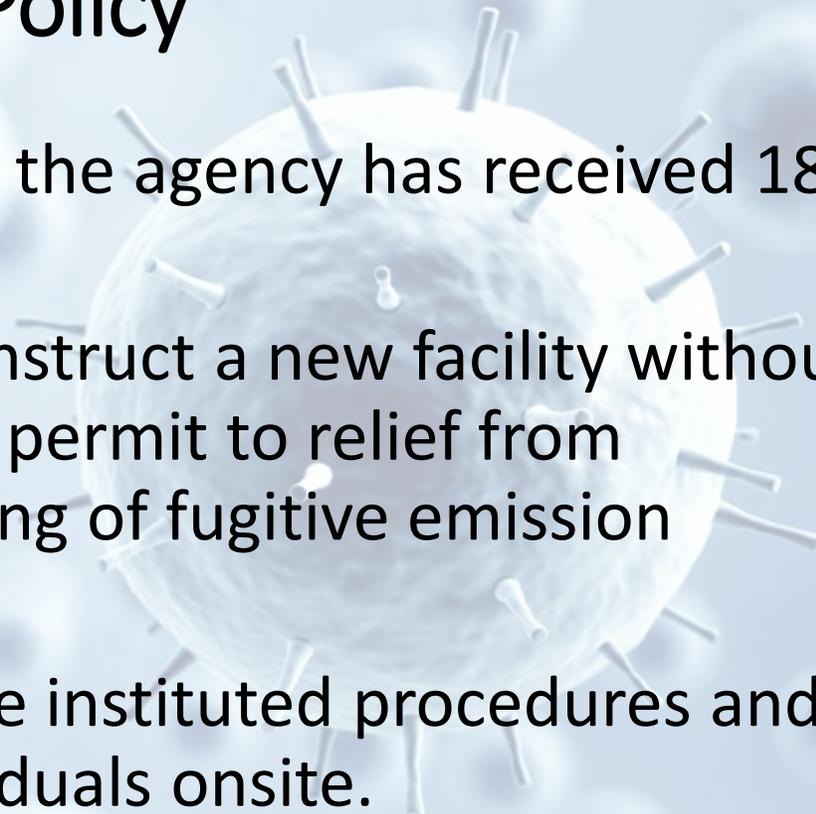
Jeff Saitas, PE  
Saitas and Seales

# COVID – 19 Impacts on the Regulated Community and Environmental Policy

- Apart from the economic stresses, many regulated entities have been struggling to balance environmental compliance with health and safety issues associated with the pandemic.
- Entities have sought and received approval from TCEQ for Case-By-Case Enforcement Discretion related to noncompliance with regulatory requirements.
- The TCEQ received the first request for Enforcement Discretion on March 17, 2020 from Westlake Chemicals.



# COVID – 19 Impacts on the Regulated Community and Environmental Policy

- Since that time and through July 7, 2020, the agency has received 189 Enforcement Discretion requests.
  - Those requests range from seeking to construct a new facility without first obtaining an air quality construction permit to relief from enforcement regarding periodic monitoring of fugitive emission sources.
  - In many instances, regulated entities have instituted procedures and policies to minimize the number of individuals onsite.
  - Keeping skilled and hard to replace operators healthy has been a key focus for those companies.
- 

# COVID – 19 Impacts on the Regulated Community and Environmental Policy

- On April 6, TCEQ Chairman Jon Niermann wrote an open letter addressing the issue of Case-By-Case Enforcement Discretion.
- In that letter the Chairman stated:
- “TCEQ’s Executive Director has determined that it may be inappropriate to pursue enforcement for violations that were unavoidable due to the pandemic or where compliance would create an unreasonable risk of transmitting COVID-19 or otherwise impede an appropriate response to the pandemic.”
- “This is not a suspension of rules, such as the limited rule suspensions that have been necessary in response to other disasters.”

# COVID – 19 Impacts on the Regulated Community and Environmental Policy

- “This is certainly not an exemption from agency rules, as some observers have incorrectly characterized it.”
- Further the letter indicates support for the Enforcement Discretion Policy.
- “In a September 2019 to Governor Abbott, the consumer advocacy group, Public Citizen, wrote: “We believe that exercise of enforcement discretion [sic], not environmental rule suspensions, is the appropriate action to provide companies with the flexibility they need to respond to disasters.”

# COVID – 19 Impacts on the Regulated Community and Environmental Policy

- “In addition to case-by-case enforcement discretion, the Executive Director has extended the deadlines for certain routine reporting requirements and, pursuant to agency rules, implemented a variance process for certain public notice requirements.”
- The agency is continuing the process of reviewing and approving requests for Enforcement Discretion and the assumption is that they will continue to do so until the pandemic recedes.
- A listing of the request documentation for Enforcement Discretion can be found here.

<https://www.tceq.texas.gov/downloads/response/covid-19/enforcement-discretion>

# Texas Commission on Environmental Quality COVID-19 Pandemic Planning Document Return to Office Plan May 28, 2020

- On April 27, 2020 the Governor released the Report to Open Texas and announced the first phase of the state's ongoing plan to safely and strategically open Texas while minimizing the spread of COVID-19.
- On May 18, 2020, he announced the second phase.
- Local restrictions issued in response to the COVID-19 disaster do not apply to restrict the conduct of state business.
- TCEQ plans to follow a similar phased approach to returning to work in their offices.

# Texas Commission on Environmental Quality COVID-19 Pandemic Planning Document Return to Office Plan May 28, 2020

- Using a phased approach, TCEQ initially began returning staff to the office space, as needed, starting June 1, 2020.
- The agency will initially allow for up to 25% of staff to return to the office workspace.
- Teleworking is likely to continue for some groups for several months.
- TCEQ offices will remain closed to the public temporarily.
- TCEQ will continue to assist the public through established virtual methods, email and telephone.

# Texas Commission on Environmental Quality COVID-19 Pandemic Planning Document Return to Office Plan May 28, 2020

- Returning employees will be required to complete COVID-19 safety training.
- Returning employees will be required to complete an initial Pre-Return to the Office Questionnaire.
- Returning employees will have to acknowledge daily that they have conducted a self screening for symptoms of COVID-19.
- Returning employees will be required to certify that they have read and understand TCEQ's return to office plan.

# Texas Commission on Environmental Quality COVID-19 Pandemic Planning Document Return to Office Plan May 28, 2020

## Final Acknowledgement & Certification

- I certify that I have completed the COVID-19 training, that I understand the safety guidance provided, and agree to do my part to maintain a safe work environment at the TCEQ that includes:
  - Conducting a Daily Self-Check for Symptoms;
  - Staying Home if you are sick or caring for someone who is;
  - Practicing preventative hygiene and respiratory etiquette;
  - Wearing a cloth faced covering where required;
  - Maintaining Social Distancing; and
  - Keeping your workspaces clean.

# Texas Commission on Environmental Quality COVID-19 Pandemic Planning Document Return to Office Plan May 28, 2020

- The agency will return staff to the office as needed, with each division limited to 25% office staffing capacity.
- The 25% staffing capacity is a limit or cap, not a required goal.
- The priority for determining which staff should return to the office will be focused on those that are necessary to carry out the TCEQ essential functions and services, including staff who can help fill any regulatory gaps where agency services were discontinued or productivity was materially diminished.

# Texas Commission on Environmental Quality COVID-19 Pandemic Planning Document Return to Office Plan May 28, 2020

- Division management will consider implementing staggered work shifts or rotating schedules by days of the week (split schedule), by alternating weeks, by splitting am/pm schedules, or using a compressed workweek to accomplish staffing needs.
- For staff consideration, the agency referenced a link to an innovative study by Israeli research scientists that showed the potential benefits of working 4 consecutive (ten hour) days in the office (week 1) and then 10 consecutive days out of the office (week 2 – which could include 4 or 5 days teleworking from home), then repeat.

# Texas Commission on Environmental Quality COVID-19 Pandemic Planning Document Return to Office Plan May 28, 2020

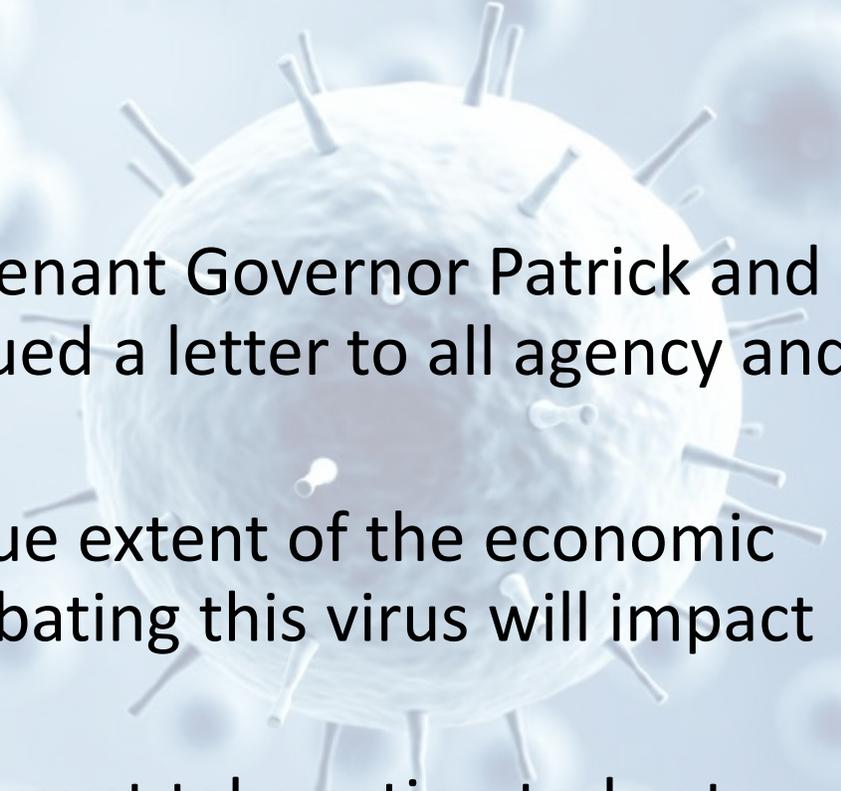
- Travel for field work is considered essential agency business.
- Field employees have been requested to inquire with facility/regulated entity staff about COVID-19 risks/mitigation strategies before conducting on-site investigations.
- TCEQ staff have been informed that additional PPE may be required by the facility.
- TCEQ staff who travel to work or for other official state business have been asked to carry their agency-issued ID with them, along with a copy of the TCEQ Employee Travel Letter.

# Texas Commission on Environmental Quality COVID-19 Pandemic Planning Document Return to Office Plan May 28, 2020

- Each division has assessed its current operations and identified any gaps in regulatory coverage which have not been fully operational since the agency transitioned to a telework environment.
- The agency will use their list of Gaps in Regulatory Coverage to prioritize staff, who can help fill their regulatory gaps and discontinued services, as those who are returned to the office first.

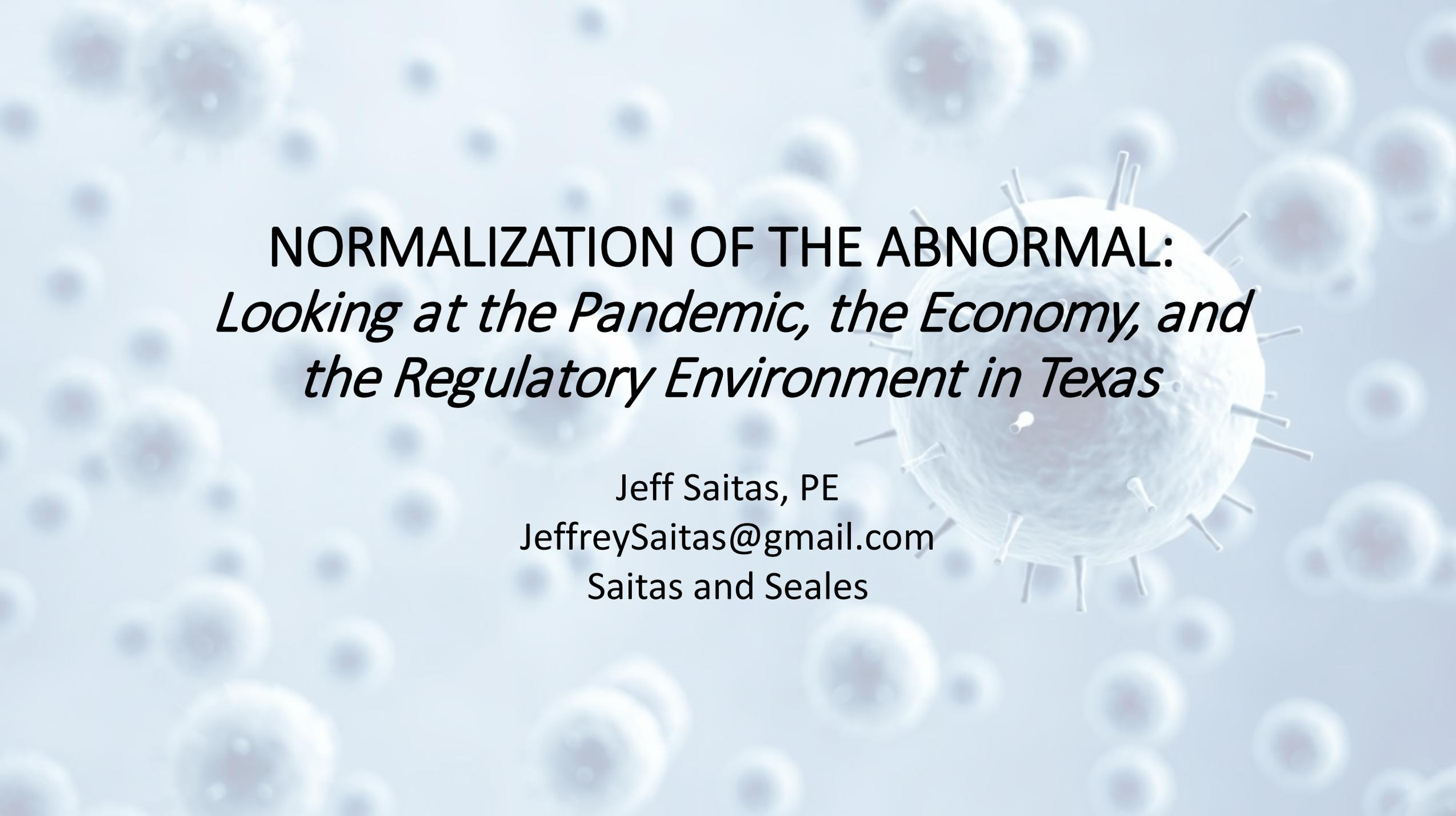
# State Fiscal Impacts of COVID-19

- On May 20, 2020, Governor Abbot, Lieutenant Governor Patrick and Speaker of the House Dennis Bonnen issued a letter to all agency and institutions of Higher Education heads.
- “It will take months until we know the true extent of the economic ramifications of COVID-19, and how combating this virus will impact state finances.”
- “To prepare for this economic shock, we must take action today to ensure that the state can continue providing the essential government services that Texans expect. “



# State Fiscal Impacts of COVID-19

- “Savings achieved in the **current biennium** are ... necessary to offset current year revenue losses.”
- “Some cost saving strategies that agencies should pursue that will not affect the state’s response to COVID-19 include foregoing any capital expenditures that can be deferred, any avoidable travel expenditures, any administrative expenses that are not mission critical and **keeping unfilled any open positions that are not essential to the COVID-19 response.**”
- “Additionally, we request each state agency and institution of higher education **submit a plan identifying savings that will reduce your general and general revenue related appropriations by five percent for the 2020-2021 biennium.**”

The background of the slide is a light blue color with a pattern of numerous small, semi-transparent virus particles. These particles are spherical with a textured surface and several thin, grey, spike-like protrusions extending from their outer edges. One larger, more detailed virus particle is positioned on the right side of the slide, partially overlapping the text.

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