

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST

AGENDA REQUESTED: August 20, 2104

DATE OF REQUEST: August 1, 2014

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Joyce Spencer-Nelson, (512) 239-5017

CAPTION: Docket No. 2014-0660-MIS. Consideration of the adoption of *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program (RG-524)*.

The guidelines would implement the new Drayage Truck Incentive Program established in Texas Health and Safety Code (THSC), Chapter 386, Subchapter D-1, Drayage Truck Incentive Program, by Senate Bill (SB) 1727, 83rd Texas Legislature, 2013, Regular Session, and the corresponding rules for the program in 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter K, Mobile Source Incentive Programs, Division 8, Drayage Truck Incentive Program.

SB 1727 directed the commission to develop a purchase incentive program to encourage owners to replace drayage trucks with pre-2007 model year engines with newer drayage trucks and to adopt guidelines necessary to implement the program. The guidelines establish the procedures and criteria for the program.

The guidelines were made available for public comment. Comments received have been considered and responded to in the Executive Director's Response to Comments. (Steve Dayton, Terry Salem) (Non-Rule Project No. 2014-021-OTH-NR)

Steve Hagle

Deputy Director

Kim Herndon for David Brymer

Division Director

Joyce Nelson

Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: August 1, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Steve Hagle, P.E., Deputy Director
Office of Air

Docket No.: 2014-0660-MIS

Subject: Commission Approval for Adoption of Revisions to
*Texas Emissions Reduction Plan: Guidelines for the Drayage Truck
Incentive Program (RG-524)*

Background and reason(s) for the guidelines:

The *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program* (guidelines) establish the detailed criteria for implementing the Drayage Truck Incentive Program (program) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D-1, Drayage Truck Incentive Program. Rules for the program are included under 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter K, Mobile Source Incentive Programs, Division 8, Drayage Truck Incentive Program.

Under THSC, §386.053, the Texas Commission on Environmental Quality (TCEQ or commission) is required to adopt grant guidelines and criteria consistent with Chapter 386. The commission may propose revisions to the guidelines and criteria as necessary to improve the ability of the Texas Emissions Reduction Plan (TERP) to achieve its goals.

Scope of the revisions:

A.) Summary of what the guidelines will do: Senate Bill (SB) 1727, 83rd Texas Legislature, 2013, Regular Session, by Senators Deuell and Garcia, added new Subchapter D-1 to THSC, Chapter 386. Program rules under 30 TAC Chapter 114, Subchapter K, were adopted by the commission on April 9, 2014. The guidelines are necessary to implement the statutory and regulatory provisions.

A summary of the guidelines is included with the back-up materials.

B.) Scope required by federal regulations or state statutes: The guidelines are required to establish the new Drayage Truck Incentive Program in THSC, Chapter 386, under SB 1727.

C.) Additional staff recommendations that are not required by federal rule or state statute: The guidelines provide the procedures and criteria to implement the program as established by statute.

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Statutory authority:

- Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties;
- TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of the state;
- TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission;
- THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act;
- THSC, §382.011, which authorizes the commission to establish the level of air quality to be maintained in the state's air and to control the quality of the state's air;
- THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and
- THSC, Chapter 386, Subchapter D-1, which establishes the Drayage Truck Incentive Program.

Effect on the:

A.) Regulated community: The guidelines will not affect regulated entities.

B.) Public: The new program will provide owners and operators of eligible drayage trucks the opportunity to apply for and receive grants under this new program.

C.) Agency programs: Program processes, criteria, and forms will need to be developed.

Stakeholder meetings: Stakeholder meetings were not held for the guidelines.

Public comment: The notice of the availability of the draft guidelines and the public comment period was published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3489), published in eight major newspapers within the TERP eligible counties, posted on the TERP website, sent by electronic mail to the TERP listserv, mailed to the TERP Advisory Board, and mailed to the United States Environmental Protection Agency Region 6.

Public meetings were held on May 15, 2014, in Austin, Texas; May 19, 2014, in Fort Worth, Texas; May 21, 2014, in Houston, Texas; and May 23, 2014, in El Paso, Texas.

A summary of the comments received and the response to the comments are included in the attached Executive Director's Response to Comments.

Significant changes from proposal: No substantive changes were made to the proposed guidelines as a result of the public comments.

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Staff made two changes to the original proposal to clarify the requirements. Staff revised the discussion of eligible seaports to remove reference to intermodal facilities. In place of that reference, staff added language that eligible seaports may include on-site storage of cargo in addition to facilities involving the transfer of cargo from vessel or rail to drayage truck, or vice versa. This change is made in recognition that operations at seaports include a broad range of activities, including on-site storage and other activities involving cargo arriving from or being transferred to a marine vessel. The guidelines are written to provide some flexibility in designating what seaports are eligible under the program, as staff learns more about the facilities where the drayage trucks targeted by this program operate.

Staff also added examples under the provisions pertaining to drayage trucks eligible for purchase to state that the TCEQ may allow replacement of on-road heavy-duty vehicles with vehicles configured as on-road or non-road yard trucks. These provisions are in recognition that many of the vehicles used for short-distance movement of cargo within or near a seaport or rail yard are older on-road vehicles originally used for long-haul transport. The replacement of these vehicles with new vehicles configured as yard trucks for the movement of cargo within these facilities will help address the goals of the program.

Potential controversial concerns and legislative interest: The guidelines implement statutory changes. Therefore, staff does not anticipate any concerns with the guidelines. Staff expects legislators involved in SB 1727 to be interested in how the commission implements the program.

Do the guidelines affect any current policies or require development of new policies? Program application contracting materials will need to be developed. Also, eligible seaports and rail yards will need to be identified.

What are the consequences if this revision to the guidelines does not go forward? Are there alternatives to revising the guidelines? The guidelines are needed to implement the statutory requirements. Possible alternatives are not adopting the guidelines or adopting the guidelines at a later date and delaying implementation of the program.

Key points in the adoption schedule: The guidelines will become effective upon adoption.

Agency contacts:

Steve Dayton, Project Manager, (512) 239-6824, Air Quality Division

Terry Salem, Staff Attorney, (512) 239-0469

Commissioners

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Re: Docket No. 2014-0660-MIS

Attachments

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
Pattie Burnett
Office of General Counsel
Steve Dayton

Texas Emissions Reduction Plan (TERP)
Guidelines for the Drayage Truck Incentive Program (RG-524)
Summary of Requirements
August 2014

Senate Bill (SB) 1727, 83rd Texas Legislature, 2013, Regular Session, established the new Drayage Truck Incentive Program (DTIP) under Texas Health and Safety Code (THSC), §386.181. The DTIP is to provide financial assistance for the replacement of pre-2007 model year drayage trucks operating at seaports and rail yards in the state's nonattainment areas with 2010 or later model year drayage trucks.

The rule to establish the criteria for the models of drayage trucks that are eligible for inclusion in the program was adopted by the commission on April 9, 2014. THSC, §386.181(b), directs the commission to also adopt guidelines necessary to implement the DTIP.

This document provides a summary of key requirements for adoption in the guidelines, in addition to the eligibility criteria in the rules.

1. Chapter 1, Summary

This chapter provides a summary of the background and purpose of the program. Contact information is also provided.

2. Chapter 2, Glossary

- a. Activity Life.** Staff recommends a standard activity life of five years with the option of the agency establishing an alternative minimum life on a grant-round basis. This would be the period over which a grant recipient must operate the grant-funded drayage truck in the eligible areas according to the grant requirements. The five-year activity life is consistent with the period used for the TERP Diesel Emissions Reduction Incentive Program (DERI).

3. Chapter 3, Eligible Seaports and Rail Yards

- a. Eligible Counties.** Under the statutory provisions, vehicles must be operated at seaports and/or rail yards located in a nonattainment area in Texas. The counties in the Dallas-Fort Worth and Houston-Galveston-Brazoria eight-hour ozone nonattainment areas are listed in the guidelines. In addition, El Paso County is listed because the City of El Paso is designated nonattainment for particles of particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM₁₀). Language is included to state that the TCEQ may limit the program to only some of the counties based on funding allocation decisions for that grant period.
- b. Facilities.** Under the requirements, eligible seaports and rail yards include those facilities involved in the transfer of cargo from marine vessel or rail to drayage truck, or vice versa. This may include the on-site storage of cargo delivered by vessel or rail for transfer to drayage truck, or vice versa. The provisions state that, in general, major rail yards are operated by Class I railroad companies (i.e., companies with \$250 million or more in annual operating revenues) and that the TCEQ may also include rail yards operated by Class II or III railroad companies, case by case, if it is determined that those facilities include

significant cargo transfer operations based on the frequency of average daily drayage truck visits. The provisions also state that the TCEQ may compile a list of eligible seaports and rail yards.

4. Chapter 4, Eligibility Criteria

The primary eligibility criteria are taken from the statute and rules. Additional and more specific criteria included in the guidelines are explained below.

- a. **Eligible Applicants.** The guidelines require that an applicant have operated the drayage truck to be replaced for an average number of visits per year for the preceding two years, as to be defined by the TCEQ in the grant solicitation, at one or more of the designated seaports or rail yards.
- b. **Drayage Trucks Eligible for Reimbursement (non-road yard trucks).** The guidelines require that a non-road yard truck eligible for replacement have an engine rated at greater than 125 horsepower.
- c. **Drayage Trucks Eligible for Replacement**
 - i. **Two-year ownership requirement.** This section outlines requirements for determining that the drayage truck being replaced has been owned and operated at an eligible seaport or rail yard by the applicant for at least two years preceding the application.
 - ii. **Non-road yard trucks.** This section includes the criteria from the statute and rules requiring that the drayage truck being purchased has an engine model year of 2010 or later. Because the federal emissions standards for non-road equipment changed according to a different schedule than for heavy-duty on-road vehicles, staff included additional criteria for non-road yard trucks to ensure that the yard truck being purchased will be certified to a lower emissions standard than the yard truck being replaced. The guidelines require that a non-road yard truck being purchased be certified to meet the federal Tier 4 or higher non-road engine emissions standard.
 - iii. **Type of vehicle.** The guidelines require that the drayage truck being purchased be of the same type, weight category, and body and axle configuration as the drayage truck being replaced. The provisions allow the TCEQ to accept vehicles of a different type, in particular cases, to account for specific drayage purposes. Some, but not all, of the situations that may be considered include:
 - replacement of an on-road heavy-duty vehicle used for moving cargo in an eligible facility with a non-road yard truck;
 - replacement of an on-road heavy-duty vehicle configured for long-haul transport with an on-road heavy-duty vehicle manufactured and configured as an on-road yard truck; and
 - replacement of a non-road yard truck with an on-road heavy-duty vehicle manufactured and configured as an on-road yard truck.
- d. **Eligible Costs.** The guidelines require that the salvage value of the drayage truck being replaced be considered in determining the purchase price of the new drayage truck and that the TCEQ may use a default salvage value of \$1,000. This approach is consistent with the provisions of the other TERP incentive programs.

e. Eligible Grant Amounts

- i. Percentage of costs.** The guidelines implement the statutory and regulatory requirement that the grant may cover up to 80% of the eligible costs of the purchase of the new drayage truck.
- ii. Maximum limits on eligible costs.** The guidelines state that the TCEQ may establish maximum limits on the eligible costs based on average marketplace prices or the manufacturer's suggested retail price. The TCEQ may also set limits on the cost-effectiveness of a project and may establish standardized maximum eligible grant amounts based on pre-determined prices, percentage of costs, and/or cost-effectiveness limits. The intent of these provisions is to allow the TCEQ to establish pre-determined grant amounts using a rebate-type approach or to award grants based on project cost-effectiveness. The approach for a particular grant round will be included in the funding plan approved for that grant round.

5. Chapter 5, Program Procedures

The procedures include processes similar to those used for the other TERP grant programs. Key criteria are explained further below.

a. Application Review and Selection

- i. Selection process.** The procedures allow the TCEQ to solicit and award grants on either a first-come, first-served basis or to use a competitive grant selection process, including consideration of the comparative cost-effectiveness of the projects. The criteria also allow the TCEQ to establish default annual usage rates to be used for calculating emissions reductions and cost-effectiveness. The selection process for a particular grant round will be included in the funding plan for that grant round.
- ii. Limits on areas and applicants.** The procedures allow the TCEQ to limit projects to specific areas and/or facilities on a grant-round basis. The TCEQ may also limit the number of grants awarded to one applicant, one area, or one facility to ensure that a broad range of projects are funded. Any proposed limits for a particular grant round will be included in the funding plan for that grant round.

- b. Monitoring and Reporting.** Under the criteria, the TCEQ may require semi-annual reporting on the use and location of use of the drayage truck or may establish an alternative reporting schedule. The TCEQ may also authorize or require the use of a global positioning system to monitor use of the grant-funded vehicle.

c. Commitments

- i. Operation at seaports and rail yards.** Under the criteria, a grant recipient must agree to operate the grant-funded drayage truck for a defined number of visits per year to an eligible seaport or rail yard.
- ii. Area of use.** Under the statutory provisions and the rules, at least 50% of the annual miles or hours of operation must also occur within an area defined by the TCEQ. Under the criteria, the areas of use would need to be in the nonattainment areas and other counties designated as "Affected Counties" under the Texas Emissions Reduction Plan. This criteria would make the areas of use consistent with the eligible areas under the main TERP grant program, while the requirement that a drayage truck make a minimum number of visits per year to an eligible seaport or rail yard

will help ensure that only those trucks that operate a significant amount at seaports or rail yards will be eligible for funding.



RG-524
Draft for Commission Agenda - August 2014

Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program

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recycled paper

Air Quality Division

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program

Prepared by
Air Quality Division

RG-524
Draft for Commission Agenda – August 2014

Page to be added in final publication

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Chapter 1

Summary

These guidelines contain the criteria for grants under the Texas Emissions Reduction Plan (TERP) Drayage Truck Incentive Program (DTIP), administered by the Texas Commission on Environmental Quality (TCEQ).

Purpose

The TERP was established by the Texas Legislature in 2001 to create monetary incentives for projects to improve air quality in the state's nonattainment areas and other areas of the state with air quality concerns. The nonattainment areas have been determined to not meet certain federal National Ambient Air Quality Standards established by the United States Environmental Protection Agency (EPA).

The DTIP was established to provide incentives for replacement of vehicles operating at seaports and/or rail yards in nonattainment areas. As a program under the TERP, the TCEQ has determined that a primary purpose of the DTIP should be to reduce emissions of nitrogen oxides (NO_x) and other pollutants, including particulate matter (PM), at these facilities and in the nonattainment areas in general.

NO_x is usually a by-product of high-temperature combustion. Everyday functions like driving a motor vehicle contribute to the creation of NO_x. It can react with volatile organic compounds in the presence of sunlight to form ground-level ozone—a lung irritant that may cause health problems.

Large diesel engines, such as those installed on drayage vehicles, also emit PM consisting of a mixture of solid particles and liquid droplets found in the air. PM can also form in complicated reactions of atmospheric chemicals such as sulfur dioxide and NO_x that are emitted from vehicle engines and other sources. PM that is 2.5 microns in aerodynamic diameter or smaller can get deep into the lungs and are capable of causing health problems.

In many cases, vehicles used for drayage are older, higher-polluting vehicles that are no longer used for longer-haul operations. The concentration of these vehicles operating at seaports and rail yards warranted the establishment of this separate program specifically for replacement of older drayage vehicles with newer, less-polluting models.

As required under the statute, these guidelines establish the standards and criteria for grants issued under the DTIP. Along with the statutory and regulatory provisions applicable to this program, recipients of incentive funding must adhere to the criteria herein.

In addition, the TCEQ may establish more specific criteria, through contracts or other funding mechanisms, consistent with these guidelines.

Legislative and Regulatory Standards

The DTIP is established under Chapter 386, Subchapter D-1, of the Texas Health and Safety Code (THSC). Rules for the program have been adopted by the commission in Title 30 Texas Administrative Code, Chapter 114 (30 TAC 114), Subchapter K, Division 8.

These guidelines were established and adopted in accordance with THSC 386.182. As authorized under THSC 386.183(2)(f), and 30 TAC 114.682(d), these guidelines may modify, further define, or otherwise limit the criteria in the statute and rules.

Other state law and regulations also apply to the DTIP. The applicable standards will be listed in the grant-solicitation documents and the grant contract.

Funding

The DTIP is funded through revenue deposited into the Texas Emissions Reduction Plan Fund. That revenue consists of fees and surcharges established by the Texas Legislature.

The amount of funds available for grants during each year varies depending on the legislative appropriations to the program. The TCEQ will periodically issue notices and information regarding the grant programs, including information on the amount of funds available.

How to Contact Us

For information about this and other TERP grant programs, interested parties should check the TERP website at <www.terpgrants.org>. Also linked from that page are electronic versions of this document, grant-application forms, and other documents, as well as other information that may be helpful to a potential applicant.

TCEQ staff are available to answer questions and offer assistance with the grant programs. If you are unclear about whether a proposed project would qualify for a grant, please feel free to contact TCEQ personnel to discuss the project.

Program staffers may be reached by calling 800-919-TERP (8377) from 8 a.m. to 5 p.m., Monday–Friday during days the TCEQ is open, by e-mail at <terp@tceq.texas.gov>, or by mail at:

**Implementation Grants Section, MC 204
Air Quality Division
Texas Commission on Environmental Quality
PO Box 13087
Austin TX 78711-3087**

Chapter 2

Glossary

Terms as they are defined in Texas Health and Safety Code, Chapter 386, and the TCEQ rules (30 TAC 114.620) apply to this program, except as such terms are further defined and have the meanings as explained below.

activity. Each individual replacement of a drayage truck.

activity life. The period over which the grant recipient commits to use the grant-funded vehicle or equipment in accordance with the terms of the grant contract. The standard minimum activity life is five years, although a different minimum activity life may be established by the TCEQ for a particular grant application period. The TCEQ will establish a start date for each activity, which will usually be as soon as the TCEQ has verified that the vehicle being replaced has been properly disposed of.

cost-effectiveness. The total dollar amount expended divided by the total number of tons of reduced emissions of nitrogen oxides, particulate matter, and other pollutants (alone or in combination) attributable to that expenditure, as may be determined by the TCEQ.

day cab. A drayage truck cab that does not have a compartment behind the driver's seat intended to be used by the driver for sleeping.

drayage activities. The transport of cargo, such as containerized, bulk, or break-bulk goods.

drayage truck. A heavy-duty on-road or non-road vehicle used for drayage activities and that operates on or transgresses (i.e., passes) through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis.

motor vehicle. A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Chapter 502, Texas Transportation Code.

non-road equipment. A piece of equipment, excluding a motor vehicle or on-road heavy-duty vehicle, that is powered by a non-road engine, including non-road and non-recreational equipment and vehicles; construction equipment; industrial equipment; mining equipment; locomotives; marine vessels; and other categories of equipment with high-emitting engines.

non-road engine. An internal combustion engine that is in or on a piece of equipment that is self-propelled and performs another function, excluding:

- a vehicle that is used solely for competition;

- a piece of equipment that is intended to be propelled while performing its function; or
- a piece of equipment designed to be capable of being carried or moved from one location or another.

non-road yard truck. A non-road mobile utility vehicle (non-road equipment) used to transport cargo containers with or without chassis; also known as a utility tractor rig, yard tractor, or terminal tractor.

on-road heavy-duty vehicle. An on-road motor vehicle that has a gross vehicle weight rating of 8,500 pounds or more. This definition does not include a vehicle over 8,500 pounds that is classified by the EPA as a medium-duty passenger vehicle subject to the federal emission standards for light-duty on-road vehicles.

on-road yard truck. An on-road heavy-duty vehicle similar in configuration and use to a non-road yard truck, but with an on-road engine and meeting regulatory standards for limited on-road use.

person. An individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity. This may include a corporation headquartered outside Texas that operates equipment or vehicles primarily in an eligible county in Texas.

project. One or more activities approved by the TCEQ under one grant contract.

rail yard. A rail facility where cargo is routinely transferred from drayage truck to train or vice versa, including structures that are devoted to receiving, handling, holding, consolidating, and loading or delivery of rail-borne cargo.

seaport. Publically or privately owned property associated with the primary movement of cargo or materials from oceangoing vessels or barges to shore or vice-versa, including structures and property devoted to receiving, handling, holding, consolidating, and loading or delivery of waterborne shipments.

Uniform Grant Management Standards. Standards issued by the Texas comptroller of public accounts for use by state agencies in issuing and administering grants under the authority of the Uniform Grant and Contract Management Act, Texas Government Code, Chapter 783.

Chapter 3

Eligible Seaports and Rail Yards

Vehicles funded under this program must operate at eligible seaports and rail yards located within the nonattainment areas in Texas designated under the Federal Clean Air Act, Section 107(d). The counties where all or a portion of the county are currently located within a nonattainment area are listed in Table 3.1 (see also map, Figure 3.1). While this list is accurate at the time of publication, the boundaries of nonattainment areas may be subject to change and those changes will be considered in effect for this program regardless of whether the change is incorporated into these guidelines.

Table 3.1
Counties Eligible for Location of
Drayage Truck Incentive Program Seaports and Rail Yards

Brazoria	Ellis	Johnson	Rockwall
Chambers	El Paso	Kaufman	Tarrant
Collin	Fort Bend	Liberty	Waller
Dallas	Galveston	Montgomery	Wise
Denton	Harris	Parker	

The TCEQ may limit funding under a grant period to projects operating at seaports and rail yards in only some of the counties based on decisions about allocating funds for that grant period.

Seaports eligible under this program include facilities involved in the transfer of cargo from vessel to drayage truck or vice versa, or a combination of drayage truck and rail transfers. This may include the on-site storage of cargo delivered by vessel or drayage truck, before the transfer to drayage truck or vessel.

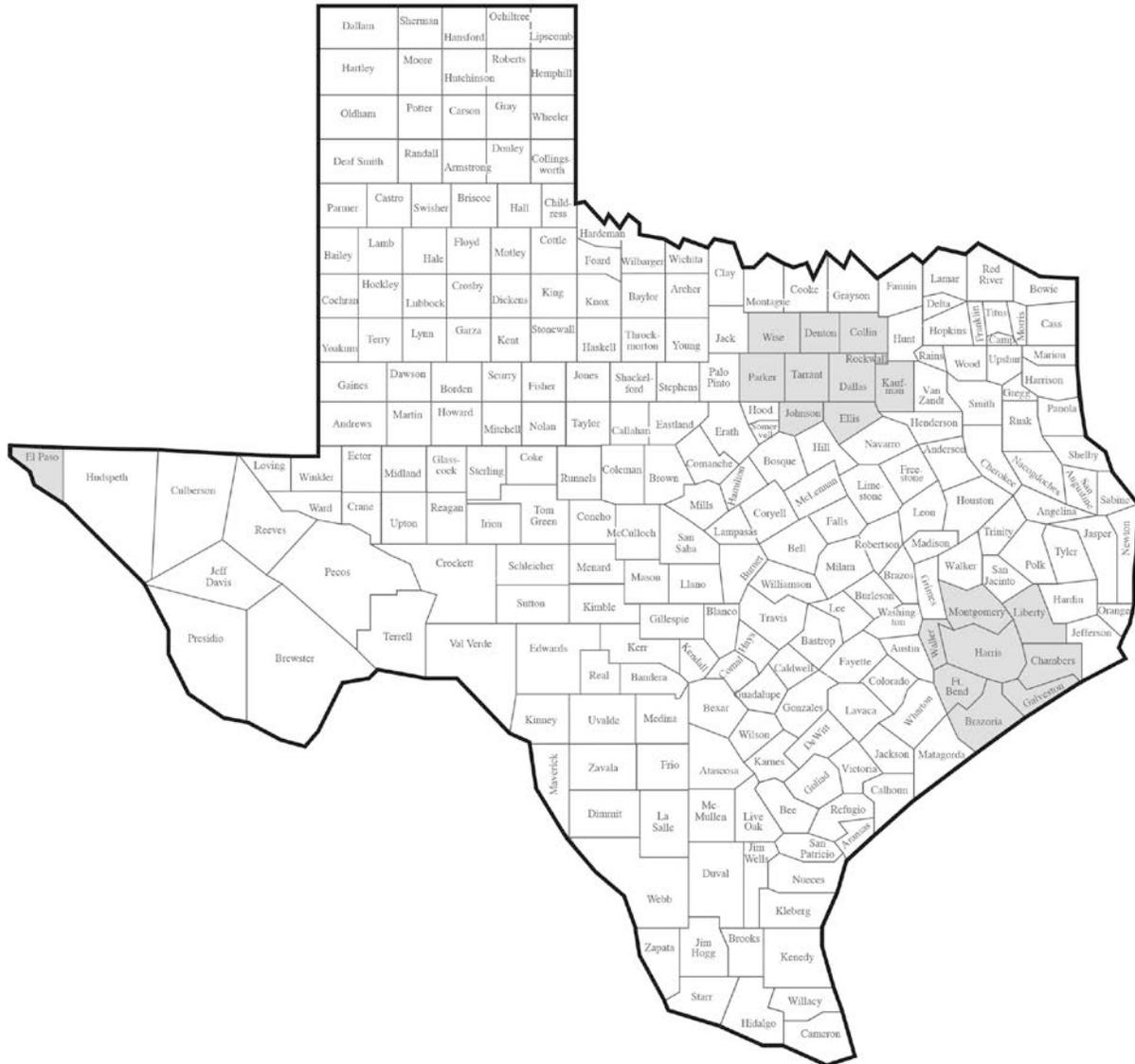
Rail yards eligible under this program include facilities involved in the transfer of cargo from rail to drayage truck or vice versa, or a combination of drayage truck and vessel transfers. This may include the on-site storage of cargo delivered by rail or drayage truck, before the transfer to drayage truck or rail. In general, major rail yards are operated by Class I railroad companies. Under Title 49, Code of Federal Regulations, Chapter 1201, a Class I railroad carrier is one with \$250 million or more in annual operating revenues. The TCEQ may also include rail yards operated by Class II or III railroad companies, case by case, if it determines that those facilities include significant cargo transfer operations at the rail yard. This determination may include consideration of the frequency of average daily drayage-truck visits for transfer of cargo within a calendar month.

The TCEQ may periodically compile a list of seaports and rail yards that meet the definitions and criteria for this program and may require that a facility be included

on the approved list before it considers a drayage truck operating at that facility for funding. This list may be made available on the TERP website at <www.terpgrants.org> and included with the grant solicitation. The TCEQ will have the final authority to determine if a seaport or rail yard is eligible.

Also, the TCEQ may limit funding under a grant period to projects operating at only some of the seaports or rail yards that meet the criteria based on decisions made for that grant period.

Figure 3.1
Counties Eligible for Location of
Drayage Truck Incentive Program Seaports and Rail Yards



Chapter 4

Eligibility Criteria

This chapter outlines the criteria for project eligibility. The TCEQ may further define or limit the eligibility criteria and establish additional criteria in the solicitation materials and other grant documents.

Eligible Activities

Activities eligible for funding under this program involve the replacement of a drayage truck with another drayage truck that is eligible for purchase.

Eligible Applicants

A person is potentially eligible for incentive funding if, for at least the preceding two years, they have:

1. owned or leased a drayage truck eligible to be replaced under the program; and
2. operated the truck in one or more of the designated seaports or rail yards for a minimum average number of visits per year for the preceding two years as established by the TCEQ in the grant solicitation documents.

For particular funding periods, the TCEQ may limit eligibility to certain types of applicants.

Drayage Trucks Eligible for Replacement

Models of drayage trucks eligible for replacement under this program include:

1. a heavy-duty on-road vehicle with a gross vehicle weight rating (GVWR) over 26,000 pounds; and
2. a non-road yard truck with an engine rated at greater than 125 horsepower (hp).

A drayage truck being replaced must have an engine of model year 2006 or earlier.

An applicant must have continuously owned or leased the drayage truck for at least two years preceding the submission of an application and must have operated the

truck at one or more of the eligible seaports or rail yards over that two-year period for at least an average number of visits per 12-month period over the two years as may be established by the TCEQ in the grant solicitation documents. Each combined entry and exit to and from the seaport or rail yard will be considered a visit. For drayage trucks operating permanently at a seaport or rail yard, each day of operation at the facility will be considered a visit.

The applicant must also have the authority to dispose of the vehicle and engine being replaced.

To document the ownership or lease of the truck, all of the following apply:

- For an on-road vehicle, the applicant must be named as the owner on the front of the vehicle title or lessee on the lease documents. The TCEQ may also require documentation that the applicant was listed on the title or lease documents for the previous two years.
- For a non-road yard truck, the TCEQ may require documentation of ownership or leasing of the truck for the previous two years.
- For both on-road vehicles and non-road yard trucks, the TCEQ may require other documentation, as determined by the TCEQ, that the applicant has authority to dispose of the vehicle and engine being replaced.
- An on-road vehicle used for on-road purposes must currently be registered for operation in Texas in the applicant's name and must have been continuously registered and operated for the majority of use in Texas for the previous two years. An apportioned registration for operation in several states will not normally be accepted as proof of continuous registration and operation in Texas, unless the applicant can document that the majority of the vehicle operation occurred in Texas over the previous two years. A non-road yard truck must also have been operated for the majority of use in Texas for the previous two years.
- An on-road vehicle used for on-road purposes must have a current safety inspection (if a safety inspection is required for that vehicle and use) and must have continuously had an up-to-date safety inspection over the preceding two years.
- An on-road vehicle used for non-road purposes may be considered, case by case, if it was solely used at an eligible seaport or rail yard for cargo handling for the previous two years.

The TCEQ may waive the two-year ownership or lease requirement, case by case, where the ownership of the company has changed, the assets of the company have been purchased by another company, or the company has changed its name or incorporation status.

The drayage truck must be in good operating condition and capable of performing its primary function.

To document that the drayage truck has been used at one or more eligible seaports or rail yards for the two years before submission of the application, the applicant must certify in the application the average number of visits to the eligible facilities over those two years. The average historical operation at the eligible facilities may be used by the TCEQ to determine eligibility for the program as well as the eligible grant amount and the usage commitment over the activity life for the drayage truck being purchased.

The TCEQ may require the applicant to provide records and other documentation of use of the drayage truck at the eligible facilities.

Drayage Trucks Eligible for Purchase

Models of drayage trucks eligible for purchase to replace an existing drayage truck under the program include:

1. a heavy-duty on-road vehicle with a GVWR over 26,000 pounds and having a day-cab only; and
2. a non-road yard truck with an engine rated at greater than 125 hp.

A drayage truck to be purchased must have an engine model year of 2010 or later. In addition, the engine on a non-road yard truck must be certified under an EPA certificate of conformity to meet the final Tier 4 non-road engine emission standards for both NO_x and PM. The Tier 4 standards for non-road engines were phased in from 2012 through 2014 for engines 75 to 174 hp and from 2011 through 2014 for engines 175 to 750 hp. Therefore, the eligibility of non-road yard trucks for purchase will need to be considered on a case-by-case basis.

For on-road and non-road engines, the engine on the drayage truck being purchased must be certified by the EPA to lower NO_x and PM emission standards or family emission limits (FELs) than the emission standards or FELs to which the engine on the drayage truck being replaced is certified.

In general, the replacement drayage truck must be of the same type, weight category, and body and axle configuration as the drayage truck being replaced. The TCEQ may accept, in particular cases, vehicles of a different type, weight category, or body and axle configuration to account for the latest technology used for specific drayage purposes.

Some, but not all, of the situations the TCEQ may consider include:

- replacement of an on-road heavy-duty vehicle used solely for moving cargo in an eligible facility with a non-road yard truck;
- replacement of an on-road heavy-duty vehicle configured for long-haul transport with an on-road heavy-duty vehicle manufactured and configured as an on-road yard truck; or

- replacement of a non-road yard truck with an on-road heavy-duty vehicle manufactured and configured as an on-road yard truck.

Eligible Costs

The grant recipient may be eligible for reimbursement of up to 80% of the purchase price of the replacement drayage truck, subject to the grant-amount limits established by the TCEQ. A finance lease, with a binding commitment to buy and retain ownership of the drayage truck at the end of the lease, may be considered a purchase, subject to approval by the TCEQ. Other types of leases are not eligible.

The purchase price may include the invoice price, including taxes and delivery charges included in the price of the replacement drayage truck. The cost to purchase and install a TCEQ-approved global positioning system may also be considered part of the purchase price.

In determining the purchase price, the TCEQ may require that the salvage value of the drayage truck being replaced be subtracted from the invoice price. Unless an alternative approach is used for a particular grant round, the TCEQ may establish and use a default salvage value of \$1,000 for the drayage truck being replaced.

The TCEQ may further limit what is considered an eligible cost for purposes of a particular grant round.

To the extent applicable, as determined by the TCEQ, the cost principles of the Uniform Grant and Contract Management Standards will apply to the determination of eligible costs.

Eligible Grant Amounts

The TCEQ may consider applications for the full 80% of the eligible costs of the purchase of the new drayage truck or may limit the grant amounts to a lower percentage of eligible costs.

The TCEQ may also establish maximum limits on the eligible costs, based on average marketplace purchase prices or manufacturer's suggested retail prices for different weight categories, model years, and types of vehicles, or on other factors determined by the TCEQ to help meet the goals of the program and the TERP.

In establishing the criteria for a particular grant round, the TCEQ may set limits on the cost-effectiveness of a project, based on the emissions reductions projected to be achieved in and near the seaports or rail yards.

In addition, the TCEQ may establish and list in the solicitation documents standardized maximum eligible grant amounts based on predetermined default

prices, the percentage of costs eligible for reimbursement, cost-effectiveness limits, or a combination of these and other factors.

Chapter 5

Program Procedures

This chapter contains the general procedures that will be used for applying for, awarding, and administering grants under this program. The TCEQ may adjust these procedures and develop more detailed ones, as needed, to ensure the effectiveness of the program.

Project Solicitation

Grant projects will be solicited through periodic or open-ended Requests for Grant Applications (RFGAs) and through other mechanisms to solicit grant applications. Copies of the RFGAs and the necessary application forms are made available at the TERP website <www.terpgrants.org> and directly from the TCEQ by calling toll free at 800-919-TERP (8377) during regular working hours (8 a.m. to 5 p.m., Monday through Friday), excluding holidays.

Application Review and Selection

The TCEQ will establish criteria for how grants will be selected for each grant round and will make the criteria available in the grant-solicitation documents. The TCEQ will review and evaluate grant applications according to the established criteria.

The TCEQ may either select and award grants based on the order of submission or may use competitive grant selection, including consideration of the comparative cost-effectiveness of the projects. Even when the order of submission is used as a determinant of grant selection, the TCEQ may establish a priority order where applications meeting certain prioritization criteria may be selected and awarded first.

The determination of emissions reductions and calculation of the cost-effectiveness of a project may make use of default annual usage rates (mileage or hours of operation) established by the TCEQ or actual historical usage rates for the two years preceding the application. In addition, the TCEQ may place a priority on funding projects in specific areas or at specific facilities.

The TCEQ may limit the number of grants awarded to one applicant, one area, or projects at one facility, to ensure that a broad range of projects are funded. The TCEQ may also prioritize the selection and grant awards based on the average number of annual visits to an eligible seaport or rail yard.

Application-Verification Visits

Upon receipt of a grant application, the TCEQ may check the vehicle and equipment for condition, engine identification, and vehicle identification.

Awarding of Grants and Contracting

Projects selected for funding will be awarded a grant through the development and execution of a grant contract that is signed by the recipient and by an official of the TCEQ. Grant contracts may contain additional and more specific requirements than those contained in these guidelines. Grant recipients should review the contract's language carefully before accepting and signing it.

All grant awards and contracts will be contingent upon the availability of funds to cover the grant. Grant contracts may be issued on a contingency basis, subject to a follow-up Notice to Proceed being issued by the TCEQ, once sufficient funds are available.

Reimbursement

Grant payments will be reimbursements, meaning that the agency will remit payment **after** the eligible expense has been incurred by the recipient, including the vehicle having been delivered and the expense paid. Recipients will also have the option to assign their grant payments directly to the dealer or finance company. The TCEQ will supply reimbursement request and reporting forms for use by the recipient. The grant contract and instructions accompanying the reimbursement forms will include more specific criteria for requesting and receiving payment, including the criteria under which an assignment of the reimbursement payment may be made.

Upon completion of all grant-funded purchases, the grant recipient will need to submit a final request for reimbursement of all remaining expenses. The final request must include a completed and signed release of claims.

The grant recipient must also agree to place a label or sticker on the grant-funded vehicles and equipment, as the TCEQ may supply.

Verification of Vehicle, Equipment, and Engine Disposition

The applicant must agree to destroy the old vehicle or equipment—including the engine—replaced under this program no later than 90 days after receiving reimbursement by the TCEQ.

Unless the TCEQ agrees to an alternative method, the destruction must be carried out by complete crushing or other complete destruction of the vehicle, equipment, or engine, or by making a hole in the engine block on both sides large enough to prevent repairs (usually at least 3 inches) and permanently destroying the frame by cutting the frame rails or main structural components of the vehicle or equipment.

In lieu of crushing an engine block or cutting a hole in it, the TCEQ may also allow the engine to be sent to a remanufacture facility operated or authorized by the original engine manufacturer. The remanufacture of the engine must include removing all parts and using the old block to build a remanufactured engine with a new serial number.

The applicant must certify the appropriate disposition of the vehicle or equipment, including the engine, using forms supplied by the TCEQ. The TCEQ may require a certified or duplicate Texas Nonrepairable Vehicle Title as evidence that an on-road vehicle has been rendered permanently inoperable. Grantees may be required to return grant funds if they fail to meet the disposition requirements, including if the vehicle, equipment, or engine is later returned to operation.

Monitoring and Reporting

The grant recipient must agree to monitor and track the use of the grant-funded drayage truck for the activity life designated in the grant contract.

The grant recipient will be required to submit monitoring reports to the TCEQ twice a year, unless the TCEQ authorizes an alternative reporting schedule.

The TCEQ may authorize grant recipients to use global positioning system units to monitor the grant-funded drayage truck in lieu of filing reports on the location and use of the equipment. The TCEQ may also require the installation and use of a Global Positioning System (GPS) for all projects under a particular grant round or for specific projects, based on the risks associated with that project. With use of GPS, grant recipients must verify the accuracy of the GPS data on forms provided by the TCEQ on a schedule it has established. All applicants monitoring via GPS will be required to use a vendor the TCEQ selects.

The usage reports or GPS monitoring reports submitted by the grant recipient will document:

- the usage amount;
- the number of visits to, and use at, the eligible facilities; and
- the percentage of use in the eligible areas over the required reporting period.

The TCEQ may, at its sole discretion, authorize an annual or longer reporting schedule, including suspending the reporting requirements, if a grant recipient is meeting the requirements and is otherwise complying with all program requirements.

Commitments

The intent of this program is to achieve reductions in emissions of NO_x and other pollutants at seaports and rail yards, as well as in the nonattainment areas and counties identified as “affected counties” in Texas Health and Safety Code 386.001(2) and TCEQ rules (30 TAC 114.629). Over the activity life of each grant-funded activity, the grant recipient commits the resulting emissions reductions to the TCEQ.

The recipient is responsible for performing the activities, as defined in the contract, necessary to achieve the emissions reductions at the designated seaports and rail yards and within the eligible geographic areas.

Unless the TCEQ has determined that the intent of the program has been met, recipients will be required to return all or a pro rata share of the grant funds to the TCEQ if the emissions reductions in the eligible geographic areas and at the seaports and rail yards over the activity life are not achieved.

To achieve the emissions reductions at seaports and rail yards, the grant recipient must agree to operate the grant-funded drayage truck at the eligible seaports and rail yards identified in accordance with the provisions in Chapter 3 for a minimum number of visits per 12-month period as determined by the TCEQ based on the priorities established for grant selection and award for that grant solicitation period and included in the grant contract. Each combined entry and exit to and from the seaport or rail yard will be considered a visit. For drayage trucks operating permanently at a seaport or rail yard, each day of operation at the facility will be considered a visit.

To achieve the emissions reductions in the nonattainment areas and affected counties, the grant recipient must agree to operate the grant-funded vehicle or equipment for at least 50% of the annual and total usage over the activity life in those counties. The 42 counties currently located within a nonattainment area or designated as an affected county are listed in Table 5.1 (see also map, Figure 5.1). While this list is accurate at the time of publication, affected counties and the boundaries of nonattainment areas are subject to change.

Table 5.1
Counties in Nonattainment Areas or Otherwise
Designated as "Affected Counties" (*subject to change*)

Bastrop	Ellis	Hays	Nueces	Upshur
Bexar	El Paso	Henderson	Orange	Victoria
Brazoria	Fort Bend	Hood	Parker	Waller
Caldwell	Galveston	Hunt	Rockwall	Williamson
Chambers	Gregg	Jefferson	Rusk	Wilson
Collin	Guadalupe	Johnson	San Patricio	Wise
Comal	Hardin	Kaufman	Smith	
Dallas	Harris	Liberty	Tarrant	
Denton	Harrison	Montgomery	Travis	

The TCEQ may more narrowly limit the areas of use for a particular grant solicitation period to help best achieve the goals of the program and the TERP in general. The designated counties will be listed in the grant solicitation documents and the grant contract.

The TCEQ may also allow a grant applicant to commit to a greater percentage of use in the eligible counties in order to qualify for a higher grant amount. The percentage-of-use commitment will be listed in the grant contract.

The calculation of emissions reductions in the designated counties will be based on a *usage amount* (miles for on-road vehicles or hours for non-road yard trucks) over the activity life in the eligible counties as established by the TCEQ for a particular grant solicitation period. The TCEQ may establish default usage rates according to type of vehicle or equipment, or the TCEQ may base the calculations on actual historical usage rates and require a usage commitment based on actual miles or hours of operation.

The TCEQ may work with the grantee to implement other options for ensuring that the usage commitments will be met before it requires the return of grant funds. If the TCEQ requires the return of a pro rata share of the grant funds for underachievement of the annual commitment, the TCEQ may revise the commitment over the remaining activity life to a lower amount, corresponding to the lower grant amount.

***Texas Emissions Reduction Plan:
Guidelines for the Drayage Truck Incentive Program (RG-524)***

**Executive Director's Response to Comments
Docket No.: 2014-0660-MIS**

PUBLIC COMMENT

The *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program* (guidelines) provide procedures and criteria for implementing the Drayage Truck Incentive Program (DTIP) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D-1.

The guidelines were made available for public comment in accordance with the provisions of THSC, §386.053. Notice of the public comment period was published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3489). Notice was also published in eight major newspapers within the Texas Emissions Reduction Plan (TERP) eligible counties, posted on the TERP website, sent by electronic mail to the TERP listserv, mailed to the TERP Advisory Board, and mailed to the United States Environmental Protection Agency (EPA) Region 6.

Public meetings were held on May 15, 2014, in Austin, Texas; May 19, 2014, in Fort Worth, Texas; May 21, 2014, in Houston, Texas; and May 23, 2014, in El Paso Texas.

The public comment period closed May 30, 2014. The commission received comments from six entities. Comments were received from Air Alliance Houston (AAH), Beneficial Results, the Environmental Defense Fund (EDF), the Healthy Port Community Coalition (HPCC), the Houston-Galveston Area Council (H-GAC), and Public Citizen.

RESPONSE TO COMMENTS

1. General Support

AAH, Beneficial Results, EDF, HPCC, and Public Citizen commented in support of the TERP programs and the guidelines.

The commission appreciates the support for the TERP programs. No changes were made to the guidelines in response to these comments.

AAH commented that it understands the TERP has primarily been a nitrogen oxides (NO_x) program historically and that there have been co-benefits, but the more it learns about particular matter (PM) the more significant the health concerns become. AAH and HPCC commented that they hoped consideration is given to PM reductions.

The commission agrees that the TERP incentive programs have had a beneficial impact on reducing PM emissions from vehicles and equipment in addition to reductions in NO_x. The commission is taking steps to determine the reduction in PM emissions from the TERP grant projects to date and is evaluating methodologies to calculate PM

reductions from projects in the future, along with NO_x reductions. The commission will take into consideration these comments when deciding how to use the information on PM reductions in making decisions regarding the incentives. No changes were made to the guidelines in response to these comments.

HPCC also commented that based on the amount of PM and NO_x emissions that it is seeing in Houston it hopes that a good deal of the funding is focused in Houston.

The commission anticipates that the Houston area will receive a significant percentage of the DTIP project funding. No changes were made to the guidelines in response to these comments.

AAH and HPCC also commented that many of the drayage truck drivers are owners-operators and that it is important that the benefits of the program reach these small business owners and not just the larger companies. AAH and HPCC commented that it is important that there is a strong public outreach campaign to these small business owners.

The commission agrees that many of the trucks targeted by this program are owned and operated by individual drivers and small businesses. The commission will consider these comments when establishing the program and initiating the grant application period. No changes were made to the guidelines in response to these comments.

2. Chapter 3, Eligible Areas, Seaports, and Rail Yards

EDF commented that it is unclear why specific counties are listed in the guidelines instead of noting that staff can identify specific counties or ports during each grant application period.

Under THSC, §386.183(a)(2), eligible seaports and rail yards must be located in a nonattainment area of Texas. The specific counties currently in a nonattainment area are listed. No changes were made to the guidelines in response to these comments.

3. Chapter 4. Eligibility Criteria

Drayage Trucks Eligible for Purchase

H-GAC commented that in the H-GAC regional drayage truck program, it is seeing that newer trucks are not much more expensive than used trucks because of all the fracking operations and shortage of trucks and that newer trucks address PM better, given the emission standards for newer trucks. H-GAC also commented that the operators put so many miles on the trucks that a used truck may not be able to operate for the five years required by H-GAC in its program and under the commitment period for the DTIP.

The DTIP criteria implement the statutory requirements that the drayage truck being purchased have an engine model year of at least

2010 or later. This provision allows for the purchase of a used drayage truck, but the engine will be certified to or close to the latest emission standards established by the EPA. The commission does not intend to establish more restrictive requirements on the age of the truck being purchased at this time but will consider H-GAC's comments when evaluating the initial success of the program. No changes were made to the guidelines in response to these comments.

4. Chapter 5, Program Procedures

Application Review and Selection

EDF commented that the DTIP will target emissions reductions from some of the oldest, dirtiest vehicles used in goods movement at ports and that it is critical that the DTIP provide adequate incentives to accelerate the turnover of these vehicles. EDF stated that while competitive grants generally take into consideration mileage or hours of operation when the grant is calculated, rebate grants rely on a default value for mileage or hours that may not capture the often very high usage of these vehicles. EDF proposed that an option when using a rebate-style grant round could be to establish multiple usage tiers to help create real incentives for drivers to replace a truck. EDF suggested as an example establishing a base rebate amount that is calculated using 60,000 miles and also providing for usage tiers in 20,000 mile increments to increase the total grant amount, thereby incentivizing replacement of the high-usage vehicles based on the actual emissions reduced. EDF also suggested adjusting the grant calculation methodology to provide a greater incentive based on well-known duty cycles of the vehicles that have significant idle time in addition to high annual mileage. EDF stated that this might include incorporating an idling factor into the emissions reduction calculations.

The commission agrees that this program may require use of alternative approaches from what is used in the other TERP incentive programs in developing any rebate grant tables based on default usage rates. The guidelines are written so as to allow flexibility in how the rebate amounts are determined, and the commission is considering approaches that will best achieve the goals of the program. The commission will consider these comments when making decisions on how to establish the rebate grant tables. No changes were made to the guidelines in response to these comments.

EDF also encouraged the commission to implement processes that allow the evaluation and selection of projects to be more transparent. EDF noted that similar grant programs explicitly note the criteria for evaluation based on a points system to allow applicants to understand how they may have scored relative to other applications and make improvements.

The commission agrees with the need for transparency in the grant selection process. As noted in the guidelines, the selection criteria for this program will be explained in the solicitation documents. This is the process that has been used for all of the TERP incentive programs. Also,

for competitive grant selections, the scores and project ranking are available to applicants upon request, and the commission has always responded to questions regarding why a particular application was or was not funded. No changes were made to the guidelines in response to these comments.

Commitments

Beneficial Results and Public Citizen recommended that the DTIP include flexibility to allow drayage trucks to travel along the routes between cities, including a provision in the guidelines that drayage trucks can go back and forth to the port or to a city along a designated route between San Antonio, Dallas, Houston, and Austin.

H-GAC commented that in implementing a similar regional drayage truck program, H-GAC worked with the EPA on research and tracking of where these vehicles were going. H-GAC stated that it would probably be more accurate to call these trucks short-haul trucks since the operators are not only going to just the port and to different intermodal facilities to pick up and then deliver cargo but are doing a lot of operations within the area. H-GAC also referred to a freight movement study conducted as part of this research that identified that the cargo and materials coming into the Port of Houston are delivered within 500 miles of the port. H-GAC stated that this delivery area may include Dallas, San Antonio, Austin, and Corpus Christi. H-GAC recommended that the guidelines take into account that the operators are going to have to deliver cargo to these other areas.

The commission agrees that many of the drayage trucks that operate at ports and rail yards deliver cargo from those facilities to the broader regional area and other areas of Texas than just at or near the eligible seaports and rail yards. In recognition of this, the guidelines allow travel in the nonattainment areas and other counties designated as "Affected Counties" under the TERP in THSC, §386.001(2), to count towards the requirement that grant-funded vehicles be operated at least 50% of annual use within a maximum distance established by the commission of an eligible seaport or rail yard. The commitment requirements in the guidelines also allow the commission to establish a minimum number of annual visits to eligible seaports and rail yards by the grant-funded vehicles. Under this approach, the requirement for a minimum number of visits addresses the goal that the DTIP reduce emissions from vehicles operating a significant amount of use in the seaports and rail yards. The provisions to allow travel in the additional designated areas address the concerns expressed by Beneficial Results, Public Citizen, and H-GAC that the program account for the fact that many of these vehicles pick up and deliver cargo within a broader area than just near the seaport or rail yard. In addition, these additional areas are consistent with the areas of use required for the larger TERP Diesel Emissions Reduction Incentive Program, which is intended to achieve emissions reductions in the nonattainment areas and affected counties. These requirements will help reduce emissions directly at seaports and rail yards and will also help achieve the broader goals of

the TERP to reduce emissions in these designated areas. No changes to the guidelines were made in response to these comments.

5. Other Comments

EDF commented to strongly urge the Texas Legislature to fully appropriate funds for the diesel emissions reduction projects to protect the health of Texans from the risks from diesel exhaust, PM, and ozone pollution.

The commission appreciates the support to the TERP programs. No changes were made to the guidelines in response to these comments.

Texas Commission on Environmental Quality



ORDER ADOPTING GUIDELINES REVISIONS

Docket No. 2014-0660-MIS

Non-Rule Project No. 2014-021-OTH-NR

On August 20, 2014, the Texas Commission on Environmental Quality (Commission) adopted the *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program* (guidelines). Under Tex. Health & Safety Code Ann. §§ 382.011, 382.012, and 382.023 (Vernon 2011), the Commission has the authority to control the quality of the state's air and to issue orders consistent with the policies and purposes of the Texas Clean Air Act, Chapter 382 of the Tex. Health & Safety Code. Additionally, the Commission has authority under the Texas Emissions Reduction Plan (TERP), Chapter 386 of the Tex. Health & Safety Code, to provide grants and other funding for projects to improve air quality in the state's nonattainment areas and other areas of the state with air quality concerns. Under Tex. Health & Safety Code Ann. §386.053, the Commission has authority to adopt guidelines and criteria consistent with Chapter 386 of the Tex. Health & Safety Code.

The proposed guidelines were made available for public comment in accordance with the provisions of Tex. Health & Safety Code Ann. § 386.053. Notice of the proposed guidelines was published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3489), published in eight major newspapers within the TERP eligible counties, posted on the TERP website, sent by electronic mail to the TERP listserv, mailed to the TERP Advisory Board, and mailed to the United States Environmental Protection Agency Region 6.

Public meetings on the proposed guidelines were held on May 15, 2014, at the Texas Commission on Environmental Quality in Austin, Texas; May 19, 2014, in Fort Worth, Texas; May 21, 2014, in Houston, Texas; and May 23, 2014, in El Paso, Texas. The public was invited to submit data, views, and recommendations on the proposed guidelines, either orally or in writing, at the public meetings or during the comment period. Prior to the scheduled public meetings, copies of the proposed guidelines were available for public inspection at the Commission's central office and on the Commission's website.

The Commission received comments on the proposed guidelines during the public comment period, and those comments have been considered and responded to in the Executive Director's Response to Comments, which have been approved by the commission and incorporated by reference in this Order as if set forth at length verbatim in this Order. The Commission finds that the Executive Director's Response to Comments includes the names of all interested individuals, groups or associations offering comment on the proposed guidelines and their position concerning the same.

IT IS THEREFORE ORDERED BY THE COMMISSION that the guidelines and the Executive Director's Response to Comments incorporated by reference into this Order are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the guidelines necessary for final publication. The adopted guidelines and responses to comment are incorporated by reference in this Order as if set forth at length verbatim in this Order.

The provisions of Tex. Health & Safety Code, § 386.053 exempt revisions to the guidelines from rule-making requirements of Chapter 2001, Government Code. This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, § 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Date Issued:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman