

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** September 18, 2009

Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Susana M. Hildebrand, P.E., Chief Engineer
Chief Engineer's Office

Docket No.: 2009-1186-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 114, Control of Air Pollution From Motor Vehicles
HB 1796: Emission Reduction Incentive Grants Rules
Rule Project No. 2009-048-114-EN

Reasons for the rule package:

The rules are being proposed to implement revisions to the Texas Health and Safety, Chapter 386 as a result of House Bill (HB) 1796, 81st Legislative Session, 2009.

Under what authority are we proposing these changes?

- Texas Water Code, §5.102, which provides the commission with the general powers to carry out its duties;
- Texas Water Code; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state;
- Texas Water Code, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission
- Texas Health and Safety Code, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act;
- Texas Health and Safety Code, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air;
- Texas Health and Safety Code, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air;
- Texas Health and Safety Code, Chapter 386, which establishes the Texas Emissions Reduction Plan (TERP) program.

Is this rulemaking required by federal rule or state statute? Yes. Which ones? HB 1796.

Are there any legal deadlines by which these rules must be proposed, adopted, or effective? No.

What issue(s) or problem(s) are we trying to solve? Adding a definition for stationary source and clarifying eligibility requirements for natural gas recovery projects.

Why is it important that we do this rule package? To implement requirements of HB 1796.

Other important background or historical information. N/A.

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Scope of the rulemaking:

The revisions to Chapter 114, as required by HB 1796, add a definition for stationary engine and clarify requirements for projects involving non-road equipment used for natural gas recovery purposes.

Changes required by federal rule: N/A

Changes required by state statute: The revisions to Chapter 114, as required by HB 1796, add a definition of stationary source and expand the list of eligible projects to include projects involving non-road equipment used for natural gas recovery purposes.

Staff recommendations that are not expressly required by federal rule or state statute: N/A.

Impact on the regulated community:

Who will be affected? The TERP program is a voluntary diesel emissions incentive grant program. Any person or entity in the eligible counties of the state can participate in the program.

Does it create a group of affected persons who were not affected previously? Yes. **How?** This rulemaking expands the pool of eligible grant applicants for diesel emissions reduction incentive grants.

Will there be a fiscal impact? No. **If so, estimate.**

Impact on the public:

Who will be affected? The TERP program is a voluntary diesel emissions incentive grant program. Any person or entity in the eligible counties of the state can participate in the program.

Does it create a group of affected persons who were not affected previously? Yes. **How?** This rulemaking expands the pool of eligible grant applicants for diesel emissions reduction incentive grants.

Will there be a fiscal impact? No. **If so, estimate.**

Impact on agency programs: This rulemaking will require new grant program procedures. Application forms will need to be revised to accommodate the new elements of the program. Revisions to the accompanying guidelines will also be necessary. The rules will not impact agency funding or full-time equivalent requirements.

Stakeholder meetings:

Have any stakeholder meetings been held? No.

With whom? N/A

What were the general sentiments? N/A

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Were any changes made in response to stakeholder concerns? N/A

Policy issues:

What policy issues are affected? N/A

Are any policies that are not currently based on rule being made into a rule? No.

What are the consequences if this rulemaking is not approved to go forward? The commission's rules would no longer be in line with the program outlined in state statute.

Are there alternatives? Specific eligibility requirements for the Emission Reduction Incentive Grants are defined in separate guidelines. The amendments outlined in HB 1796 could be implemented through revisions to the guidelines only.

Potentially controversial matters:

No controversy is anticipated.

Key points in proposed rulemaking schedule:

Anticipated proposal date: October 7, 2009

Anticipated *Texas Register* publication date: October 23, 2009

Public hearing date (if any): November 16, 2009

Public comment period: October 23, 2009 - November 23, 2009

Anticipated adoption date: March 2010

Agency contacts:

Heather Evans, Rule Project Manager, 239-4675, Chief Engineer's Office

Steve Dayton, Team Leader, 239-6824, Chief Engineer's Office

Chisum Cooke, Staff Attorney, 239-6994

Devon Ryan, Texas Register Coordinator, 239-6090

Attachments

cc: Chief Clerk, 5 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Daniel Womack
Kevin Patteson
Betsy Bird
Office of General Counsel
Heather Evans
Devon Ryan