

Texas Commission on Environmental Quality

Interoffice Memorandum

Date: September 29, 2011

To: Commissioners

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

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

Docket No.: 2011-1221-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 114, Control of Air Pollution from Motor Vehicles
SB 385: Alternative Fueling Facilities Program
Rule Project No. 2011-052-114-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 393. This new chapter establishes the Alternative Fueling Facilities Program (AFFP) to be funded from the Texas Emissions Reduction Plan (TERP) Fund and administered by the Texas Commission on Environmental Quality (commission). The commission is to establish by rule the criteria for prioritizing facilities eligible to receive grants under the AFFP. Facilities eligible to receive grants under the program include a facility to store, compress, or dispense alternative fuels in a nonattainment area. Under the program, alternative fuels are defined as a fuel, other than gasoline or diesel fuel, other than biodiesel fuel, including electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 80% methanol by volume. The rules are to be adopted as soon as practicable after September 1, 2011, 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 AFFP 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, §393.004(a), the commission is to adopt rules to establish the criteria for prioritizing facilities eligible to receive a grant. The proposed 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 proposed rules are required by THSC, Chapter 393, as added by SB 385.

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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 393.

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, §382.107, 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, Chapter 393.004, which directs the commission to adopt rules to establish criteria for prioritizing facilities eligible to receive grants under the Alternative Fueling Facilities Program.

Effect on the:

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

B.) Public: The proposed criteria for prioritizing the grants will affect any applicant for a grant under this program, including 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. This will help potential applicants to determine what facilities may be most likely to be funded.

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 are not proposed as part of the rulemaking process.

Potential controversial concerns and legislative interest:

The proposed rules incorporate provisions required under THSC, Chapter 393. The proposal does not go further than what is required to comply with the statutory changes.

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Therefore, staff does not anticipate any concerns being raised about the rules. Staff expects that the legislators involved in SB 385 and stakeholders will be interested in how the commission implements the new provisions.

Will 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 AFFP under THSC, Chapter 393, as added by SB 385. 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 proposal rulemaking schedule:

Anticipated proposal date: October 18, 2011

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

Public hearing date: November 29, 2011

Public comment period: November 4, 2011 – December 5, 2011

Anticipated adoption date: March 28, 2012

Agency contacts:

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Attachments

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