

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: March 28, 2012

DATE OF REQUEST: March 9, 2012

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS
REQUEST, IF NEEDED: Bruce McAnally, (512) 239-2141

CAPTION: Docket No. 2011-1222-RUL. Consideration for adoption of
a new Division 7, Texas Natural Gas Vehicle Grant Program, Sections
114.670 - 114.672 of 30 TAC Chapter 114, Control of Air Pollution from
Motor Vehicles, Subchapter K, Mobile Source Incentive Programs.

The rulemaking implements part of Senate Bill 385, 82nd Legislature, 2011,
Regular Session, relating to establishing the criteria for prioritizing
qualifying vehicles eligible to receive grants under the Texas Natural Gas
Vehicle Grant Program. The proposed rules were published in the
November 4, 2011, issue of the *Texas Register* (36 TexReg 7480). (Steve
Dayton, Bruce McAnally) (Rule Project No. 2011-053-114-EN)

Susana M. Hildebrand, P. E.

Chief Engineer

David Brymer

Division Director

Bruce McAnally

Agenda Coordinator

Copy to CCC Secretary? NO YES X

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:

Steve Dayton, Rule Project Manager, 239-6824, Air Quality Division

Betsy Peticolas, Staff Attorney, 239-1439

Bruce McAnally, Texas Register Coordinator, 239-2141

Attachments

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Ashley Morgan
Office of General Counsel

Commissioners

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March 9, 2012

Re: Docket No. 2011-1222-RUL

Steve Dayton

Bruce McAnally

The Texas Commission on Environmental Quality (TCEQ or commission) adopts new §§114.670 - 114.672.

Section 114.671 is adopted *with change* to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7480). Sections 114.670 and 114.672 are adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Senate Bill (SB) 385, 82nd Legislature, 2011, amended the Texas Health and Safety Code (THSC), by adding Chapter 394, Texas Natural Gas Vehicle Grant Program (program). This program is designed to encourage eligible entities to replace on-road heavy-duty and medium-duty vehicles with natural gas vehicles and to replace on-road heavy-duty and medium-duty vehicle engines with natural gas engines. The program also includes incentives to fund a portion of the costs to install natural gas dispensing equipment at fueling stations along a Clean Transportation Triangle consisting of the interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth. These rules are adopted to comply with THSC, §394.005(a), which requires the commission to adopt rules to establish criteria for prioritizing qualifying vehicles eligible to receive grants under the new program.

SB 20, 82nd Legislature, 2011, 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.

Section by Section Discussion

§114.670, Purpose

Section 114.670 defines the purpose of the rules as the criteria the executive director may use when establishing priorities for funding projects under the program, as required by THSC, §394.005.

§114.671, Criteria for Prioritizing Vehicles Eligible to Receive a Grant

Section 114.671 outlines the criteria to be used for prioritizing qualifying vehicles to receive grants under this program, as required by THSC, §394.005.

Subsection (a) lists the criteria that may be used by the executive director to establish priorities for funding. Prior to each grant application period, the executive director will establish specific priorities for funding projects under that application period.

Under subsection (a)(1), the executive director may consider the potential for different types of projects to achieve reductions in nitrogen oxides (NO_x) and/or other pollutants

of concern, including consideration of the vehicle types, weight categories, and types of use with the greatest potential to achieve emissions reductions.

Under subsection (a)(2), the cost-effectiveness of a potential project, as determined by the cost per ton of expected reductions in NO_x and/or other pollutants of concern may be considered by the executive director.

Under subsection (a)(3), the potential for different types of projects to help increase the use of natural gas for transportation in Texas may be considered by the executive director.

Under subsection (a)(4), the areas of use of the grant-funded vehicles may be considered by the executive director, including consideration of the availability of fuel and fueling infrastructure and the need for emissions reductions in those areas in order to meet federal air quality standards. Language is added from the proposed text to also consider the need for vehicle fleets to support fueling infrastructure.

Under subsection (a)(5), the executive director could consider how a project may support the conversion of large regional vehicle fleets moving goods and materials along interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth from gasoline or diesel fuel to natural gas.

Under subsection (a)(6), the executive director may assign a priority to projects that will help reduce exposure of vulnerable populations to pollutants of concern, including the conversion of school bus fleets and other fleets transporting children or the elderly from gasoline or diesel fuel to natural gas.

Under subsection (a)(7), the executive director may assign a priority to projects that would result in the conversion of public transportation fleets, such as school buses, transit buses, airport shuttle buses, and similar vehicle fleets from gasoline or diesel fuel to natural gas.

Under subsection (a)(8), the executive director may assign a priority to projects that will result in the conversion of public utility and service fleets, such as refuse vehicles, maintenance and utility vehicles, and similar fleets from gasoline or diesel fuel to natural gas.

Under subsection (a)(9), the executive director may assign a priority to projects that will support the use of natural gas and natural gas vehicles, engines, and associated technologies produced, manufactured, or otherwise based in Texas.

Under subsection (a)(10), the executive director may assign a priority to projects that will support the implementation of new and innovative natural gas vehicle and engine technologies.

Subsection (b) authorizes the executive director to limit grants under a grant application period according to the priorities established for that application period.

Subsection (c) requires that not less than 60% of the total amount of grants awarded in a fiscal biennium must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. This subsection also provides that this restriction will not apply if the commission does not receive enough grant applications to satisfy the percentage of funding requirement. These provisions are required by THSC, §394.007(b).

§114.672, Implementation Schedule

Section 114.672 identifies the expiration date of the program, as stated in THSC, §394.012. Under this section, the program expires on August 31, 2017.

Final Regulatory Impact Analysis

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule action is not subject to Texas Government Code, §2001.0225, because it does not meet

the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The new Chapter 114 rules are adopted in accordance with SB 385, which added THSC, Chapter 394. The rules are part of the implementation of a new voluntary incentive program with the goal of encouraging the use of natural gas in on-road heavy-duty and medium-duty vehicles and reducing emissions through the replacement or repower of older existing vehicles and engines with new cleaner models powered by natural gas. The program offers financial incentives for the voluntary replacement of vehicles and engines. Because the rules place no involuntary requirements on the regulated community, the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Also, none of the rules place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government

Code, §2001.0225, applies only to a major environmental rule the result of which is to:

1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency, but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the rules are subject to Texas Government Code, Chapter 2007. The primary purpose of

the rulemaking is to amend Chapter 114 in accordance with SB 385. The new rules establish criteria for prioritizing vehicles eligible to receive a grant as part of the implementation of a voluntary program and only affect motor vehicles which are not considered to be private real property. The promulgation and enforcement of the rules is neither a statutory nor a constitutional taking because it does not affect private real property. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it revises a voluntary incentive grant program and does not govern air pollution emissions.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding consistency with the CMP.

Public Comment

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 recommendation regarding the rules.

ANGA, Clean Energy, Crossroads, Pioneer, and UPS commented in support of the proposed rules.

ANGA, Clean Energy, and Pioneer discussed how the implementation of the Texas Natural Gas Vehicle Grant Program will benefit Texas on many levels, including job creation, increased revenues to the state, improved air quality, energy independence, and the promotion of Texas products. The comments from these entities also discussed the amount of natural gas produced in Texas and how utilization of this resource will

benefit the Texas economy, the benefits to national security from use of natural gas as a vehicle fuel, and the benefits of assisting the state in its efforts to meet national ambient air quality standards under the Federal Clean Air Act.

ANGA, Clean Energy, and Pioneer commented that it is critical that the TCEQ retain flexibility to change priorities as the program matures and that the rules as proposed achieve this goal.

Crossroads provided information regarding its experience in California and nationally in financing and assisting entities to apply for and receive grant funding for programs like the Texas Natural Gas Vehicle Grant Program. Crossroads commented that the 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.

The commission appreciates the support expressed for the new Texas Natural Gas Vehicle Grant Program and these rules. The commission agrees that the program will provide a variety of benefits to the state. No changes were made to the proposed text in response to these comments.

Clean Energy and Pioneer also commented that it is important that 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.

The commission agrees that it is important to keep stakeholders engaged in the program. Where appropriate, stakeholder input will be solicited as the program matures and decisions are made regarding priorities for funding. Also, workshops, training events, and informational meetings will be held as needed to explain the program requirements and procedures to dealers, potential applicants, and other stakeholders. 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.

The commission agrees that the provisions in the rule do not provide enough information to determine that the program will meet the criteria for credit of the emissions reductions to the state implementation plan. The rules will not be submitted as a revision to the state implementation plan at

this time. If this program is submitted for possible credit in the state implementation plan in the future, the more detailed criteria and program guidelines may be submitted to the EPA at that time.

ANGA, Clean Energy, and Pioneer 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 to 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, . . .*"

The commission agrees that, where appropriate, it is important that vehicle fleets and fueling infrastructure be developed in a complimentary approach. Additional language was added to §114.671(a)(4) from the

proposed text to include consideration of the need for vehicle fleets to support fueling infrastructure.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS
DIVISION 7: TEXAS NATURAL GAS VEHICLE GRANT PROGRAM
§§114.670 - 114.672

Statutory Authority

The new sections are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; 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. These new rules are also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; 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; and THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these new rules are adopted under THSC, §394.005(a), as added by Senate Bill 385, directing the commission to establish by rule the criteria for prioritizing qualifying vehicles eligible to receive a grant.

The adopted new sections implement THSC, §394.005.

§114.670. Purpose.

(a) These rules establish the criteria that the executive director may use for prioritizing qualifying vehicles eligible to receive grants under the Texas Natural Gas Vehicle Grant Program, established under Texas Health and Safety Code, Chapter 394.

(b) The requirements of Texas Health and Safety Code, Chapter 394, apply to grants awarded under this program.

§114.671. Criteria for Prioritizing Vehicles Eligible to Receive a Grant.

(a) Prior to each grant application period, the executive director will establish priorities for funding projects under that application period. Criteria that may be considered in establishing the funding priorities include, but are not limited to:

(1) the potential for different types of projects to achieve reductions in nitrogen oxides (NO_x) and/or other pollutants of concern over the required period of use of the grant-funded vehicles, including consideration of the vehicle types, weight categories, and types of use with the greatest potential to achieve emissions reductions;

(2) the cost-effectiveness of potential projects, as determined by the cost per ton of expected reductions in NO_x and/or other pollutants of concern;

(3) the potential for different types of projects to help increase the use of natural gas for transportation in Texas;

(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, and the need for emissions reductions in those areas in order to meet federal air quality standards;

(5) support for conversion of large regional vehicle fleets moving goods and materials along interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth from gasoline or diesel fuel to natural gas;

(6) support for projects to reduce exposure of vulnerable populations to pollutants of concern, including conversion of school bus fleets and other fleets transporting children or the elderly from gasoline or diesel fuel to natural gas;

(7) support for conversion of public transportation fleets, such as school buses, transit buses, airport shuttle buses, and similar vehicle fleets from gasoline or diesel fuel to natural gas;

(8) support for conversion of public utility and service fleets, such as refuse vehicles, maintenance and utility vehicles, and similar fleets from gasoline or diesel fuel to natural gas;

(9) support for the use of natural gas and natural gas vehicles, engines, and associated technologies produced, manufactured, or otherwise based in Texas; and

(10) support for implementation of new and innovative natural gas vehicle and engine technologies.

(b) The executive director may limit the grants under a grant application period according to the priorities established for that grant application period.

(c) Not less than 60% of the total amount of grants awarded in a fiscal biennium must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. However, this restriction does not apply if the commission does not receive enough grant applications to satisfy the percentage of funding requirement.

§114.672. Implementation Schedule.

This division expires on August 31, 2017.

ORDER ADOPTING NEW RULES

Docket No. 2011-1222-RUL

On March 28, 2012, the Texas Commission on Environmental Quality (Commission) adopted new rules in 30 TAC Chapter 114, concerning Control of Air Pollution From Motor Vehicles. The proposed rules were published for comment in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7480).

IT IS THEREFORE ORDERED BY THE COMMISSION that the new rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

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.

Issued date: March 28, 2012

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman

(10) the commitment by the applicant to operating the facility over a period of time, and

(11) consideration of technical and economic factors associated with a project.

(b) The executive director may establish additional criteria for the award of a grant, including establishing certain operational, maintenance, and reporting requirements.

(c) The executive director may limit the grants under a grant application period according to the priorities established for that grant application period.

§114.662. Implementation Schedule.

This division expires on August 31, 2018.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 21, 2011.

TRD-201104488

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 4, 2011

For further information, please call: (512) 239-2141



DIVISION 7. NATURAL GAS VEHICLE GRANT PROGRAM

30 TAC §§114.670 - 114.672

The Texas Commission on Environmental Quality (commission) proposes new §§114.670 - 114.672.

If adopted, the new sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan.

Background and Summary of the Factual Basis for the Proposed Rules

Senate Bill (SB) 385, 82nd Legislature, 2011, amended the Texas Health and Safety Code (THSC), by adding Chapter 394, Texas Natural Gas Vehicle Grant Program (program). This program is designed to encourage eligible entities to replace on-road heavy-duty and medium-duty vehicles with natural gas vehicles and to replace on-road heavy-duty and medium-duty vehicle engines with natural gas engines. The program also includes incentives to fund a portion of the costs to install natural gas dispensing equipment at fueling stations along a Clean Transportation Triangle consisting of the interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth. These rules are proposed to comply with THSC, §394.005(a), which requires the commission to adopt rules to establish criteria for prioritizing qualifying vehicles eligible to receive grants under the new program.

SB 20, 82nd Legislature, 2011, 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.

Section by Section Discussion

§114.670, Purpose

Proposed §114.670 would define the purpose of the proposed rules as the criteria the executive director may use when establishing priorities for funding projects under the program, as required by THSC, §394.005.

§114.671, Criteria for Prioritizing Vehicles Eligible to Receive a Grant

Proposed §114.671 outlines the criteria to be used for prioritizing qualifying vehicles to receive grants under this program, as required by THSC, §394.005.

Proposed subsection (a) lists the criteria that may be used by the executive director to establish priorities for funding. Prior to each grant application period, the executive director would establish specific priorities for funding projects under that application period.

Under proposed subsection (a)(1), the executive director could consider the potential for different types of projects to achieve reductions in nitrogen oxides (NO_x) and/or other pollutants of concern, including consideration of the vehicle types, weight categories, and types of use with the greatest potential to achieve emissions reductions.

Under proposed subsection (a)(2), the cost-effectiveness of a project, as determined by the cost per ton of expected reductions in NO_x and/or other pollutants of concern could be considered by the executive director.

Under proposed subsection (a)(3), the potential for different types of projects to help increase the use of natural gas for transportation in Texas could be considered by the executive director.

Under proposed subsection (a)(4), the areas of use of the grant-funded vehicles could be considered by the executive director, including consideration of the availability of fuel and fueling infrastructure and the need for emissions reductions in those areas in order to meet federal air quality standards.

Under proposed subsection (a)(5), the executive director could consider how a project may support the conversion of large regional vehicle fleets moving goods and materials along interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth from gasoline or diesel fuel to natural gas.

Under proposed subsection (a)(6), the executive director may assign a priority to projects that will help reduce exposure of vulnerable populations to pollutants of concern, including the conversion of school bus fleets and other fleets transporting children or the elderly from gasoline or diesel fuel to natural gas.

Under proposed subsection (a)(7), the executive director may assign a priority to projects that would result in the conversion of public transportation fleets, such as school buses, transit buses, airport shuttle buses, and similar vehicle fleets from gasoline or diesel fuel to natural gas.

Under proposed subsection (a)(8), the executive director may assign a priority to projects that would result in the conversion of public utility and service fleets, such as refuse vehicles, maintenance and utility vehicles, and similar fleets from gasoline or diesel fuel to natural gas.

Under proposed subsection (a)(9), the executive director may assign a priority to projects that would support the use of natural gas and natural gas vehicles, engines, and associated technologies produced, manufactured, or otherwise based in Texas.

Under proposed subsection (a)(10), the executive director may assign a priority to projects that would support the implementation of new and innovative natural gas vehicle and engine technologies.

Proposed subsection (b) would authorize the executive director to limit grants under a grant application period according to the priorities established for that application period.

Proposed subsection (c) would require that not less than 60% of the total amount of grants awarded in a fiscal biennium must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. The proposed subsection would also provide that this restriction would not apply if the commission does not receive enough grant applications to satisfy the percentage of funding requirement. These provisions are required by THSC, §394.007(b).

§114.672, Implementation Schedule

Proposed §114.672 would identify the expiration date of the program, as stated in THSC, §394.012. Under this section, the program would expire on August 31, 2017.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The agency will utilize available funding appropriated out of the Texas Emissions Reduction Plan (TERP) - Account 5071 to implement the proposed rules. Other state agencies and local governments may experience cost savings as a result of the proposed rules if they are eligible to use the grant funds to replace vehicles or engines in their fleets with natural gas vehicles or engines.

SB 385 requires the agency to adopt rules to create the program using a portion of the funds appropriated in Account 5071 - TERP. The proposed rules would add a new division to Chapter 114 to outline the criteria that will be used to prioritize qualifying vehicles eligible to receive a grant under this voluntary program. The program would be a new type of incentive grant in the overall TERP incentive grant program. To be eligible for this type of grant funding, an entity would be required to replace or repower an existing on-road heavy-duty or medium-duty motor vehicle with a natural gas vehicle or engine. The project must result in a reduction in emissions of NO_x of at least 25%. The grant recipient must also agree to operate the grant funded vehicle for at least 75% of the annual mileage over a period of four years or 400,000 miles along a Clean Transportation Triangle (consisting of the interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth) and in nonattainment counties. Funds appropriated for the program in Account 5071 - TERP total \$9,146,408 in each year of the 2012 - 2013 biennium.

State agencies or local governments with vehicles that meet the criteria of the grant program may experience cost benefits if they qualify to receive grant funds to purchase natural gas vehicles or engines to replace existing vehicles or engines. Applying for a grant from the program would be voluntary and it is not known at this time how many state agencies or local governments would do so. Vehicle replacement and repower grant amounts may range between 60% and 90% of the incremental cost of the project. Incremental costs are estimated to range from \$15,000 to over \$80,000 per vehicle replacement or repower project.

Public Benefits and Costs

Nina Chamness also determined that, for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be improved air quality in the area defined by the interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth and in non-attainment counties. The proposed rules will provide grant funding to replace older existing vehicles and engines with new natural gas models that have fewer emissions in these areas.

Under the proposed rules, individuals in certain areas of the state may find it more affordable and easier to purchase natural gas vehicles or replacement engines if they meet qualifying criteria.

Businesses that purchase vehicles or engines that meet the criteria of the program may experience lower costs when making those purchases. Businesses that are sellers of qualifying vehicles and replacement engines and agree to enter into a dealer contract with the commission should experience increased revenue since the program is expected to make the purchase of natural gas vehicles more attractive to potential buyers. The administrative requirements of the grants have not been finalized at this time, but applying for a grant from the program would be voluntary, and a business is not expected to submit an application for grant funds unless it has determined that the grant would be economically beneficial. It is not known at this time how many businesses would apply for a grant or how many businesses would purchase a replacement vehicle or engine under the program. Grant amounts will range from 60% to 90% of the incremental cost of the replacement or repower project, and incremental costs are estimated to range from \$15,000 to over \$80,000 per vehicle replacement or repower project.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small or micro-businesses in qualifying areas of the state are expected to experience the same benefits as a large business either when buying a natural gas vehicle or replacement engine or when acting as an authorized dealer natural gas vehicles or engines.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that

may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The new Chapter 114 rules are proposed in accordance with SB 385, which added THSC, Chapter 394. The proposed rules are part of the implementation of a new voluntary incentive program with the goal of encouraging the use of natural gas in on-road heavy-duty and medium-duty vehicles and reducing emissions through the replacement or repower of older existing vehicles and engines with new cleaner models powered by natural gas. The program offers financial incentives for the voluntary replacement of vehicles and engines. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Also, none of the proposed rule place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the proposed rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with SB 385. The new rules establish criteria for prioritizing vehicles eligible to receive a grant as part of the implementation of a voluntary program and only affect motor vehicles which are not considered to be private real property. The promulgation and enforcement of the proposed rules is neither a statutory nor a constitutional taking because it does not affect private real property. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concern-

ing rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it is part of implementing a voluntary incentive grant program and does not govern air pollution emissions.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on November 29, 2011, at 10:00 a.m. in Building E, Room 201A, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-053-114-EN. The comment period closes December 5, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adapt.html. For further information, please contact Stephen Dayton, Implementation Grants Section, (512) 239-6824.

Statutory Authority

These new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; 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. These new rules are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; 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; and THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these proposed new rules are proposed under THSC, §394.005(a), as added by Senate Bill 385, directing the commission to establish by rule the criteria for prioritizing qualifying vehicles eligible to receive a grant.

The proposed rules implement THSC, §394.005.

§114.670. Purpose.

(a) These rules establish the criteria that the executive director may use for prioritizing qualifying vehicles eligible to receive grants under the Texas Natural Gas Vehicle Grant Program, established under Texas Health and Safety Code, Chapter 394.

(b) The requirements of Texas Health and Safety Code, Chapter 394, apply to grants awarded under this program.

§114.671. Criteria for Prioritizing Vehicles Eligible to Receive a Grant.

(a) Prior to each grant application period, the executive director will establish priorities for funding projects under that application period. Criteria that may be considered in establishing the funding priorities include, but are not limited to:

(1) the potential for different types of projects to achieve reductions in nitrogen oxides (NO_x) and/or other pollutants of concern over the required period of use of the grant-funded vehicles, including consideration of the vehicle types, weight categories, and types of use with the greatest potential to achieve emissions reductions;

(2) the cost-effectiveness of potential projects, as determined by the cost per ton of expected reductions in NO_x and/or other pollutants of concern;

(3) the potential for different types of projects to help increase the use of natural gas for transportation in Texas;

(4) the areas of use of the grant-funded vehicles, including consideration of the availability of fuel and fueling infrastructure and the need for emissions reductions in those areas in order to meet federal air quality standards;

(5) support for conversion of large regional vehicle fleets moving goods and materials along interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth from gasoline or diesel fuel to natural gas;

(6) support for projects to reduce exposure of vulnerable populations to pollutants of concern, including conversion of school bus fleets and other fleets transporting children or the elderly from gasoline or diesel fuel to natural gas;

(7) support for conversion of public transportation fleets, such as school buses, transit buses, airport shuttle buses, and similar vehicle fleets from gasoline or diesel fuel to natural gas;

(8) support for conversion of public utility and service fleets, such as refuse vehicles, maintenance and utility vehicles, and similar fleets from gasoline or diesel fuel to natural gas;

(9) support for the use of natural gas and natural gas vehicles, engines, and associated technologies produced, manufactured, or otherwise based in Texas; and

(10) support for implementation of new and innovative natural gas vehicle and engine technologies.

(b) The executive director may limit the grants under a grant application period according to the priorities established for that grant application period.

(c) Not less than 60% of the total amount of grants awarded in a fiscal biennium must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. However, this restriction does not apply if the commission does not receive enough grant applications to satisfy the percentage of funding requirement.

§114.672. Implementation Schedule.

This division expires on August 31, 2017.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 21, 2011.

TRD-201104489

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 4, 2011

For further information, please call: (512) 239-2141



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (TWDB) proposes amendments to Chapter 371, Drinking Water State Revolving Fund: Subchapter B, Financial Assistance, §371.14, regarding Lending Rates; Subchapter C, Intended Use Plan, §371.21, regarding Rating Process; and Subchapter E, Environmental Reviews and Determinations, §371.40, regarding Definitions, §371.41, regarding Environmental Review Process, §371.42, regarding Types of Environmental Determinations: Categorical Exclusions, §371.50, regarding Use of Environmental Determinations Prepared by Other Entities, and adding new §371.51, regarding Emergency Relief Project Procedures.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE AMENDMENTS.

The Drinking Water State Revolving Fund (DWSRF) is used by the TWDB to offer loans and loan forgiveness to political subdivisions for improvements to water systems. Loans from DWSRF are provided through annual federal capitalization grants, in coordination with the U.S. Environmental Protection Agency (EPA) Region 6 and the Texas Commission on Environmental Quality (TCEQ). Implementation of the financing program is through the Intended Use Plan (IUP).

Staff has determined that amendments to certain sections of Chapter 371, Subchapter C and Subchapter E, are needed to authorize expedited environmental review procedures required for entities seeking DWSRF funding in emergency situations. These rules were adopted on an emergency basis at a meeting of the TWDB on September 20, 2011, pursuant to §2001.034, Government Code. This rulemaking will continue these duties in effect following the expiration of the rules adopted on an emergency basis. In addition, a minor amendment in Subchapter B is needed to clarify the procedure for setting fixed interest rates within the DWSRF loan program.

SECTION BY SECTION DISCUSSION OF AMENDMENTS.

Section 371.14(b).

AN ACT

relating to the creation of programs to support the use of alternative fuels, including an alternative fuel program to be funded by the Texas emissions reduction plan fund and a grant program for certain natural gas vehicles.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 386.252, Health and Safety Code, as amended by Chapters 1125 (H.B. 1796) and 1232 (S.B. 1759), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5 percent of the money in the fund, of which:

(A) not more than four percent may be used for the clean school bus program;

(B) not more than 10 percent may be used for on-road diesel purchase or lease incentives; ~~and~~

(C) a specified amount may be used for the new technology implementation grant program, from which a defined amount may be set aside for electricity storage projects related to renewable energy;

(D) five percent shall be used for the clean

1 fleet program;

2 (E) two percent may be used for the Texas
3 alternative fueling facilities program;

4 (F) not less than 16 percent shall be used for the
5 natural gas vehicle grant program; and

6 (G) not more than four percent may be used to
7 provide grants for natural gas fueling stations under Section
8 394.010;

9 (2) for the new technology research and development
10 program, nine percent of the money in the fund, of which:

11 (A) up to \$200,000 is allocated for a health
12 effects study;

13 (B) \$500,000 is to be deposited in the state
14 treasury to the credit of the clean air account created under
15 Section 382.0622 to supplement funding for air quality planning
16 activities in affected counties;

17 (C) not less than 20 percent is to be allocated
18 each year to support research related to air quality as provided by
19 Section 387.010; and

20 (D) the balance is allocated each year to the
21 commission to be used to:

22 (i) implement and administer the new
23 technology research and development program for the purpose of
24 identifying, testing, and evaluating new emissions-reducing
25 technologies with potential for commercialization in this state and
26 to facilitate their certification or verification; and

27 (ii) contract with the Energy Systems

1 Laboratory at the Texas Engineering Experiment Station for \$216,000
2 annually for the development and annual computation of creditable
3 statewide emissions reductions obtained through wind and other
4 renewable energy resources for the state implementation plan; and

5 (3) two percent is allocated to the commission and 1.5
6 percent is allocated to the laboratory for administrative costs
7 incurred by the commission and the laboratory.

8 SECTION 2. Section 386.252, Health and Safety Code, is
9 amended by adding Subsections (e), (f), and (g) to read as follows:

10 (e) The commission may allocate unexpended money designated
11 for the Texas alternative fueling facilities program to other
12 programs described under Subsection (a) after the commission
13 allocates money to recipients under the alternative fueling
14 facilities program.

15 (f) Notwithstanding Subsection (a), the commission may
16 reallocate money in the fund if:

17 (1) the commission, in consultation with the governor
18 and the advisory board, determines that the use of the money in the
19 fund for the program established under Chapter 394 will cause the
20 state to be in noncompliance with the state implementation plan to
21 the extent that federal action is likely; and

22 (2) the commission finds that the reallocation of some
23 or all of the funding for the program established under Chapter 394
24 would resolve the noncompliance.

25 (g) Under Subsection (f), the commission may not reallocate
26 more than the minimum amount of money necessary to resolve the
27 noncompliance.

1 SECTION 3. Subtitle C, Title 5, Health and Safety Code, is
2 amended by adding Chapters 393 and 394 to read as follows:

3 CHAPTER 393. ALTERNATIVE FUELING FACILITIES PROGRAM

4 Sec. 393.001. DEFINITIONS. In this chapter:

5 (1) "Alternative fuel" means a fuel other than
6 gasoline or diesel fuel, other than biodiesel fuel, including
7 electricity, compressed natural gas, liquified natural gas,
8 hydrogen, propane, or a mixture of fuels containing at least 85
9 percent methanol by volume.

10 (2) "Commission" means the Texas Commission on
11 Environmental Quality.

12 (3) "Program" means the Texas alternative fueling
13 facilities program established under this chapter.

14 Sec. 393.002. PROGRAM. (a) The commission shall establish
15 and administer the Texas alternative fueling facilities program to
16 provide fueling facilities for alternative fuel in nonattainment
17 areas. Under the program, the commission shall provide a grant for
18 each eligible facility to offset the cost of those facilities.

19 (b) An entity that constructs, reconstructs, or acquires an
20 alternative fueling facility is eligible to participate in the
21 program.

22 Sec. 393.003. APPLICATION FOR GRANT. (a) An entity
23 operating in this state that constructs, reconstructs, or acquires
24 a facility to store, compress, or dispense alternative fuels may
25 apply for and receive a grant under the program.

26 (b) The commission may adopt guidelines to allow a regional
27 planning commission, council of governments, or similar regional

1 planning agency created under Chapter 391, Local Government Code,
2 or a private nonprofit organization to apply for and receive a grant
3 to improve the ability of the program to achieve its goals.

4 (c) An application for a grant under this chapter must be
5 made on a form provided by the commission and must contain the
6 information required by the commission.

7 Sec. 393.004. ELIGIBILITY OF FACILITIES FOR GRANTS.

8 (a) The commission by rule shall establish criteria for
9 prioritizing facilities eligible to receive grants under this
10 chapter. The commission shall review and revise the criteria as
11 appropriate.

12 (b) To be eligible for a grant under the program, the entity
13 receiving the grant must agree to make the alternative fueling
14 facility available to persons not associated with the entity at
15 times designated by the grant agreement.

16 (c) A recipient of a grant under this chapter is not
17 eligible to receive a second grant under this chapter for the same
18 facility.

19 Sec. 393.005. RESTRICTION ON USE OF GRANT. A recipient of a
20 grant under this chapter shall use the grant only to pay the costs
21 of the facility for which the grant is made. The recipient may not
22 use the grant to pay the recipient's administrative expenses.

23 Sec. 393.006. AMOUNT OF GRANT. For each eligible facility
24 for which a recipient is awarded a grant under the program, the
25 commission shall award the grant in an amount equal to the lesser
26 of:

27 (1) 50 percent of the sum of the actual eligible costs

1 incurred by the grant recipient within deadlines established by the
2 commission to construct, reconstruct, or acquire the facility; or

3 (2) \$500,000.

4 Sec. 393.007. EXPIRATION. This chapter expires August 31,
5 2018.

6 CHAPTER 394. TEXAS NATURAL GAS VEHICLE GRANT PROGRAM

7 Sec. 394.001. DEFINITIONS. In this chapter:

8 (1) "Advisory board" means the Texas Emissions
9 Reduction Plan Advisory Board.

10 (2) "Commission" means the Texas Commission on
11 Environmental Quality.

12 (3) "Executive director" means the executive director
13 of the Texas Commission on Environmental Quality.

14 (4) "Heavy-duty motor vehicle" means a motor vehicle
15 with:

16 (A) a gross vehicle weight rating of more than
17 8,500 pounds; and

18 (B) an engine certified to the United States
19 Environmental Protection Agency's standards for heavy-duty
20 engines.

21 (5) "Incremental cost" means the difference between
22 the manufacturer's suggested retail price of a baseline vehicle,
23 the documented dealer price of a baseline vehicle, cost to lease or
24 otherwise commercially finance a baseline vehicle, cost to repower
25 with a baseline engine, or other appropriate baseline cost
26 established by the commission, and the actual cost of the natural
27 gas vehicle purchase, lease, or other commercial financing, or

1 repower.

2 (6) "Medium-duty motor vehicle" means a motor vehicle
3 with a gross vehicle weight rating of more than 8,500 pounds that:

4 (A) is certified to the United States
5 Environmental Protection Agency's light-duty emissions standard;
6 or

7 (B) has an engine certified to the United States
8 Environmental Protection Agency's light-duty emissions standard.

9 (7) "Motor vehicle" has the meaning assigned by
10 Section 386.151.

11 (8) "Natural gas vehicle" means a motor vehicle that
12 receives not less than 75 percent of its power from compressed or
13 liquefied natural gas.

14 (9) "Program" means the Texas natural gas vehicle
15 grant program established under this chapter.

16 Sec. 394.002. PROGRAM. The commission shall establish and
17 administer the Texas natural gas vehicle grant program to encourage
18 an entity that has a heavy-duty or medium-duty motor vehicle to
19 repower the vehicle with a natural gas engine or replace the vehicle
20 with a natural gas vehicle. Under the program, the commission shall
21 provide grants for eligible heavy-duty motor vehicles and
22 medium-duty motor vehicles to offset the incremental cost for the
23 entity of repowering or replacing the heavy-duty or medium-duty
24 motor vehicle.

25 Sec. 394.003. QUALIFYING VEHICLES. (a) A vehicle is a
26 qualifying vehicle that may be considered for a grant under the
27 program if during the calendar year the entity:

1 (1) purchased, leased, or otherwise commercially
2 financed the vehicle as a new on-road heavy-duty or medium-duty
3 motor vehicle that:

4 (A) is a natural gas vehicle;

5 (B) is certified to current federal emissions
6 standards;

7 (C) replaces an on-road heavy-duty or
8 medium-duty motor vehicle of the same weight classification and
9 use; and

10 (D) is powered by an engine certified to:

11 (i) emit not more than 0.2 grams of nitrogen
12 oxides per brake horsepower hour; or

13 (ii) meet or exceed the United States
14 Environmental Protection Agency's Bin 5 standard for light-duty
15 engines when powering the vehicle; or

16 (2) repowered the on-road motor vehicle to a natural
17 gas vehicle powered by a natural gas engine that:

18 (A) is certified to current federal emissions
19 standards; and

20 (B) is:

21 (i) a heavy-duty engine that is certified
22 to emit not more than 0.2 grams of nitrogen oxides per brake
23 horsepower hour; or

24 (ii) certified to meet or exceed the United
25 States Environmental Protection Agency's Bin 5 standard for
26 light-duty engines when powering the vehicle.

27 (b) A heavy-duty or medium-duty motor vehicle is not a

1 qualifying vehicle if the vehicle or the natural gas engine
2 powering the vehicle:

3 (1) has been awarded a grant under this chapter for a
4 previous reporting period; or

5 (2) has received a similar grant or tax credit in
6 another jurisdiction if that grant or tax credit program is relied
7 on for credit in the state implementation plan.

8 Sec. 394.004. APPLICATION FOR GRANT. (a) Only an entity
9 operating in this state that operates a heavy-duty or medium-duty
10 motor vehicle may apply for and receive a grant under this chapter.

11 (b) An application for a grant under this chapter must be
12 made on a form provided by the commission and must contain the
13 information required by the commission.

14 (c) The commission, after consulting stakeholders, shall:

15 (1) simplify the application form; and

16 (2) minimize, to the maximum extent possible,
17 documentation required for an application.

18 Sec. 394.005. ELIGIBILITY FOR GRANTS. (a) The commission
19 by rule shall establish criteria for prioritizing qualifying
20 vehicles eligible to receive grants under this chapter. The
21 commission shall review and revise the criteria as appropriate
22 after consultation with the advisory board.

23 (b) To be eligible for a grant under the program:

24 (1) the use of the qualifying vehicle must be
25 projected to result in a reduction in emissions of nitrogen oxides
26 of at least 25 percent as compared to the motor vehicle or engine
27 being replaced, based on:

1 (A) the baseline emission level set by the
2 commission under Subsection (g); and

3 (B) the certified emission rate of the new
4 vehicle; and

5 (2) the qualifying vehicle must:

6 (A) replace a heavy-duty or medium-duty motor
7 vehicle that:

8 (i) is an on-road vehicle that has been
9 owned, leased, or otherwise commercially financed and registered
10 and operated by the applicant in Texas for at least the two years
11 immediately preceding the submission of a grant application;

12 (ii) satisfies any minimum average annual
13 mileage or fuel usage requirements established by the commission;

14 (iii) satisfies any minimum percentage of
15 annual usage requirements established by the commission; and

16 (iv) is in operating condition and has at
17 least two years of remaining useful life, as determined in
18 accordance with criteria established by the commission; or

19 (B) be a heavy-duty or medium-duty motor vehicle
20 repowered with a natural gas engine that:

21 (i) is installed in an on-road vehicle that
22 has been owned, leased, or otherwise commercially financed and
23 registered and operated by the applicant in Texas for at least the
24 two years immediately preceding the submission of a grant
25 application;

26 (ii) satisfies any minimum average annual
27 mileage or fuel usage requirements established by the commission;

1 (iii) satisfies any minimum percentage of
2 annual usage requirements established by the commission; and

3 (iv) is installed in an on-road vehicle
4 that, at the time of the vehicle's repowering, was in operating
5 condition and had at least two years of remaining useful life, as
6 determined in accordance with criteria established by the
7 commission.

8 (c) As a condition of receiving a grant, the qualifying
9 vehicle must be continuously owned, leased, or otherwise
10 commercially financed and registered and operated in the state by
11 the grant recipient until the earlier of the fourth anniversary of
12 the date of reimbursement of the grant-funded expenses or until the
13 date the vehicle has been in operation for 400,000 miles after the
14 date of reimbursement. Not less than 75 percent of the annual use
15 of the qualifying vehicle, either mileage or fuel use as determined
16 by the commission, must occur in:

17 (1) the counties any part of which are included in the
18 area described by Section 394.010(a); or

19 (2) counties designated as nonattainment areas within
20 the meaning of Section 107(d) of the federal Clean Air Act (42
21 U.S.C. Section 7407).

22 (d) The commission shall include and enforce the usage
23 provisions in the grant contracts. The commission shall monitor
24 compliance with the ownership, leasing, and usage requirements,
25 including submission of reports on at least an annual basis, or more
26 frequently as determined by the commission.

27 (e) The commission by contract may require the return of all

1 or a portion of grant funds for a grant recipient's noncompliance
2 with the usage and percentage of use requirements under this
3 section.

4 (f) A heavy-duty or medium-duty motor vehicle replaced
5 under this program must be rendered permanently inoperable by
6 crushing the vehicle, by making a hole in the engine block and
7 permanently destroying the frame of the vehicle, or by another
8 method approved by the commission that permanently removes the
9 vehicle from operation in this state. The commission shall
10 establish criteria for ensuring the permanent destruction of the
11 engine or vehicle. The commission shall enforce the destruction
12 requirements.

13 (g) The commission shall establish baseline emission levels
14 for emissions of nitrogen oxides for on-road heavy-duty or
15 medium-duty motor vehicles being replaced by using the emission
16 certification for the engine or vehicle being replaced. The
17 commission may consider deterioration of the emission performance
18 of the engine of the vehicle being replaced in establishing the
19 baseline emission level. The commission may consider and establish
20 baseline emission rates for additional pollutants of concern, as
21 determined by the commission after consultation with the advisory
22 board.

23 (h) Mileage or fuel use requirements established by the
24 commission under Subsection (b)(2)(A)(ii) may differ by vehicle
25 weight categories and type of use.

26 (i) The executive director shall waive the requirements of
27 Subsection (b)(2)(A)(i) on a finding of good cause, which may

1 include short lapses in registration or operation due to economic
2 conditions, seasonal work, or other circumstances.

3 Sec. 394.006. RESTRICTION ON USE OF GRANT. A recipient of a
4 grant under this chapter shall use the grant to pay the incremental
5 costs of the replacement for which the grant is made, which may
6 include the initial cost of the natural gas vehicle or natural gas
7 engine and the reasonable and necessary expenses incurred for the
8 labor needed to install emissions-reducing equipment. The
9 recipient may not use the grant to pay the recipient's
10 administrative expenses.

11 Sec. 394.007. AMOUNT OF GRANT. (a) The commission shall
12 develop a grant schedule that:

13 (1) assigns a standardized grant in an amount between
14 60 and 90 percent of the incremental cost of a natural gas vehicle
15 purchase, lease, other commercial finance, or repowering;

16 (2) is based on:

17 (A) the certified emission level of nitrogen
18 oxides, or other pollutants as determined by the commission, of the
19 engine powering the natural gas vehicle; and

20 (B) the usage of the natural gas vehicle; and

21 (3) may take into account the overall emissions
22 reduction achieved by the natural gas vehicle.

23 (b) Not less than 60 percent of the total amount of grants
24 awarded under this chapter for the purchase and repowering of motor
25 vehicles must be awarded to motor vehicles with a gross vehicle
26 weight rating of at least 33,001 pounds. The minimum grant
27 requirement under this subsection does not apply if the commission

1 does not receive enough grant applications to satisfy the
2 requirement for motor vehicles described by this subsection that
3 are eligible to receive a grant under this chapter.

4 (c) A person may not receive a grant under this chapter
5 that, when combined with any other grant, tax credit, or other
6 governmental incentive, exceeds the incremental cost of the vehicle
7 for which the grant is awarded. A person shall return to the
8 commission the amount of a grant awarded under this chapter that,
9 when combined with any other grant, tax credit, or other
10 governmental incentive, exceeds the incremental cost of the vehicle
11 for which the grant is awarded.

12 (d) The commission shall reduce the amount of a grant
13 awarded under this chapter as necessary to keep the combined
14 incentive total at or below the incremental cost of the vehicle for
15 which the grant is awarded if the grant recipient is eligible to
16 receive an automatic incentive at or before the time a grant is
17 awarded under this chapter.

18 Sec. 394.008. GRANT PROCEDURES. (a) The commission shall
19 adopt procedures for:

20 (1) awarding grants under this chapter in the form of
21 rebates; and

22 (2) streamlining the grant application, contracting,
23 reimbursement, and reporting process for qualifying natural gas
24 vehicle purchases or repowers.

25 (b) Procedures adopted under this section must:

26 (1) provide for the commission to compile and
27 regularly update a listing of preapproved natural gas vehicles:

1 (A) powered by natural gas engines certified to
2 emit not more than 0.2 grams of nitrogen oxides per brake horsepower
3 hour; or

4 (B) certified to the United States Environmental
5 Protection Agency's light-duty Bin 5 standard or better;

6 (2) if a federal standard for the calculation of
7 emissions reductions exists, provide a method to calculate the
8 reduction in emissions of nitrogen oxides, volatile organic
9 compounds, carbon monoxide, particulate matter, and sulfur
10 compounds for each replacement or repowering;

11 (3) assign a standardized rebate amount for each
12 qualifying vehicle under Section 394.007;

13 (4) allow for processing rebates on an ongoing
14 first-come, first-served basis;

15 (5) provide for contracts between the commission and
16 participating dealers under Section 394.009;

17 (6) allow grant recipients to assign their grant funds
18 to participating dealers to offset the purchase or lease price;

19 (7) require grant applicants to identify natural gas
20 fueling stations that are available to fuel the qualifying vehicle
21 in the area of its use;

22 (8) provide for payment not later than the 30th day
23 after the date the request for reimbursement for an approved grant
24 is received;

25 (9) provide for application submission and
26 application status checks to be made over the Internet; and

27 (10) consolidate, simplify, and reduce the

1 administrative work for applicants and the commission associated
2 with grant application, contracting, reimbursement, and reporting
3 requirements.

4 (c) The commission, or its designee, shall oversee the grant
5 process and is responsible for final approval of any grant.

6 (d) Grant recipients are responsible for meeting all grant
7 conditions, including reporting and monitoring as required by the
8 commission through the grant contract.

9 Sec. 394.009. PARTICIPATING DEALERS. (a) In this section,
10 "participating dealer" means a person who:

11 (1) sells, leases, or otherwise commercially finances
12 on-road heavy-duty or medium-duty natural gas vehicles or
13 heavy-duty or medium-duty natural gas engines; and

14 (2) has satisfied all requirements established by the
15 commission for participation in the program as a dealer.

16 (b) A participating dealer must agree to the terms and
17 conditions of a standardized contract developed by the commission.

18 (c) A participating dealer shall:

19 (1) provide information regarding natural gas vehicle
20 grants to fleet operators;

21 (2) assist an applicant who purchases, leases, or
22 otherwise commercially finances a natural gas vehicle or engine
23 from the dealer with the completion of the application; and

24 (3) submit completed applications and documentation
25 to the commission on behalf of an applicant who purchases, leases,
26 or otherwise commercially finances a natural gas vehicle or engine
27 from the dealer.

1 (d) A participating dealer may not approve a grant.

2 (e) The commission shall:

3 (1) maintain and make available to the public online a
4 list of all qualified dealers; and

5 (2) establish requirements for participation in the
6 program by sellers of on-road heavy-duty or medium-duty natural gas
7 vehicles and heavy-duty or medium-duty natural gas engines.

8 Sec. 394.010. CLEAN TRANSPORTATION TRIANGLE. (a) To
9 ensure that natural gas vehicles purchased, leased, or otherwise
10 commercially financed or repowered under the program have access to
11 fuel, and to build the foundation for a self-sustaining market for
12 natural gas vehicles in Texas, the commission shall award grants to
13 support the development of a network of natural gas vehicle fueling
14 stations along the interstate highways connecting Houston, San
15 Antonio, Dallas, and Fort Worth. In awarding the grants, the
16 commission shall provide for:

17 (1) strategically placed natural gas vehicle fueling
18 stations in and between the Houston, San Antonio, and Dallas-Fort
19 Worth areas to enable a natural gas vehicle to travel along that
20 triangular area relying solely on natural gas fuel;

21 (2) grants to be dispersed through a competitive
22 bidding process to offset a portion of the cost of installation of
23 the natural gas dispensing equipment;

24 (3) contracts that require the recipient stations to
25 meet operational, maintenance, and reporting requirements as
26 specified by the commission; and

27 (4) a listing, to be maintained by the commission and

1 made available to the public online, of all natural gas vehicle
2 fueling stations that have received grant funding, including
3 location and hours of operation.

4 (b) The commission may not award more than:

5 (1) three station grants to any entity; or

6 (2) one grant for each station.

7 (c) Grants awarded under this section may not exceed:

8 (1) \$100,000 for a compressed natural gas station;

9 (2) \$250,000 for a liquefied natural gas station; or

10 (3) \$400,000 for a station providing both liquefied
11 and compressed natural gas.

12 (d) Stations funded by grants under this section must be
13 publicly accessible and located not more than three miles from an
14 interstate highway system. The commission shall give preference
15 to:

16 (1) stations providing both liquefied natural gas and
17 compressed natural gas at a single location; and

18 (2) stations located not more than one mile from an
19 interstate highway system.

20 (e) To meet the goals of this section, the commission may
21 solicit grant applications under this section for a new fueling
22 station in a specific area or location.

23 (f) Grants made under this section are not subject to the
24 requirements of Sections 394.002 through 394.008. The commission
25 shall develop an application package and review applications in
26 accordance with Sections 386.110 and 386.111.

27 (g) The commission, in consultation with the natural gas

1 industry, shall determine the most efficient use of funding for the
2 station grants under this section to maximize the availability of
3 natural gas fueling stations.

4 Sec. 394.011. ADMINISTRATION OF PROGRAM. The commission
5 may contract with one or more entities for administration of the
6 program.

7 Sec. 394.012. EXPIRATION. This chapter expires August 31,
8 2017.

9 SECTION 4. The Texas Commission on Environmental Quality
10 shall adopt rules under Section 393.004, Health and Safety Code, as
11 added by this Act, as soon as practicable after the effective date
12 of this Act.

13 SECTION 5. The Texas Commission on Environmental Quality
14 shall adopt rules and establish procedures under Chapter 394,
15 Health and Safety Code, as added by this Act, as soon as practicable
16 after the effective date of this Act.

17 SECTION 6. To the extent of any conflict, this Act prevails
18 over another Act of the 82nd Legislature, Regular Session, 2011,
19 relating to nonsubstantive additions to and corrections in enacted
20 codes.

21 SECTION 7. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 385 passed the Senate on April 4, 2011, by the following vote: Yeas 29, Nays 2; and that the Senate concurred in House amendment on May 27, 2011, by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

I hereby certify that S.B. No. 385 passed the House, with amendment, on May 23, 2011, by the following vote: Yeas 112, Nays 27, four present not voting.

Chief Clerk of the House

Approved:

Date

Governor