

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 31, 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.: 2014-0953-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 114, Control of Air Pollution from Motor Vehicles
LIRAP Rule Revision
Rule Project No. 2014-027-114-AI

Background and reason(s) for the rulemaking:

In March 2002, the Texas Commission on Environmental Quality (TCEQ) adopted rules to implement the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), which was authorized in Texas Health and Safety Code (THSC), §382.209. The rules established a fee to be paid by vehicle owners in participating counties to fund the LIRAP. The LIRAP fee is paid by vehicle owners as a portion of the fees assessed under the Vehicle Inspection and Maintenance (I/M) Program. Only counties that participate in the I/M program are eligible to participate in the LIRAP. Those counties include: Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties in the Houston-Galveston-Brazoria (HGB) area; Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties in the Dallas-Fort Worth (DFW) area; Travis and Williamson Counties in the Austin-Round Rock (ARR) area; and El Paso County.

When the rules were first adopted, a procedure was established to allow counties to opt into the LIRAP, and all eligible counties but El Paso County opted in. No procedure was established to allow a participating county to opt out of the LIRAP and have the LIRAP-funding fee removed. On April 28, 2014, the TCEQ received Court Order No. 2014-221-04-21 from the Collin County Commissioners Court requesting withdrawal of the county from participation in the LIRAP, which requires amending the rules to include an opt-out procedure. The proposed rulemaking, if adopted, would establish a formal procedure to allow Collin County or any participating county to opt out of the LIRAP and have LIRAP fee collection be discounted and the contract between the county and the TCEQ Executive Director ended. Removing the LIRAP fee in opt-out counties would require coordination with the Texas Department of Public Safety (DPS) and the Texas Department of Motor Vehicles (DMV).

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed revisions would amend Chapter 114, Subchapter A to incorporate a non-substantive change to §114.2 and the following substantive changes to §114.7.

- Section 114.7 would be amended to add four new definitions and revise two existing definitions. The proposed amendment would clarify the fee element of the LIRAP,

Re: Docket No. 2014-0953-RUL

define the date upon which an opt-out county is no longer subject to the LIRAP fee, define the date upon which a county is completely withdrawn from participation in the LIRAP, and differentiate between eligible counties that participate in the LIRAP and those that do not. The proposed rulemaking would revise the numbering for §114.7 to incorporate the added definitions.

The proposed revisions would also amend Chapter 114, Subchapter C to incorporate the following changes.

- Division 1, §114.53 would be revised to address the difference in vehicle emissions I/M fees between a nonattainment county that participates in the LIRAP, a non-attainment county that is in the process of opting out of the LIRAP, and a non-participating, nonattainment county.
- Division 2, §114.60 would be revised to clarify that LIRAP requirements apply only to participating counties.
- Division 2, §114.62 would be revised to clarify that the LIRAP is funded by fees collected only in participating counties.
- Division 2, §114.64 would be revised to incorporate a process by which a participating county may opt out of the LIRAP that includes a written request by the affected county commissioners court requesting removal of the LIRAP fee and ending of the grant contracts between the county and the TCEQ executive director. The LIRAP opt-out effective date for a county would be either the LIRAP fee termination effective date – the date upon which the county is no longer subject to the LIRAP fee – or the last day of the legislative biennium in which the LIRAP fee termination effective date occurred. Removal of the LIRAP fee would take at least 90 days but maybe more to take effect, which is the earliest a participating county may be completely withdrawn from the program.
- Division 2, §114.70 would be revised to specify that the recordkeeping requirements and audit provisions would continue to apply to affected entities in a county that opted out of the LIRAP for three years after the LIRAP opt-out effective date.
- Division 3, §114.87 would be revised to address the difference in vehicle emissions I/M fees between an early action compact county that participates in the LIRAP, an early action compact county that is in the process of opting out of the LIRAP, and a non-participating early action compact county.

In addition to the proposed changes to allow counties to opt out of the LIRAP, the proposed rule revisions also include various non-substantive revisions to conform with *Texas Register* style and formatting requirements.

B.) Scope required by federal regulations or state statutes:

None.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Re: Docket No. 2014-0953-RUL

Statutory authority:

This rulemaking is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the 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 this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. This rulemaking is also proposed under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and 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. Finally, this rulemaking is proposed under THSC, §382.003, amending definitions for the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized under THSC, §382.209.

Effect on the:

A.) Regulated community:

The proposed rulemaking is not expected to have a direct impact on the regulated community. The LIRAP is a voluntary program in which eligible counties may choose to participate or from which they may choose to withdraw.

B.) Public:

While this proposed rulemaking would not directly impact the public, there are possible implications if a participating county opts out of the LIRAP. Vehicle owners in non-participating counties are not subject to the LIRAP fee, which is \$6.00 in the participating HGB and DFW counties and \$2.00 in participating ARR counties. However, non-participating counties and the vehicle owners registered in those counties are not eligible for the AirCheckTexas Drive a Clean Machine (DACM) and Local Initiative Project (LIP) grant programs. With no DACM grant funds available to qualifying vehicle owners for repair or replacement of vehicles that fail emissions inspections, it is possible that program-related business at participating recognized emissions repair facilities and auto dealers in a non-participating county would be affected.

C.) Agency programs:

This proposed rulemaking would not directly impact agency programs. If a county opted out of the LIRAP, then the TCEQ would be required to coordinate with the DMV and the DPS to remove the LIRAP fee in that county.

Stakeholder meetings:

No stakeholder meetings were held for the proposed rulemaking. TCEQ staff coordinated with the DMV and DPS on developing a method for adding and removing the LIRAP fee in eligible counties.

Potential controversial concerns and legislative interest:

The proposed rule revisions would include a waiting period for LIRAP fee removal during which the TCEQ and DMV would work to remove the LIRAP fee. The proposed rulemaking

Re: Docket No. 2014-0953-RUL

would not set a specific time period for removal of the LIRAP fee because it is dependent on when registration forms that do not include the LIRAP fee are available from the DMV. The DMV prints and distributes its vehicle registration notices more than 90 days prior to a vehicle's registration expiration, so renewal notices that excluded the LIRAP fee for an opt-out county would be printed for registrations due more than 90 days after a county submitted its request to opt out of the LIRAP. During the fee-removal time frame, vehicle owners would still pay the LIRAP fee because the county would still be considered a participating county.

When a county participates in the LIRAP, vehicle owners remit the LIRAP fee, which funds the program. The LIRAP fees for each participating county are deposited in the state's Clean Air Fund 151, and a portion of that fund is appropriated to the commission for allocation to participating counties as annual grants for DACM and LIP. Vehicle owners in Travis and Williamson Counties pay \$2.00 in annual LIRAP fees, and vehicle owners in DFW and HGB-area counties pay \$6.00 in annual LIRAP fees. Once a county is effectively opted out of the LIRAP, the LIRAP fee for that county would no longer be collected and deposited in the state treasury's Clean Air Fund.

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

The proposed rulemaking is not expected to directly affect any current policies or require the development of new policies.

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

The LIRAP is a voluntary program, and participating counties may opt out at their discretion. The proposed rulemaking would establish a formal procedure to allow any participating LIRAP county to opt out of the program, which includes no longer paying the LIRAP fee. This proposed rulemaking offers counties opting out of the LIRAP a choice between becoming a non-participating county upon the LIRAP fee termination effective date or continuing to participate in the grant program using allocated funds until the end of the biennium in which the LIRAP fee was terminated. If this rulemaking does not go forward, then affected counties would be required to pay the LIRAP fee even if they no longer wanted to participate in the program. The only alternative to this proposed rulemaking would be to conduct a separate rulemaking for every county that decided to withdraw from the LIRAP.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: November 19, 2014

Anticipated *Texas Register* publication date: December 5, 2014

Anticipated public hearing date (if any): January 6, 2015

Anticipated public comment period: December 5, 2014 through January 9, 2015

Anticipated adoption date: April 29, 2015

Commissioners
Page 5
October 31, 2014

Re: Docket No. 2014-0953-RUL

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