

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** July 15, 2016

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.: 2015-1650-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 114, Control of Air Pollution from Motor Vehicles
Texas Emissions Reduction Incentive Plan
Rule Project No. 2016-004-114-AI

Background and reason(s) for the rulemaking:

The Texas Emissions Reduction Plan (TERP) is established under Texas Health and Safety Code (THSC), Chapter 386. Under the TERP, the Texas Commission on Environmental Quality (TCEQ or commission) administers several grant programs to achieve reductions in nitrogen oxides to demonstrate compliance with the state implementation plan and prevent areas of the state from being in violation of National Ambient Air Quality Standards. One of the TERP grant programs is the Drayage Truck Incentive Program (DTIP) established under THSC, Chapter 386, Subchapter D-1.

This rulemaking revises DTIP rules under Chapter 114, Subchapter K, Division 8, to expand the types of eligible vehicles and equipment and clarify the areas considered a seaport.

The DTIP provides incentives to reduce emissions from drayage trucks operating in and around seaports and rail yards located in the state's nonattainment areas. The rules developed to implement the DTIP include criteria for the models of drayage trucks eligible for replacement and purchase under the program and definitions of seaports and rail yards.

Current TCEQ rules limit the drayage trucks purchased under the DTIP to those vehicles with a day cab only (i.e., no sleeper berth). Staff, in consultation with Port Authorities and drayage fleet owners, has determined that a significant amount of truck traffic at eligible facilities consists of vehicles with sleeper berths owned by individuals who are contracted to provide drayage services. Independent owner-operators and smaller businesses in particular are prone to buying sleeper cab trucks that are utilized for drayage purposes. This rulemaking removes the day cab requirement in order to expand eligibility to include those individual contract haulers that would not otherwise participate in the program because of that requirement.

Also, the current rules limit the eligible drayage trucks to on-road heavy-duty vehicles and non-road yard trucks. However, other types of non-road equipment used to move cargo, referred to as cargo handling equipment, also contribute to the concentration of emissions in and around seaports and rail yards. This equipment includes, but is not limited to rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach

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stackers, forklifts, loaders, and aerial lifts. This rulemaking expands the eligibility criteria to include other cargo handling equipment, in addition to non-road yard trucks, in order to improve the ability of the DTIP to achieve its goals and the goals of the TERP.

In addition, based on visits to multiple seaport facilities and discussion with facility administrators and users, staff has determined that the area in which emissions from drayage trucks are concentrated is not limited to just the specific location where cargo is transferred to or from a ship or barge. Particularly in the Port of Houston area, there are multiple businesses and facilities with substantial drayage truck activity located on property and at facilities in proximity to, but not located at, the locations where cargo is loaded on or off a ship or barge. The revision to the definition of a seaport adds publically or privately owned property within a ship channel security district established under Texas Water Code (TWC), Chapter 68. Under this additional language, the property within the Houston Ship Channel Security District, including multiple chemical facilities, warehouses, plants, and other facilities, will be considered part of the seaport for purposes of eligibility under the DTIP.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do: This rulemaking revises the DTIP rules under Chapter 114, Subchapter K, Division 8, to expand the types of eligible vehicles and equipment and clarify the areas considered a seaport. The changes to the DTIP program eligibility criteria are intended to improve its effectiveness in reducing emissions in and around seaports and rail yards located in the state's nonattainment areas.

The definition of a drayage truck is revised to remove the requirement that the vehicle being purchased may only have a day cab and to include other cargo handling equipment operating at seaports and rail yards in the list of models of drayage trucks eligible for replacement and purchase.

In addition, the definition of a seaport is revised to include publically or privately owned property within a ship channel security district established under TWC, Chapter 68.

B.) Scope required by federal regulations or state statutes: The rule revisions are not required by federal regulations or state statutes.

C.) Additional staff recommendations that are not required by federal rule or state statute: The following changes are included in the amendments to Chapter 114, Subchapter K, Division 8:

1. remove the requirement that an on-road vehicle purchased under the program may have a day cab only;
2. expand the types of non-road equipment eligible for replacement and purchase under the program to include cargo handling equipment; and
3. expand the definition of "seaport" to include publically or privately owned property within a ship channel security district established under TWC, Chapter 68.

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Statutory authority:

- 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, which establishes the TERP and the DTIP.

Effect on the:

A.) Regulated community: This rulemaking will not affect regulated entities.

B.) Public: This rulemaking makes changes to an existing TERP grant program. Persons and entities interested in applying to this program will benefit from the changes.

C.) Agency programs: Program procedures and documents will need to be updated.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, rule public hearings were held during the comment period in Austin and Houston.

Public comment:

The proposed rules were published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2127). Public hearings were held on April 12, 2016, in Austin, and April 14, 2016, in Houston. The comment period closed April 18, 2016. The commission received comments from North Central Texas Council of Governments (NCTCOG), Port of Houston Authority (POHA), Regional Transportation Council of the Dallas-Fort Worth Metropolitan Planning Organization (RTC), and Texas Farm Patch LLC (TFP).

NCTCOG and POHA expressed support for the rulemaking. POHA provided further explanation of its support for each of the changes made to the rules. NCTCOG supported the changes and provided additional recommendations for changes. TFP made a recommendation that is outside the scope of this rulemaking. Significant comments and recommendations are discussed further.

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NCTCOG recommended integration of the definition of a non-road yard truck into the added definition of cargo handling equipment under amended §114.680(1) and combining non-road yard trucks with other cargo handling equipment in the list of drayage trucks eligible for purchase under §114.682(a) because a non-road yard truck is considered cargo handling equipment. Staff responded that the commission anticipates considering non-road yard trucks separate from other cargo handling equipment when establishing standardized usage rates and grant amounts, and in allowing for possible replacement of an on-road vehicle with a non-road yard truck. Retaining the definitions as written will help the commission with implementation of the program. No changes were made to the proposed text as a result of these comments.

NCTCOG recommended additional expansion of the definition of "Seaport" under §114.680(6), or addition of another definition, to accommodate eligibility of inland ports and airports to ensure that all major freight hubs would be eligible for funding. NCTCOG commented that the drayage trucks and cargo handling equipment targeted by the DTIP are critical to operations at all of these types of facilities and that including these locations would ensure that funded projects address emissions from the highest-polluting, highest-activity vehicles and equipment, regardless of whether the facility is accessible by air, rail, or ocean. Staff responded that the rule language implements statutory provisions regarding operation of vehicles and equipment at seaports and rail yards in a nonattainment area and that other TERP grant programs are available for projects involving heavy-duty on-road vehicles and non-road equipment at other facilities in the nonattainment areas and other affected areas. No changes were made to the proposed text as a result of these comments.

NCTCOG recommended adding language to §114.682(a)(2) to include emissions tier certification requirements for non-road yard trucks to match the tier provisions in the DTIP guidelines, entitled *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program (RG-524)*. The DTIP guidelines include supplemental criteria that the engine on a non-road yard truck be certified to meet the final federal Tier 4 non-road engine emission standards, in addition to the requirement that a drayage truck being purchased have an engine of model year 2010 or later. Staff responded with an explanation of why the tier provisions were added to the DTIP guidelines and that those criteria are supplemental to the requirements in the rules. It is not necessary to add the supplemental criteria to the rules in order for those criteria to apply. No changes were made to the proposed text as a result of this comment.

NCTCOG recommended that eligible technologies for new drayage trucks include, but not be limited to, alternative fuel vehicles, battery-electric trucks, fuel-cell trucks, and battery-electric trucks utilizing fuel cells or internal combustion engines acting as range extenders. Staff responded that these fuel types and power sources are already eligible if the drayage truck and engine otherwise meet the eligibility criteria. No changes were made to the proposed text as a result of this comment.

NCTCOG recommended that the commission consider a revision that would give preference to projects involving use of zero or near-zero emission vehicles. NCTCOG expressed its opinion that such a change would support commercialization of near-zero

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emission technologies, encourage consideration of the cleanest available technology options, and contribute to additional incremental emission reductions. Staff responded that, in implementing the DTIP and other TERP incentive programs, the commission has remained fuel-neutral unless the legislature has specifically directed that certain fuels and types of engines be targeted. No changes were made to the proposed text as a result of these comments.

NCTCOG and RTC encouraged the commission to request full funding of the TERP programs as budgets are prepared for the next biennium. These comments are outside of the scope of this rulemaking. No changes were made to the proposed text as a result of this comment.

TFP requested that Atascosa County be included in the counties eligible for operation of grant-funded equipment. The equipment identified by TFP does not meet the definition of a drayage truck. Also, these rules do not list the counties eligible for operation of the grant-funded vehicles and equipment under the DTIP, those counties are listed in the DTIP guidelines. It appears that TFP was referring to the list of affected counties for eligibility under the TERP Diesel Emissions Reduction Incentive Program. This recommendation is outside of the scope of this rulemaking. No changes were made to the proposed text as a result of this comment.

Significant changes from proposal:

No changes were made from the proposal.

Potential controversial concerns and legislative interest:

This rulemaking will help make the DTIP more effective in achieving the goals of the TERP. Staff does not anticipate any concerns regarding the changes. Staff anticipates positive responses from legislators interested in the DTIP.

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

Corresponding revisions to the DTIP guidelines are scheduled to be considered for adoption by the commission after consideration of this rulemaking.

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

This rulemaking could be delayed or postponed. The changes are proposed to help make the DTIP more effective in achieving the program goals. The consequence of not proceeding with this rulemaking will be that the DTIP will continue to be implemented under the existing criteria with the limitations as noted.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: March 18, 2016

Anticipated *Texas Register* adoption publication date: August 19, 2016

Anticipated effective date: August 25, 2016

Six-month *Texas Register* filing deadline: September 19, 2016

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