

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** March 9, 2012

**Thru:** Bridget Bohac, Chief Clerk  
Mark R. Vickery, P.G., Executive Director

**From:** Susana M. Hildebrand, P.E., Chief Engineer

**Docket No.:** 2011-1222-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 114, Control of Air Pollution from Motor Vehicles  
SB 385: Texas Natural Gas Vehicle Grant Program Rules  
Rule Project No. 2011-053-114-EN

### **Background and reason(s) for the rulemaking:**

Senate Bill (SB) 385, 82nd Legislature, 2011, Regular Session, by Senators Williams and Fraser, creates a new Texas Health and Safety Code (THSC), Chapter 394. This new chapter establishes the Texas Natural Gas Vehicle Grant Program (program) to be funded from the Texas Emissions Reduction Plan (TERP) Fund and administered by the Texas Commission on Environmental Quality (TCEQ or commission). The commission is to establish by rule the criteria for prioritizing qualifying vehicles eligible to receive grants under the program. The rules are to be adopted as soon as practicable after the effective date of SB 385. This proposed rulemaking is to comply with that requirement.

It should be noted that SB 20, 82nd Legislature, 2011, Regular Session, by Senators Williams and West, also established the program under a different chapter number in the THSC. However, because SB 385 was enacted last, it is the operative legislation for this rulemaking.

### **Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:** Under THSC, §394.005(a), the commission is to adopt rules to establish the criteria for prioritizing qualifying vehicles eligible to receive a grant. The rules outline criteria that may be considered by the executive director in establishing the priorities for each application period.

**B.) Scope required by federal regulations or state statutes:** The rules are required by THSC, Chapter 394.

**C.) Additional staff recommendations that are not required by federal rule or state statute:** Staff is not recommending additional provisions beyond what is required under THSC, Chapter 394.

### **Statutory authority:**

- Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties;

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- 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, §382.107, 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 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;
- THSC, Chapter 386, which establishes the TERP program; and
- THSC, §394.005(a), which directs the commission to adopt rules to establish criteria for prioritizing qualifying vehicles eligible to receive grants under the program.

**Effect on the:**

**A.) Regulated community:** These rules will not affect regulated entities.

**B.) Public:** The criteria for prioritizing the grants will affect any applicant for a grant under this program, including individuals, companies, and other entities. The rules will provide information to potential applicants on the criteria that may be used by the executive director in implementing the program.

**C.) Agency programs:** Staff will need to develop processes, criteria, and forms for implementing the new grant program. Prior to each grant application period, the specific funding priorities for that grant round will need to be determined.

**Stakeholder meetings:**

Stakeholder meetings were not held for this rulemaking.

**Public comment:**

The proposal was published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7480). A public hearing was scheduled for November 29, 2011; however, since no one registered to provide comments, the hearing was not officially opened. The comment period closed on December 5, 2011. The commission received written comments from Crossroads Equipment Lease & Finance, LLC (Crossroads) and United Parcel Service (UPS) in support of all or part of the rulemaking. The commission received written comments from America's Natural Gas Alliance (ANGA), Clean Energy Fuels (Clean Energy), and Pioneer Natural Resources USA, Inc. (Pioneer) in support of all or part of the rulemaking, with additional recommended minor modifications. The United States Environmental Protection Agency Region 6 (EPA) submitted comments providing one

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recommendation regarding the rules. Significant comments and concerns are discussed below.

ANGA, Clean Energy, and Pioneer commented that it is critical that TCEQ retain flexibility to change priorities as the program matures and that the rules as proposed achieve this goal. Crossroads commented that the proposed rules demonstrate TCEQ's acknowledgement of potential challenges entities face when soliciting applicants for funding and that the provisions for executive director discretion will allow for flexibility. No changes were made to the proposed text in response to these comments.

Clean Energy and Pioneer commented that it is important TCEQ continue to keep stakeholders well informed of the goals it seeks to accomplish in each grant round and to allow stakeholder input as to how those goals can be accomplished. No changes were made to the proposed text in response to these comments.

EPA recommended that the rules not be submitted to the EPA for inclusion in the state implementation plan for credit because the proposed rules involve prioritizing eligibility criteria and are administrative in nature. EPA recommended the Texas Natural Gas Vehicle Grant Program be submitted on a project-by-project basis, as part of an attainment state implementation plan. No changes were made to the proposed text in response to these comments, but it was determined to not submit the rules as a revision to the State Implementation Plan, as explained further in the next section outlining significant changes from the proposal.

ANGA, Clean Energy, and Pioneer also commented in support of the Clean Transportation Triangle Program, established in THSC, Chapter 394, along with the Texas Natural Gas Vehicle Grant Program. These entities commented that the Clean Transportation Triangle Program requires promotion of both an increased use of natural gas vehicles and the availability of natural gas infrastructure and that the success of both programs depends on the location of vehicles and infrastructure along the triangle in support of each other. These entities recommended that §114.671(a)(4) be broadened to include the concept that vehicles also need to be strategically located to support the infrastructure in the Clean Transportation Triangle. These entities recommended language be added to subsection (a) as follows: "(4) the areas of use of the grant-funded vehicles, including consideration of the availability of fuel and fueling infrastructure, *the need for vehicle fleets to support fueling infrastructure,...*" Changes were made to the proposed text in response to this comment, as explained further in the next section outlining significant changes from the proposal.

**Significant changes from proposal:**

In response to the EPA's comment, the rules will not be submitted as a revision to the state implementation plan at this time. If it is determined in the future to use this program for possible credit in the state implementation plan, the more detailed criteria and program guidelines may be submitted to the EPA for revision of the state implementation plan.

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In response to the comments submitted by ANGA, Clean Energy, and Pioneer regarding the need to develop vehicle fleets and fueling infrastructure in a complimentary approach, additional language is added to §114.671(a)(4) from the proposed text to include consideration of the need for vehicle fleets to support fueling infrastructure.

**Potential controversial concerns and legislative interest:**

The rules incorporate provisions required under THSC, Chapter 394. The rules do not go further than what is required to comply with the statutory changes. Therefore, staff does not anticipate any concerns being raised about the rules, beyond the comments received on the proposed text. Staff expects that the legislators involved in SB 385 and stakeholders will be interested in how the commission implements the new provisions.

**Does this rulemaking affect any current policies or require development of new policies?**

Prior to each grant application period, the specific priorities for that grant round will need to be developed.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

This rulemaking is required to implement the program under THSC, Chapter 394. If rulemaking is not completed, implementation of the program could not be put into effect. Possible alternatives are not adopting the rules or adopting the rules at a later date and delaying implementation of the program.

**Key points in the adoption rulemaking schedule:**

***Texas Register* proposal publication date:** November 4, 2011

***Anticipated Texas Register* publication date:** April 13, 2012

***Anticipated effective date:*** April 19, 2012

***Six-month Texas Register* filing deadline:** May 4, 2012

**Agency contacts:**

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**Attachments**

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