


# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

**To:** Commissioners **Date:** June 16, 2010

**Thru:** LaDonna Casteñuela, Chief Clerk  
Mark R. Vickery, P.G., Executive Director

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

**Docket No.:** 2010-0760-MIS

**Subject:** Commission Approval for Proposal of the New Technology Implementation Grants: Guidelines for Grants (RG-484)

### Background and reason(s) for the guidelines:

Texas Health and Safety Code (THSC), §391.002 directs the Texas Commission on Environmental Quality (TCEQ) to establish and administer a New Technology Implementation Grants (NTIG) program as part of the Texas Emission Reduction Plan (TERP). The TCEQ shall adopt guidelines and criteria consistent with the requirements of THSC, §391.003. The guidelines establish the criteria and requirements for grant projects funded under the NTIG program.

The proposed NTIG guidelines were reviewed by the executive director and the NTIG Stakeholder Group. The NTIG Stakeholder Group held two public meetings on February 24, 2010, and March 29, 2010. The NTIG Stakeholder Group made a number of suggestions and assisted staff in defining the grant criteria and requirements. Guidelines need to be adopted to incorporate the statutory requirements of THSC, Chapter 391 and to provide the public with a clear understanding of the criteria to be used by the executive director when determining which projects will receive grant funds.

The proposed guidelines are presented in the attached document.

### Scope of the proposed guidelines:

**A) Summary of what the guidelines will do:** These guidelines establish the initial NTIG criteria as authorized in House Bill (HB) 1796, 81st Texas Legislature, 2009, and other criteria proposed by the executive director. Specifically, the guidelines will set out the Request for Grant Applications (RFGA) scoring criteria.

**B) Scope required by federal regulations or state statutes:** THSC, §391.002 directs the commission to adopt guidelines consistent with the requirements of THSC, Chapter 391.

**C) Additional staff recommendations that are not required by federal rule or state statute:** Staff recommends that electricity storage projects must be able to store a minimum of one megawatt of electricity in order to be eligible for funding under this program. The one megawatt requirement came from discussions at the NTIG Stakeholder Group meetings. The reason for this minimum capacity limit is to ensure that NTIG funds commercial-scale storage projects, and not small-scale private storage projects.

### Statutory authority:

The guidelines are proposed under THSC, §391.003, which directs the TCEQ to adopt and revise guidelines and criteria for the NTIG program as necessary to improve the ability of the plan to achieve its goals. The proposed guidelines are also proposed as part of the implementation of HB 1796.

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**Effect on the:**

**A) Regulated community:** Owners or operators of stationary sources, which emit pollutants, or electricity storage projects related to renewable energy may be eligible for a grant under this program. The primary objective of the NTIG program is to offset the incremental cost of emission reductions from facilities and other stationary sources in Texas. The selection criteria for the RFGA may focus on the emission reduction potential, while remaining technology-neutral as to the type of technology proposed, or may target particular types of promising technology.

**B) Public:** The public will benefit from the emission reductions that result from the implementation of this program.

**C) Agency programs:** New program material will need to be developed to implement this program. Application and contract processing and approval procedures, as well as long-term monitoring procedures, will need to be developed and implemented.

**Stakeholder meetings:**

The NTIG Stakeholder Group held two public meetings on February 24, 2010, and March 29, 2010. The stakeholder group made a number of suggestions and assisted staff in defining the grant criteria and requirements. The stakeholder group and public participants generally supported the guidelines. Furthermore, stakeholders generally supported the proposed RFGA scoring criteria. However, there was some deliberation regarding electricity storage projects that benefit nonattainment areas. The stakeholders discussed giving priority to electricity storage projects that reduce emissions in nonattainment areas. The problem with placing these types of projects in the highest preference category is in verifying emission reduction claims made by applicants. Due to the complexity of evaluating emission reductions associated with electricity storage projects, the stakeholders decided to not include emission reductions as part of electricity storage projects. Advanced Clean Energy Projects and New Technology Projects will be scored based on their effect on emissions in nonattainment areas.

**Potentially controversial matters:**

Under THSC, § 391.002(b), "Projects that may be considered for a grant under the program include: ... (3) electricity storage projects related to renewable energy." There may be some controversy as to what constitutes "related to renewable energy." Some stakeholders suggested that strategically placed electricity storage facilities would allow more renewable energy to be placed on the electrical grid. Others suggested that the relationship to renewable energy should be more direct. They argue that to qualify for this program, electricity stored should be derived directly from renewable energy sources. The stakeholders agreed to consider those projects that store electricity that is not derived directly from renewable energy sources. The burden is on the applicant to demonstrate the electricity storage facility's relationship to a renewable energy source.

**What are the consequences if these guidelines do not go forward? Are there alternatives to adopting these guidelines?**

Without the adoption of these guidelines, the NTIG program cannot open solicitations for grant applications. The NTIG program will not be able to award the funds allocated to NTIG. There are no alternatives to adopting these guidelines.

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**Public comments:**

The proposed guidelines were made available for public comment during the open stakeholder meetings. Notice of the stakeholder meetings were posted to the TERP Web site and posted on the TCEQ's calendar a minimum of two weeks prior to the meeting. The TCEQ's Public Interest Counsel, Office of Public Assistance, and Small Business and Local Government Assistance programs were also notified two weeks prior to the meeting.

No public comments were received.

**Agency contacts:**

Colin Donovan, NTIG Coordinator, Air Quality Division, 239-1984  
Ben Rhem, Staff Attorney, Environmental Law Division, 239-6501

Attachments

## **Eligible Project Categories for NTIG**

### **Advanced Clean Energy Projects (ACEP)**

Qualifying facilities: new or modified

Fuel: coal, biomass, petroleum coke, solid waste, or fuel cells using hydrogen derived from such fuels

Emissions requirements:

Must be capable of achieving

- $\geq 99\%$  reduction of sulfur dioxide (SO<sub>2</sub>) emissions on an annual basis or, if project uses subbituminous coal, an emission rate of  $\leq 0.04$  lbs SO<sub>2</sub> per million British thermal units (MBtu) as determined by a 30-day average;
- $\geq 95\%$  reduction of mercury (Hg) emissions on an annual basis;
- an annual average nitrogen oxide (NO<sub>x</sub>) emission rate of:
  - $\leq 0.05$  lbs/MBtu; or
  - if the project uses gasification technology,  $\leq 0.034$  lbs/MBtu; and
- an annual average emission rate for filterable particulate matter (PM) of  $\leq 0.015$  lbs/MBtu;

Carbon capture:

- captures  $\geq 50\%$
- Sequestration method
  - geologic storage
  - other means

### **New Technology Projects**

New technology projects that reduce emissions of regulated pollutants from point sources

- capital expenditures must exceed \$500 million
- regulated pollutants include but are not limited to:
  - criteria pollutants
  - hazardous air pollutants (HAPs)
  - any other pollutants regulated under the Federal Clean Air Act
  - any other pollutants subject to requirements under TCEQ rules, regulations, permits, orders of the commission, or court orders

### **Electricity Storage projects related to renewable energy**

Examples include:

- Compressed Air Energy Storage (CAES)
- Pumped Hydropower
- Sodium Sulfur Storage Batteries
- Energy-retaining flywheels



RG-484  
Draft for Commission approval  
June 2010

# **New Technology Implementation Grants**

## **Guidelines for Grants**

printed on  
recycled paper

Air Quality Division

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



# **New Technology Implementation Grant Program: Guidelines for Grants**

Prepared by  
Air Quality Division

RG-484 (draft)  
June 2010



**Brian W. Shaw, Ph.D.,** *Chairman*  
**Buddy Garcia,** *Commissioner*  
**Carlos Rubinstein,** *Commissioner*

**Mark R. Vickery, P.G.,** *Executive Director*

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# Chapter 1

## Summary

These guidelines contain the criteria for grants under the Texas New Technology Implementation Grant (NTIG) program, authorized under Texas Health and Safety Code Chapter 391 (THSC 391), Subtitle C, Title 5.

Along with all applicable statutory provisions, NTIG recipients must adhere to the criteria herein.

The TCEQ may also establish more specific criteria consistent with these requirements through requests for grant applications (RFGAs), contracts, or other funding mechanisms.

## History of Program

In 2009, HB 1796, 81st Legislative Session, authorized the TCEQ to administer the NTIG program. These guidelines establish the standards and criteria for grants issued under the NTIG program as administered by the TCEQ.

## Purpose

The primary objective of the program is to offset the incremental cost of emission reductions from facilities and other stationary sources in Texas [THSC 391.002(a)].

## Funding

This program is funded through revenue from the TERP fund (THSC 386.251). The fund consists of fees and surcharges established by the Texas Legislature. Texas Health and Safety Code 386.252(a)(2) currently appropriates 10 percent of the TERP fund to the NTIG program.

The amount of funds available for grants during each year may vary depending upon the cash flow to the program, the amount of revenues received, appropriations made to the program, and reallocations of TERP funds pursuant to Texas Health and Safety Code 386.252(b). The TCEQ will periodically issue notices and information regarding the grants, including the amount of funds available.

## How to Contact Us

Anyone interested should check our Web site for information about the grant program. The NTIG Webpage at <[www.terpgrants.org](http://www.terpgrants.org)> contains links to this document and application forms, as well as other information that may be helpful to a potential applicant.

If you are unable to access the web site or you want additional information, the staff at the TCEQ is available to answer questions about this program. If you are unclear as to whether your proposed project would qualify for a grant, please feel free to contact us to discuss the project.

You may contact the program by calling 512-239-4950, 8:00 a.m.–5:00 p.m., Monday–Friday. You may contact us by mail at:

Implementation Grants Section, MC 204  
Air Quality Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

You may also contact us by e-mail at <[terp@tceq.state.tx.us](mailto:terp@tceq.state.tx.us)>.

The EPA offers several programs to assist the public and private sectors in developing and commercializing new environmental technologies, including testing protocols. More information is available through EPA at <[www.epa.gov/etop/](http://www.epa.gov/etop/)>.

## Chapter 2

### Glossary

Terms as they are defined in Texas Health and Safety Code, Chapter 386, and TCEQ rules (30 TAC 114.620) apply to this program, except as such terms are further defined and have the meanings as explained below.

**advanced clean energy** Any project for which an application for a permit or for an authorization to use a standard permit, under chapter 382 of the Texas Health and Safety Code (THSC), is received by the commission on or after January 1, 2008, and before January 1, 2020, and meets all requirements of THSC §382.003 (1-a) (A)-(C).

**best available control technology (BACT)** An emission limitation based on the maximum degree of reduction of each pollutant subject to regulation, emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. Industry specific BACT may be found by on the TCEQ Air Permitting Division's (APD) website: < [www.tceq.state.tx.us/permitting/air/nav/bact\\_index.html](http://www.tceq.state.tx.us/permitting/air/nav/bact_index.html) > or by contacting the APD at 512-239-1250. (**42 U.S.C. Sect. 7479 (3)**).

**implementation plan** Plan for the installation and operation of emission-reduction technologies.

**cost-effectiveness** Money spent (in dollars) divided by the total reduced emissions (in tons) attributable to that expenditure. In calculating cost-effectiveness, one-time grants of money are annualized using a time value of public funds or discount rate determined for each project by the TCEQ, taking into account the interest rate on bonds, interest earned by state funds, and other factors the TCEQ considers appropriate. The current discount rate used to determine cost-effectiveness is 3 percent per year.

**emission factor** A representative value that relates the quantity of a pollutant released to the atmosphere to an activity associated with the release of that pollutant.

**EPA** The U.S. Environmental Protection Agency.

**facility** A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission

control equipment. A mine, quarry, well test, or road is not considered to be a facility. **(H.B. 1796 Sec. 386.001)**

**incremental cost** The cost of a project less a baseline cost that would otherwise be incurred by the applicant in the normal course of business. It may include added lease or fuel costs, as well as additional capital costs. **(TERP Guidance Document [April 2008])**

**new technology** Emissions control technology that results in emissions reductions that exceed state or federal requirements in effect at the time of submission of an NTIG application. **(H.B. 1796 Sec. 391.001 (5))**

**notice to proceed** A written notice from the TCEQ to a grant recipient confirming that adequate funding is available to support the grant agreement.

**person** Not only an individual, but also a corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

**public financial assistance** Tax credits or deductions, financial funding, or other financial incentives to a person by government, whether county, city, state, or federal, such as a property-tax reduction or a grant.

**regulated pollutant** A pollutant subject to federal regulation under new source review, including any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such a pollutant identified by the EPA, or others based on standards of the federal Clean Air Act, sections 108, 111, and 112, and Title VI.

**renewable energy** Energy generated from resources that are naturally replenished (such as sunlight, wind, rain, tides, and geothermal heat).

**stationary source** Generally, any source of an air pollutant except those emissions resulting directly from an internal combustion engine used for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of title 42 of the U.S. Code **(Clean Air Act Title II Sec. 216)**.

**testing protocol** A written document detailing how, when and where testing of new technologies will be conducted. Potential applicants should review the EPA's criteria for testing new technologies.

# Chapter 3

## Eligibility Requirements

### Eligible Applicants

The primary objective of the NTIG program is to offset the incremental cost of emissions reductions of pollutants from facilities and other stationary sources in Texas.

Owners or operators of stationary sources that emit pollutants, or of electricity storage projects related to renewable energy, may apply for a grant. Only applicants in Texas are eligible for funding under the program. All applicants must certify compliance with all applicable Texas laws.

Each proposed new technology applicant will need to demonstrate the projected potential for reduced emissions and the cost-effectiveness of the technology once it has been implemented; the potential for the technology to contribute significantly to air quality goals; and a substantial implementation plan.

The NTIG program will evaluate proposals according to the selection criteria in the request for grant applications (RFGA). The criteria may focus on the emission reduction potential, while remaining neutral as to the type of technology proposed, or may target particular types of promising technologies.

Applicants will be required to submit the following (if applicable):

- articles of incorporation
- authorization to sign grants or contracts
- evidence of required insurance
- resumes or qualifications of all principal staff involved in the project
- an implementation plan
- a project plan (including drawings, photos, etc., to clarify the project)
- a project schedule (including a schedule of deliverables)
- a subcontracting plan
- a detailed budget

## Eligible Project Categories

Activities eligible for funding under this program are limited to emissions reductions in Texas. Activities that may be eligible under this program are outlined below. The TCEQ may more narrowly define or limit the types of eligible activities for a particular funding period.

Activities eligible for funding are those that implement new technologies to reduce emissions from stationary sources:

1. Advanced Clean Energy Projects as defined by THSC 382.003 for new or modified sources, e.g.:
  - Projects that involve the generation of electricity using the following fuels:
    - coal
    - biomass
    - petroleum coke
    - solid waste
    - fuel cells which use derived hydrogen
  - Creation of liquid fuel outside of the existing fuel production infrastructure while co-generating electricity
2. New technology projects that reduce emissions of regulated pollutants and involve capital expenditures that exceed \$500 million
3. Electricity storage projects related to renewable energy, such as:
  - compressed-air energy storage
  - pumped hydropower
  - sodium-sulfur storage batteries
  - energy-retaining flywheels
  - lithium-ion batteries

The TCEQ may more narrowly define or limit the types of eligible activities for a particular funding period.



# Chapter 4

## Application and Award Procedures

### How to Apply

The TCEQ will issue a request for grant applications (RFGA) periodically and indicate the dates that project selections will be made. Copies of the RFGAs and the necessary application forms will be available on the TCEQ's NTIG Web page at <[www.terpgrants.org](http://www.terpgrants.org)> and directly from the TCEQ.

To find out more or to obtain copies of the application forms, see <[www.terpgrants.org](http://www.terpgrants.org)> You may also contact the TCEQ directly to discuss your potential project. Program staff members may be reached at 512-239-4950.

Apply for each distinct project separately. Costs should be broken down so that partial funding could be considered for any grant. Please enter all necessary information onto the application forms in accordance with the instructions provided with the forms. Incomplete applications may delay the review process or be deemed ineligible or unresponsive. The required number of copies of the application and all necessary attachments should be submitted to the following address:

(Regular Mail)            New Technology Implementation Grants Program  
Implementation Grants Section, MC 204  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

(Express Mail)            New Technology Implementation Grants Program  
Implementation Grants Section, MC 204  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Bldg F  
Austin, TX 78753

# Project Review

## *Initial Review*

The TCEQ will review the application for completeness. If the application is found to be incomplete or ineligible for funding during initial review, the TCEQ will notify the applicant. TCEQ staff members will provide details about what is missing from the application or why the proposed project is not eligible for funding.

## *Project Evaluation*

The TCEQ will evaluate properly completed applications according to criteria established in these guidelines and the RFGA and determine the funding eligibility of each activity included in the project application.

An application for a technology grant awarded under the New Technology Implementation Grants Program, per Chapter 391 of the Texas Health and Safety Code, must show reasonable evidence that the proposed technology project will reduce emissions, that the proposed project is cost effective, and that the applicant has provided a strong implementation plan in the application.

TCEQ will consider in each application:

- the projected potential for reduced emissions of regulated pollutants;
- project maturity;
- cost-effectiveness of emissions reduction;
- potential air quality benefit;
- strength of the implementation plan;
- other environmental impacts;
- strength of the project team;
- project timeline/schedule;
- potential funding from other sources;
- the uniqueness of the plan/product being considered for funding to offer long term environmental benefits.

If the TCEQ requires additional information to complete or review a submitted application then the applicant may be asked to submit additional or supporting documentation within a reasonable set time period. Substantially incomplete applications or those for which the requested additional information is not submitted will be deemed incomplete or

unresponsive. Incomplete applications will receive a letter of ineligibility and will not be considered for grant funding.

## ***Testing Protocol***

If the applicant submits testing results or proposes to test equipment, as part of the application, the TCEQ will require that testing protocols be included in the application. Testing may include, but is not limited to, stack sampling and/or continuous emissions monitoring.

The testing protocol shall be accepted by the appropriate community or entity (e.g. EPA), but its inclusion in the application will allow the TCEQ to facilitate acceptance of an applicable test protocol in parallel with the grant negotiations and grant award and help minimize the time lapse before testing can begin.

Testing protocols must be developed considering a broad range of interests (the original equipment manufacturer, the developer of the new technology, testing facilities or installers of the new equipment, etc.) which must reach agreement about how the test will be conducted.

The first part is the initial readings or analysis before and after the new technology is applied. The second part is the durability testing, demonstrating how long the new technology will last. The end of the process is a consensus-developed final report presenting all of the data, including the facilities and industries that would experience similar results. An acceptable written testing protocol initiates the process and carries it through to the final report. This testing data and final report will be utilized as documentation to EPA for determination of emission reduction credits.

There are many companies in the U.S. that have the capability of performing the full range of testing that is required to evaluate emissions from stationary sources.

## ***Project Selection***

Project selections will be made using ranking and scoring procedures that will be explained in the RFGA. In general, the selection priorities may include priority funding among different types of technology, the maturity of the project, and air quality benefits. TCEQ Executive Management will make the final project selections.

## Grant Award and Contracting

Projects selected for funding will be awarded a grant, **not to exceed 50 percent of the implementation costs**, through the execution of a contract between the recipient and the TCEQ. If necessary, the grant management staff will coordinate with the recipient on any additional information necessary to complete the contract, including the scope of work and budget. All grant recipients should review the contract language carefully before accepting and signing the contract.

Because the funding for this program is provided by revenue that is received throughout the year, all grant awards and contracts will be contingent upon the receipt of sufficient revenue to cover the grant. The TCEQ may issue grant contracts on a contingency basis, subject to an issuance of a notice to proceed once sufficient funds are available.

The applicant will need to sign the grant contract and return the document to the TCEQ for final signature and execution. A copy of the signed contract will then be provided to the grant recipient.

An application for a Texas payee identification number (PIN) will also be provided to the grant recipient with the contract. This number must be assigned before the Texas Comptroller will make payment from state funds. Potential applicants without a PIN should consider applying for one as soon as possible. A grant recipient that has not already been assigned a PIN will need to return a completed PIN application form to the TCEQ along with the signed contract. The TCEQ will forward the application to the Comptroller so that the required number can be assigned. Lack of a PIN will not affect project evaluation or selection.

# Chapter 5

## Grant Administration

### Reimbursement

Grant payments occur on a reimbursement basis, meaning that payment will be made after the eligible expense has been incurred and paid by the grant recipient. The grant recipient must request reimbursement of expenses by submitting a completed, original, signed TCEQ request for reimbursement (RFR). Each RFR must be accompanied by a properly completed financial status report (FSR) for each activity conducted under the overall project.

The grant contract and the reimbursement forms will include requirements for documentation of expenses. Copies of all purchase orders, receipts, and paid invoices for expenditures must be submitted with each RFR of payments. Documentation of paid expenses, including canceled checks, must be provided in accordance to the grant contract provisions. Documentation of any required insurance must be submitted in accordance with the requirements of the applicable grant contract.

### Reporting

The grant recipient must submit a project status report monthly, or as specified by the contract and with each RFR, and will provide a final report upon completion of the overall project. The project status and final report will be posted at the TCEQ's Web site. Following TCEQ acceptance of the final report, the grantee will be required to continue submitting quarterly activity reports for at least five years. The information contained in the activity reports will be determined by the NTIG Program based on the type of activities funded. Each report must clearly identify the project and be written so the average lay person can understand the project.

The TCEQ staff will review the forms and accompanying documentation. To be eligible for reimbursement, all expenses must meet all applicable requirements of the Uniform Grant Management Standards (UGMS), including allowable-cost principles set forth in Part III, Subpart C, section \_ .22 (b).

## Forms

The TCEQ will supply grantees with the reimbursement and reporting forms. All completed forms should be sent to:

(Regular Mail)            New Technology Implementation Grants Program  
Implementation Grants Section, MC 204  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

(Express Mail)            New Technology Implementation Grants Program  
Implementation Grants Section, MC 204  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Bldg F  
Austin, TX 78753

## Grant Adjustments and Authorizations

Grant recipients must complete the project according to the timelines established in the grant agreement. Approval for adjustments to the schedule should be requested as needed, according to the provisions of the grant agreement; however, a thorough explanation is required as to why additional time is needed. The TCEQ will have sole discretion to approve any modifications to time lines. Any changes to the timeline must be justified since the project's timing is considered in the application evaluation and selection process. Consistent with the grant contract, the TCEQ may also choose to terminate a project early due to delays, particularly if the delays will put the project completion date past the end of the eligible funding period.

Once the grant contract is signed and the project begins, any desired changes to the grant agreement, including work activities, authorized representative, schedule, or budget, must be requested in writing to the TCEQ. In accordance with the grant agreement provisions, the TCEQ may approve any changes through an amendment to the contract. TCEQ has the sole discretion to approve any changes to the contract. Instructions for budget changes will be included in the contract provisions. Applicants are encouraged to carefully analyze all costs in the grant application before execution of a contract.

## Closeout Procedure and Release of Claims

Upon completion of the project, the grant recipient must submit an RFR and FSR for all remaining unreimbursed expenses, all required expense documentation, and a final project report. This documentation must be submitted by no later than the deadline established in the grant contract.

The TCEQ must review and accept all deliverables due as part of the grant project before final reimbursement or closeout of the grant. The contract will contain provisions for the grantee to submit deliverables to the TCEQ for review and comment. Review and comment must be accounted for in the project time line and schedule. The grantee will also have a contractual obligation to respond to the TCEQ's review comments before finalizing reports or other deliverables.

The final FSR must include a completed and signed release of claims. Once it receives a release of claims form and the recipient has met all other contract requirements, the TCEQ will close out the grant contract.

The TCEQ will also complete a contractor evaluation in accordance with the provisions that will be outlined in the grant contract. The grant recipient will be notified of the results of the evaluation and will be given the opportunity to respond. This evaluation, which is required for all contracts administered by the TCEQ, is used to track the compliance and effectiveness of all TCEQ contractors and grant recipients.

## **ORDER ADOPTING GUIDELINES**

Docket No. 2010-0760-MIS

On June 25, 2010, the Texas Commission on Environmental Quality (TCEQ or Commission) adopted guidelines for the New Technology Implementation Grants (NTIG) program. The NTIG Stakeholder Group held two meetings, open to the public, on February 24, 2010, and March 29, 2010, at the TCEQ in Austin, Texas. Notice of the stakeholder meetings was posted to the Texas Emission Reduction Plan (TERP) Web site and posted on the TCEQ's calendar a minimum of two weeks prior to the meeting. The TCEQ's Public Interest Counsel, Office of Public Assistance, and Small Business and Local Government Assistance programs were also notified two weeks prior to the meeting.

The Commission received no public comments on the NTIG guidelines.

IT IS THEREFORE ORDERED BY THE COMMISSION the NTIG guidelines are hereby adopted.

The provisions of Texas Health & Safety Code, § 386.091 exempts adoption of the NTIG guidelines from the rulemaking requirements of Chapter 2001, Texas Government Code.

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:

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Bryan W. Shaw, Ph.D., Chairman



AN ACT

relating to the development of carbon dioxide capture and sequestration in this state.

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

SECTION 1. Chapter 382, Health and Safety Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. OFFSHORE GEOLOGIC STORAGE OF CARBON DIOXIDE

Sec. 382.501. DEFINITIONS. In this subchapter:

(1) "Board" means the School Land Board.

(2) "Bureau" means the Bureau of Economic Geology at The University of Texas at Austin.

(3) "Carbon dioxide repository" means an offshore deep subsurface geologic repository for the storage of anthropogenic carbon dioxide.

(4) "Land commissioner" means the commissioner of the General Land Office.

Sec. 382.502. RULES. (a) The commission by rule may adopt standards for the location, construction, maintenance, monitoring, and operation of a carbon dioxide repository.

(b) If the United States Environmental Protection Agency issues requirements regarding carbon dioxide sequestration, the commission shall ensure that the construction, maintenance, monitoring, and operation of the carbon dioxide repository under this subchapter comply with those requirements.

1       Sec. 382.503. STUDY; SELECTION OF LOCATION. (a) The land  
2 commissioner shall contract with the bureau to conduct a study of  
3 state-owned offshore submerged land to identify potential  
4 locations for a carbon dioxide repository.

5       (b) The land commissioner shall recommend suitable sites  
6 for carbon dioxide storage to the board based on the findings of the  
7 study.

8       (c) The board shall make the final determination of suitable  
9 locations for carbon dioxide storage.

10       Sec. 382.504. CONTRACT FOR NECESSARY INFRASTRUCTURE AND  
11 OPERATION. (a) Once the location has been established for the  
12 carbon dioxide repository, the board may issue requests for  
13 proposals for the lease of permanent school fund land for the  
14 construction of any necessary infrastructure for the  
15 transportation and storage of carbon dioxide to be stored in the  
16 carbon dioxide repository.

17       (b) The board may contract for construction or operational  
18 services for the repository.

19       Sec. 382.505. ACCEPTANCE OF CARBON DIOXIDE FOR STORAGE;  
20 FEES AND CARBON CREDITS. (a) Once the carbon dioxide repository is  
21 established, the board may accept carbon dioxide for storage.

22       (b) The board by rule may establish a fee for the storage of  
23 carbon dioxide in the carbon dioxide repository. If this state  
24 participates in a program that facilitates the trading of carbon  
25 credits, a fee under this subsection may be established as a  
26 percentage of the carbon credits associated with the storage.

27       Sec. 382.506. MEASURING, MONITORING, AND VERIFICATION;

1 ROLE OF BUREAU. (a) The commission by rule may establish standards  
2 for the measurement, monitoring, and verification of the permanent  
3 storage status of the carbon dioxide in the carbon dioxide  
4 repository.

5 (b) The bureau shall perform the measurement, monitoring,  
6 and verification of the permanent storage status of carbon dioxide  
7 in the carbon dioxide repository.

8 (c) The bureau shall serve as a scientific advisor for the  
9 measuring, monitoring, and permanent storage status verification  
10 of the carbon dioxide repository.

11 (d) The bureau shall provide to the board data relating to  
12 the measurement, monitoring, and verification of the permanent  
13 storage status of the carbon dioxide in the carbon dioxide  
14 repository, as determined by the board.

15 Sec. 382.507. OWNERSHIP OF CARBON DIOXIDE. (a) The board  
16 shall acquire title to carbon dioxide stored in the carbon dioxide  
17 repository on a determination by the board that permanent storage  
18 has been verified and that the storage location has met all  
19 applicable state and federal requirements for closure of carbon  
20 dioxide storage sites.

21 (b) The right, title, and interest in carbon dioxide  
22 acquired under this section are the property of the permanent  
23 school fund and shall be administered and controlled by the board.

24 Sec. 382.508. LIABILITY. (a) The transfer of title to the  
25 state under Section 382.507 does not relieve a producer of carbon  
26 dioxide of liability for any act or omission regarding the  
27 generation of stored carbon dioxide performed before the carbon

1 dioxide was stored.

2 (b) On the date the permanent school fund, under Section  
3 382.507, acquires the right, title, and interest in carbon dioxide,  
4 the producer of the carbon dioxide is relieved of liability for any  
5 act or omission regarding the carbon dioxide in the carbon dioxide  
6 repository.

7 (c) This section does not relieve a person who contracts  
8 with the board under Section 382.504(b) of liability for any act or  
9 omission regarding the construction or operation, as applicable, of  
10 the carbon dioxide repository.

11 Sec. 382.509. RATES FOR TRANSPORTATION. Neither the  
12 commission nor the board may establish or regulate the rates  
13 charged for the transportation of carbon dioxide to the carbon  
14 dioxide repository.

15 Sec. 382.510. ANNUAL REPORT. The land commissioner shall  
16 issue annually a report regarding the carbon dioxide repository.  
17 The report may be submitted electronically by posting on the  
18 General Land Office's Internet website. The report must include  
19 information regarding:

20 (1) the total volume of carbon dioxide stored;

21 (2) the total volume of carbon dioxide received for  
22 storage during the year; and

23 (3) the volume of carbon dioxide received from each  
24 producer of carbon dioxide.

25 SECTION 2. This Act does not make an appropriation. A  
26 provision in this Act that creates a new governmental program,  
27 creates a new entitlement, or imposes a new duty on a governmental

1 entity is not mandatory unless a specific appropriation has been  
2 made to implement the provision or it is determined by the agency  
3 that the provisions imposed by this Act may be absorbed within  
4 agency resources during the fiscal period without additional state  
5 funding.

6 SECTION 3. Section 382.003(1-a), Health and Safety Code, is  
7 amended to read as follows:

8 (1-a) "Advanced clean energy project" means a project  
9 for which an application for a permit or for an authorization to use  
10 a standard permit under this chapter is received by the commission  
11 on or after January 1, 2008, and before January 1, 2020, and that:

12 (A) involves the use of coal, biomass, petroleum  
13 coke, solid waste, or fuel cells using hydrogen derived from such  
14 fuels, in the generation of electricity, or the creation of liquid  
15 fuels outside of the existing fuel production infrastructure while  
16 co-generating electricity, whether the project is implemented in  
17 connection with the construction of a new facility or in connection  
18 with the modification of an existing facility and whether the  
19 project involves the entire emissions stream from the facility or  
20 only a portion of the emissions stream from the facility;

21 (B) with regard to the portion of the emissions  
22 stream from the facility that is associated with the project, is  
23 capable of achieving:

24 (i) on an annual basis a 99 percent or  
25 greater reduction of sulfur dioxide emissions or, if the project is  
26 designed for the use of feedstock substantially all of which is  
27 subbituminous coal, an emission rate of 0.04 pounds or less of

1 sulfur dioxide per million British thermal units as determined by a  
2 30-day average;

3 (ii) on an annual basis~~[7]~~ a 95 percent or  
4 greater reduction of mercury emissions;

5 (iii) ~~[7 and]~~ an annual average emission  
6 rate for nitrogen oxides of:

7 (a) 0.05 pounds or less per million  
8 British thermal units; or

9 (b) if the project uses gasification  
10 technology, 0.034 pounds or less per million British thermal units;  
11 and

12 (iv) an annual average emission rate for  
13 filterable particulate matter of 0.015 pounds or less per million  
14 British thermal units; and

15 (C) captures not less than 50 percent of the  
16 ~~[renders]~~ carbon dioxide in the portion of the emissions stream  
17 from the facility that is associated with the project and  
18 sequesters that captured carbon dioxide by geologic storage or  
19 other means ~~[capable of capture, sequestration, or abatement if any~~  
20 ~~carbon dioxide is produced by the project]~~.

21 SECTION 4. Section 382.0567(b), Health and Safety Code, is  
22 amended to read as follows:

23 (b) The commission may not consider any technology or level  
24 of emission reduction to be achievable for purposes of a best  
25 available control technology analysis or lowest achievable  
26 emission rate analysis conducted by the commission under another  
27 provision of this chapter solely because the technology is used or

1 the emission reduction is achieved by a facility receiving an  
2 incentive as an advanced clean energy project or new technology  
3 project, as described by Section 391.002.

4 SECTION 5. Section 386.051(b), Health and Safety Code, is  
5 amended to read as follows:

6 (b) Under the plan, the commission and the comptroller shall  
7 provide grants or other funding for:

8 (1) the diesel emissions reduction incentive program  
9 established under Subchapter C, including for infrastructure  
10 projects established under that subchapter;

11 (2) the motor vehicle purchase or lease incentive  
12 program established under Subchapter D;

13 (3) the new technology research and development  
14 program established under Chapter 387; ~~and~~

15 (4) the clean school bus program established under  
16 Chapter 390; and

17 (5) the new technology implementation grant program  
18 established under Chapter 391.

19 SECTION 6. Section 386.052(b), Health and Safety Code, is  
20 amended to read as follows:

21 (b) Appropriate commission objectives include:

22 (1) achieving maximum reductions in oxides of nitrogen  
23 to demonstrate compliance with the state implementation plan;

24 (2) preventing areas of the state from being in  
25 violation of national ambient air quality standards;

26 (3) achieving cost-saving and multiple benefits by  
27 reducing emissions of other pollutants; ~~and~~

1           (4) achieving reductions of emissions of diesel  
2 exhaust from school buses; and

3           (5) advancing new technologies that reduce oxides of  
4 nitrogen and other emissions from facilities and other stationary  
5 sources.

6           SECTION 7. Section 386.057(b), Health and Safety Code, is  
7 amended to read as follows:

8           (b) Not later than December 1, 2002, and not later than  
9 December 1 of each subsequent second year, the commission, in  
10 consultation with the advisory board, shall publish and submit to  
11 the legislature a biennial plan report. The report must include:

12           (1) the information included in the annual reviews  
13 conducted under Subsection (a);

14           (2) specific information for individual projects as  
15 required by Subsection (c);

16           (3) information contained in reports received under  
17 Sections 386.205, 388.003(e), ~~[and]~~ 388.006, and 391.104; and

18           (4) a summary of the commission's activities under  
19 Section 386.052.

20           SECTION 8. Section 386.251(c), Health and Safety Code, is  
21 amended to read as follows:

22           (c) The fund consists of:

23           (1) the amount of money deposited to the credit of the  
24 fund under:

25                   (A) Section 386.056;

26                   (B) Sections 151.0515 and 152.0215, Tax Code; and

27                   (C) Sections 501.138, 502.1675, and 548.5055,



1 Transportation Code; and

2 (2) grant money recaptured under Section 386.111(d)  
3 and Chapter 391.

4 SECTION 9. Subtitle C, Title 5, Health and Safety Code, is  
5 amended by adding Chapter 391 to read as follows:

6 CHAPTER 391. NEW TECHNOLOGY IMPLEMENTATION FOR FACILITIES AND  
7 STATIONARY SOURCES

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 391.001. DEFINITIONS. In this chapter:

10 (1) "Best available control technology" has the  
11 meaning assigned by Section 169 of the federal Clean Air Act (42  
12 U.S.C. Section 7479(3)).

13 (2) "Commission" means the Texas Commission on  
14 Environmental Quality.

15 (3) "Facility" has the meaning assigned by Section  
16 382.003.

17 (4) "Incremental cost" has the meaning assigned by  
18 Section 386.001.

19 (5) "New technology" means emissions control  
20 technology that results in emissions reductions that exceed state  
21 or federal requirements in effect at the time of submission of a new  
22 technology implementation grant application.

23 (6) "Stationary source" has the meaning assigned by  
24 Section 302 of the federal Clean Air Act (42 U.S.C. Section  
25 7602(z)).

26 Sec. 391.002. GRANT PROGRAM. (a) The commission shall  
27 establish and administer a new technology implementation grant

1 program to assist the implementation of new technologies to reduce  
2 emissions from facilities and other stationary sources in this  
3 state. Under the program, the commission shall provide grants or  
4 other financial incentives for eligible projects to offset the  
5 incremental cost of emissions reductions.

6 (b) Projects that may be considered for a grant under the  
7 program include:

8 (1) advanced clean energy projects, as defined by  
9 Section 382.003;

10 (2) new technology projects that reduce emissions of  
11 regulated pollutants from point sources and involve capital  
12 expenditures that exceed \$500 million; and

13 (3) electricity storage projects related to renewable  
14 energy.

15 Sec. 391.003. GUIDELINES AND CRITERIA. (a) The commission  
16 shall adopt grant guidelines and criteria consistent with the  
17 requirements of this chapter.

18 (b) The guidelines must include:

19 (1) protocols to compute projected emissions  
20 reductions and project cost-effectiveness; and

21 (2) safeguards to ensure that the projects funded  
22 result in emissions reductions not otherwise required by state or  
23 federal law.

24 (c) The commission may propose revisions to the guidelines  
25 and criteria adopted under this section as necessary to improve the  
26 ability of the program to achieve the program goals.

27 (d) The commission may adopt emergency rules under Section

1 2001.034, Government Code, with abbreviated notice, to carry out  
2 any rulemaking necessary to implement this chapter.

3 (e) Except as provided by Subsection (d), the rulemaking  
4 requirements of Chapter 2001, Government Code, do not apply to the  
5 adoption or revision of guidelines and criteria under this section.

6 Sec. 391.004. AVAILABILITY OF EMISSIONS REDUCTION CREDITS  
7 IN CERTAIN NONATTAINMENT AREAS. A project funded under this  
8 chapter must comply with Sections 386.055 and 386.056, as  
9 applicable.

10 [Sections 391.005-391.100 reserved for expansion]

11 SUBCHAPTER B. GRANT APPLICATIONS AND REVIEW

12 Sec. 391.101. APPLICATION FOR GRANT. (a) The owner of a  
13 facility located in this state may apply for a grant under the  
14 program established under Section 391.002. To improve the ability  
15 of the program to achieve the program goals, the commission may  
16 adopt guidelines to allow a person other than the owner to apply for  
17 and receive a grant.

18 (b) An application for a grant under this chapter must be  
19 made on a form provided by the commission and must contain  
20 information required by the commission, including:

21 (1) a detailed description of the proposed project;

22 (2) information necessary for the commission to  
23 determine whether the project meets the commission's eligibility  
24 requirements, including a statement of the amounts of any other  
25 public financial assistance the project will receive; and

26 (3) other information the commission may require.

27 (c) An application for a grant under this chapter must

1 contain a plan for implementation of a program that will provide  
2 project information and education to the public in the areas  
3 subject to public notice under federal and state permitting  
4 requirements for the proposed project until completion of the  
5 permitting process. The plan must provide for a publicly  
6 accessible informational Internet website.

7 Sec. 391.102. GRANT APPLICATION REVIEW PROCEDURES.

8 (a) The commission shall review an application for a grant for a  
9 project authorized under this chapter according to dates specified  
10 in a request for grant applications. If the commission determines  
11 that an application is incomplete, the commission shall notify the  
12 applicant and provide an explanation of the information missing  
13 from the application. The commission shall evaluate the completed  
14 application according to the guidelines and criteria adopted under  
15 Section 391.003.

16 (b) To the extent possible, the commission shall coordinate  
17 project review and approval with any timing constraints related to  
18 project purchases or installations to be made by an applicant.

19 (c) The commission may deny a grant application for a  
20 project that does not meet the applicable criteria or that the  
21 commission determines is not made in good faith, is not credible, or  
22 is not in compliance with this chapter or the goals of this chapter.

23 (d) Subject to the availability of funding, the commission  
24 shall award a grant under this chapter in conjunction with the  
25 execution of a contract that obligates the commission to make the  
26 grant and the recipient to perform the actions described by the  
27 recipient's grant application. Subject to Section 391.204, the

1 contract must incorporate provisions for recapturing grant money  
2 for noncompliance with grant requirements. Grant money recaptured  
3 under the contract provisions shall be deposited in the Texas  
4 emissions reduction plan fund and reallocated for other projects  
5 under this subchapter.

6 (e) An applicant may seek reimbursement for qualifying  
7 equipment installed after the effective date of this program.

8 (f) In coordinating interagency application review  
9 procedures, the commission shall:

10 (1) solicit review and comments from:

11 (A) the comptroller to assess:

12 (i) the financial stability of the  
13 applicant;

14 (ii) the economic benefits and job creation  
15 potential associated with the project; and

16 (iii) any other information related to the  
17 duties of that office;

18 (B) the Public Utility Commission of Texas to  
19 assess:

20 (i) the reliability of the proposed  
21 technology;

22 (ii) the feasibility and  
23 cost-effectiveness of electric transmission associated with the  
24 project; and

25 (iii) any other information related to the  
26 duties of that agency; and

27 (C) the Railroad Commission of Texas to assess:

1                   (i) the availability and cost of the fuel  
2 involved with the project; and

3                   (ii) any other information related to the  
4 duties of that agency;

5                   (2) consider the comments received under Subdivision  
6 (1) in the commission's grant award decision process; and

7                   (3) as part of the report required by Section 391.104,  
8 justify awards made to projects that have been negatively reviewed  
9 by agencies under Subdivision (1).

10                  (g) The commission may solicit review and comments from  
11 other state agencies or other entities with subject matter  
12 expertise applicable to the review of a grant application.

13                  Sec. 391.103. EVIDENCE OF EMISSIONS REDUCTION POTENTIAL  
14 REQUIRED. (a) An application for a new technology implementation  
15 grant under this chapter must show reasonable evidence that the  
16 proposed technology is capable of providing a significant reduction  
17 in emissions.

18                  (b) The commission shall consider specifically, for each  
19 proposed new technology implementation grant application:

20                   (1) the projected potential for reduced emissions and  
21 the cost-effectiveness of the new technology;

22                   (2) the potential for the new technology to contribute  
23 significantly to air quality goals; and

24                   (3) the strength of the implementation plan.

25                  Sec. 391.104. REPORTING REQUIREMENTS. The commission  
26 annually shall prepare a report that summarizes the applications  
27 received and grants awarded in the preceding year. Preparation of

1 the report must include the participation of the state agencies  
2 involved in the review of applications under Section 391.102.

3 [Sections 391.105-391.200 reserved for expansion]

4 SUBCHAPTER C. PROJECT REQUIREMENTS

5 Sec. 391.201. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The  
6 commission shall establish criteria for prioritizing projects  
7 eligible to receive grants under this chapter. The commission  
8 shall review and may modify the criteria and priorities as  
9 appropriate.

10 (b) A proposed project must meet the requirements of this  
11 section to be eligible for a grant under the program established  
12 under Section 391.002.

13 (c) Each proposed project must meet the cost-effectiveness  
14 requirements established by the commission.

15 (d) A new technology implementation project must document,  
16 in a manner acceptable to the commission, an achieved reduction  
17 from the baseline emissions adopted by the commission for the  
18 relevant facility or stationary source. After studying available  
19 emissions reduction technologies, the commission may impose a  
20 required minimum percentage reduction of emissions to improve the  
21 ability of the program to achieve the program goals.

22 (e) If a baseline emissions standard does not exist for a  
23 facility, the commission, for purposes of this subchapter, shall  
24 adopt an appropriate baseline emissions level for comparison  
25 purposes.

26 (f) Planned water usage for proposed projects must be  
27 consistent with the state water plan.

1       Sec. 391.202. EVALUATING COST-EFFECTIVENESS.       The  
2 commission shall establish reasonable methodologies for evaluating  
3 project cost-effectiveness, consistent with accepted methods.

4       Sec. 391.203. DETERMINATION OF GRANT AMOUNT.   (a) The  
5 commission may not award a grant that, net of taxes, provides an  
6 amount that exceeds the incremental cost of the proposed project.

7       (b) In determining the amount of a grant under this  
8 subchapter, the commission shall reduce the incremental cost of a  
9 proposed project by the value of any existing financial incentive  
10 that directly reduces the cost of the proposed project, including  
11 tax credits or deductions, other grants, or any other public  
12 financial assistance.

13       Sec. 391.204. COST SHARING; RECAPTURING GRANT.   (a) The  
14 commission shall require an applicant to bear at least 50 percent of  
15 the costs of implementing a project funded under this chapter.

16       (b) The commission may not require repayment of grant money,  
17 except that the commission must require provisions for recapturing  
18 grant money for noncompliance with grant requirements.

19       Sec. 391.205. PREFERENCES.   (a) Except as provided by  
20 Subsection (c), in awarding grants under this chapter the  
21 commission shall give preference to projects that:

22           (1) use natural resources originating or produced in  
23 this state;

24           (2) contain an energy efficiency component; or

25           (3) include the use of solar, wind, or other renewable  
26 energy sources.

27       (b) Projects that include more than one of the criteria



1 described by Subsection (a) shall be given a greater preference in  
2 the award of grants under this chapter.

3 (c) The commission may give preference under Subsection (a)  
4 only if the cost-effectiveness and emission performance of the  
5 project are comparable to those of a project not claiming a  
6 preference described by that subsection.

7 [Sections 391.206-391.300 reserved for expansion]

8 SUBCHAPTER D. FUNDING; EXPIRATION

9 Sec. 391.301. RESTRICTION ON USE OF GRANT. A recipient of a  
10 grant under this chapter must use the grant to pay the incremental  
11 costs of the purchase and installation of the project for which the  
12 grant is made, which may include reasonable and necessary expenses  
13 for the labor needed to install emissions-reducing equipment. The  
14 recipient may not use the grant for the costs of operating and  
15 maintaining the emissions-reducing equipment.

16 Sec. 391.302. COMPTROLLER REVIEW OF USE OF GRANT FUNDS. (a)  
17 The comptroller annually shall conduct a review of each recipient  
18 of a new technology implementation grant under this chapter to  
19 ensure that the recipient's use of the grant complies with state law  
20 and the terms of the award.

21 (b) To assist with a review under this section, the  
22 commission shall provide the comptroller with all monitoring  
23 reports received from grant recipients and any other documentation  
24 requested by the comptroller.

25 (c) On a finding of any misuse of grant money or other  
26 noncompliance with grant requirements, the comptroller shall  
27 provide a report to the commission with recommendations for

1 subsequent action, including the recapture of money misused.

2 (d) A finding of any misuse of grant money by a recipient of  
3 a grant under this chapter results in a debt owed to the state, and  
4 the comptroller may withhold warrants and electronic funds  
5 transfers to the recipient in accordance with Section 403.055,  
6 Government Code.

7 (e) The comptroller may contract with another state agency,  
8 an institution of higher education, or a private entity to conduct a  
9 review under this section or to assist the comptroller in  
10 conducting any part of the review.

11 (f) The comptroller may adopt rules to implement this  
12 section.

13 Sec. 391.303. TIME OF USE OF GRANT FUNDING. Money  
14 appropriated for grants to be made by the commission under this  
15 chapter for a fiscal year may be distributed in subsequent fiscal  
16 years if the grant has been awarded and treated as a binding  
17 encumbrance by the commission before the end of the appropriation  
18 year of the money appropriated for grant purposes. Distribution of  
19 the grant money is subject to Section 403.071, Government Code.

20 Sec. 391.304. EXPIRATION. This chapter expires August 31,  
21 2019.

22 SECTION 10. Section 403.071(b), Government Code, is amended  
23 to read as follows:

24 (b) A claim may not be paid from an appropriation unless the  
25 claim is presented to the comptroller for payment not later than two  
26 years after the end of the fiscal year for which the appropriation  
27 was made. However, a claim may be presented not later than four

1 years after the end of the fiscal year for which the appropriation  
2 from which the claim is to be paid was made if the appropriation  
3 relates to new construction contracts, to grants awarded under  
4 Chapter 391, Health and Safety Code, or to repair and remodeling  
5 projects that exceed the amount of \$20,000, including furniture and  
6 other equipment, architects' and engineering fees, and other costs  
7 related to the contracts or projects.

8 SECTION 11. Section 382.0622(a), Health and Safety Code, is  
9 amended to read as follows:

10 (a) Clean Air Act fees consist of:

11 (1) fees collected by the commission under Sections  
12 382.062, 382.0621, 382.202, and 382.302 and as otherwise provided  
13 by law; ~~and~~

14 (2) \$2 of each advance payment collected by the  
15 Department of Public Safety for inspection certificates for  
16 vehicles other than mopeds under Section 548.501, Transportation  
17 Code; and

18 (3) fees collected that are required under Section 185  
19 of the federal Clean Air Act (42 U.S.C. Section 7511d).

20 SECTION 12. Section 382.210(d), Health and Safety Code, is  
21 amended to read as follows:

22 (d) A participating county shall provide an electronic  
23 means for distributing vehicle repair or replacement funds once all  
24 program criteria have been met with regard to the repair or  
25 replacement. The county shall ensure that funds are transferred to  
26 a participating dealer under this section not later than the 10th  
27 ~~[five]~~ business day ~~[days]~~ after the date the county receives proof

1 of the sale and any required administrative documents from the  
2 participating dealer.

3 SECTION 13. Sections 382.220(c) and (d), Health and Safety  
4 Code, are amended to read as follows:

5 (c) Money that is made available for the implementation of a  
6 program under Subsection (b) may not be expended for local  
7 government fleet or vehicle acquisition or replacement, call center  
8 management, application oversight, invoice analysis, education,  
9 outreach, or advertising purposes.

10 (d) Fees collected under Sections 382.202 and 382.302 may be  
11 used, in an amount not to exceed \$5 million per fiscal year, for  
12 projects described by Subsection (b). The fees shall be made  
13 available only to counties participating in the low-income vehicle  
14 repair assistance, retrofit, and accelerated vehicle retirement  
15 programs created under Section 382.209 and only on a matching  
16 basis, whereby the commission provides money to a county in the same  
17 amount that the county dedicates to a project authorized by  
18 Subsection (b). The commission may reduce the match requirement  
19 for a county that proposes to develop and implement independent  
20 test facility fraud detection programs, including the use of remote  
21 sensing technology for coordinating with law enforcement officials  
22 to detect, prevent, and prosecute the use of counterfeit state  
23 inspection stickers.

24 SECTION 14. Section 386.001, Health and Safety Code, is  
25 amended by adding Subdivision (10-a) to read as follows:

26 (10-a) "Stationary engine" means a machine used in a  
27 nonmobile application that converts fuel into mechanical motion,

1 including turbines and other internal combustion devices.

2 SECTION 15. Section 386.002, Health and Safety Code, is  
3 amended to read as follows:

4 Sec. 386.002. EXPIRATION. This chapter expires August 31,  
5 2019 [~~2013~~].

6 SECTION 16. Section 386.104(c), Health and Safety Code, is  
7 amended to read as follows:

8 (c) For a proposed project as described by Section  
9 386.102(b), other than a project involving a marine vessel or  
10 engine, not less than 75 percent of vehicle miles traveled or hours  
11 of operation projected for the five years immediately following the  
12 award of a grant must be projected to take place in a nonattainment  
13 area or affected county of this state. The commission may also  
14 allow vehicle travel on highways and roadways, or portions of a  
15 highway or roadway, designated by the commission and located  
16 outside a nonattainment area or affected county to count towards  
17 the percentage of use requirement in this subsection. For a  
18 proposed project involving a marine vessel or engine, the vessel or  
19 engine must be operated in the intercoastal waterways or bays  
20 adjacent to a nonattainment area or affected county of this state  
21 for a sufficient amount of time over the lifetime of the project, as  
22 determined by the commission, to meet the cost-effectiveness  
23 requirements of Section 386.105. For a proposed project involving  
24 non-road equipment used for natural gas recovery purposes, the  
25 equipment must be operated in a nonattainment area or affected  
26 county for a sufficient amount of use over the lifetime of the  
27 project, as determined by the commission, to meet the

1 cost-effectiveness requirements of Section 386.105.

2 SECTION 17. Section 390.006, Health and Safety Code, is  
3 amended to read as follows:

4 Sec. 390.006. EXPIRATION. This chapter expires August 31,  
5 2019 [~~2013~~].

6 SECTION 18. Section 151.0515(d), Tax Code, is amended to  
7 read as follows:

8 (d) This section expires August 31, 2019 [~~2013~~].

9 SECTION 19. Section 152.0215(c), Tax Code, is amended to  
10 read as follows:

11 (c) This section expires August 31, 2019 [~~2013~~].

12 SECTION 20. Section 501.138(b-3), Transportation Code, is  
13 amended to read as follows:

14 (b-3) This subsection and Subsection (b-2) expire August  
15 31, 2019 [~~September 1, 2015~~].

16 SECTION 21. Section 502.1675(c), Transportation Code, is  
17 amended to read as follows:

18 (c) This section expires August 31, 2019 [~~2013~~].

19 SECTION 22. Section 548.5055(c), Transportation Code, is  
20 amended to read as follows:

21 (c) This section expires August 31, 2019 [~~2013~~].

22 SECTION 23. Sections 386.252(a) and (b), Health and Safety  
23 Code, are amended to read as follows:

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

27 (1) for the diesel emissions reduction incentive

1 program, 87.5 percent of the money in the fund, of which:

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

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

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

10 (2) for the new technology research and development  
11 program, nine ~~9.5~~ percent of the money in the fund, of which:

12 (A) up to ~~[\$250,000 is allocated for~~  
13 ~~administration, up to]~~ \$200,000 is allocated for a health effects  
14 study;

15 (B) ~~7~~ \$500,000 is to be deposited in the state  
16 treasury to the credit of the clean air account created under  
17 Section 382.0622 to supplement funding for air quality planning  
18 activities in affected counties;

19 (C) ~~7~~ not less than 20 percent is to be  
20 allocated each year to support research related to air quality as  
21 provided by Section 387.010; ~~[for the Houston-Galveston-Brazoria~~  
22 ~~and Dallas-Fort Worth nonattainment areas by a nonprofit~~  
23 ~~organization based in Houston of which \$216,000 each year shall be~~  
24 ~~contracted to the Energy Systems Laboratory at the Texas~~  
25 ~~Engineering Experiment Station for the development and annual~~  
26 ~~calculation of creditable statewide emissions reductions obtained~~  
27 ~~through wind and other renewable energy resources for the State~~

1 ~~Implementation Plan,~~] and

2                   (D) the balance is [~~to be~~] allocated each year to  
3 the commission [~~a nonprofit organization or an institution of~~  
4 ~~higher education based in Houston~~] to be used to:

5                   (i) implement and administer the new  
6 technology research and development program [~~under a contract with~~  
7 ~~the commission~~] for the purpose of identifying, testing, and  
8 evaluating new emissions-reducing technologies with potential for  
9 commercialization in this state and to facilitate their  
10 certification or verification; and

11                   (ii) contract with the Energy Systems  
12 Laboratory at the Texas Engineering Experiment Station for \$216,000  
13 annually for the development and annual computation of creditable  
14 statewide emissions reductions obtained through wind and other  
15 renewable energy resources for the state implementation plan; and

16                   (3) two percent is allocated to the commission and 1.5  
17 percent is allocated to the laboratory for administrative costs  
18 incurred by the commission and the laboratory [~~, three percent of~~  
19 ~~the money in the fund~~].

20                   (b) The [~~Up to 25 percent of the~~] money allocated under  
21 Subsection (a) to a particular program [~~and not expended under that~~  
22 ~~program by January 1 of the second fiscal year of a fiscal biennium~~]  
23 may be used for another program under the plan as determined by the  
24 commission [~~in consultation with the advisory board~~].

25                   SECTION 24. Section 387.003, Health and Safety Code, is  
26 amended to read as follows:

27                   Sec. 387.003. NEW TECHNOLOGY RESEARCH AND DEVELOPMENT



1 PROGRAM. (a) The commission [~~A nonprofit organization or~~  
2 ~~institution of higher education described by Section~~  
3 ~~386.252(a)(2), under a contract with the commission as described by~~  
4 ~~that section,~~] shall establish and administer a new technology  
5 research and development program as provided by this chapter. The  
6 commission may contract with one or more well-qualified nonprofit  
7 organizations or institutions of higher education for  
8 administration of this program [~~than one entity and may limit the~~  
9 ~~amount of each grant contract accordingly)].~~

10 (b) Under the program, the commission shall provide grants  
11 [~~to be used~~] to support development of emissions-reducing  
12 technologies that may be used for projects eligible for awards  
13 under Chapters [~~Chapter~~] 386 and 391 and other new technologies  
14 that show promise for commercialization. The primary objective of  
15 this chapter is to promote the development of commercialization  
16 technologies to reduce emissions of oxides of nitrogen in  
17 nonattainment areas designated in this state [~~that will support~~  
18 ~~projects that may be funded under Chapter 386 and this chapter,~~  
19 ~~including advanced technologies such as fuel cells, catalysts, and~~  
20 ~~fuel additives)].~~

21 (c) If the commission contracts with one or more [~~The board~~  
22 ~~of directors of a]~~ nonprofit organizations to [~~organization under~~  
23 ~~contract with the commission to establish and]~~ administer a new  
24 technology research and development program under [~~as provided by]~~  
25 this chapter, the board of directors of each organization may not  
26 have more than 11 members, must include two persons of relevant  
27 scientific expertise to be nominated by the commission, and may not

1 include more than four county judges [~~selected from counties in the~~  
2 ~~Houston-Calveston-Brazoria and Dallas-Fort Worth nonattainment~~  
3 ~~areas~~]. The two persons of relevant scientific expertise to be  
4 nominated by the commission may be employees or officers of the  
5 commission, provided that they do not participate in funding  
6 decisions affecting the granting of funds by the commission to a  
7 nonprofit organization on whose board they serve.

8 (d) [~~The commission may enter into a grant contract with an~~  
9 ~~institution of higher education described by Section 386.252(a)(2)~~  
10 ~~for the institution to operate a testing facility which would be~~  
11 ~~available for demonstration of eligible projects receiving grants~~  
12 ~~under this chapter.~~

13 [~~(e)~~] The commission shall provide oversight as appropriate  
14 for grants provided to a nonprofit organization or an institution  
15 of higher education under this program.

16 (e) [~~(f)~~] A nonprofit organization or an institution of  
17 higher education shall submit to the commission for approval a  
18 budget for the disposition of funds granted under this program.

19 (f) [~~(g)~~] The commission shall limit the use of grants for  
20 administrative costs incurred by a nonprofit organization or an  
21 institution of higher education to an amount not to exceed 10  
22 percent of the total program funding [~~provided to the nonprofit~~  
23 ~~organization under this program~~].

24 (g) [~~(h)~~] A nonprofit organization that receives grants  
25 from the commission under this program is subject to Chapters 551  
26 and 552, Government Code.

27 SECTION 25. Section 387.004, Health and Safety Code, is

1 amended to read as follows:

2           Sec. 387.004. SOLICITATION OF NEW TECHNOLOGY PROPOSALS.  
3 The commission from time to time shall issue or contract with a  
4 nonprofit organization or an institution of higher education  
5 described by Section 387.003(a) [~~386.252(a)(2)~~] to issue specific  
6 requests for proposals (RFPs) or program opportunity notices (PONs)  
7 for technology projects to be funded under the program.

8           SECTION 26. Sections 387.005(a), (b), and (f), Health and  
9 Safety Code, are amended to read as follows:

10           (a) Grants awarded under this chapter shall be directed  
11 toward a balanced mix of:

12                   (1) retrofit and add-on technologies and other  
13 advanced technologies that reduce emissions from the existing stock  
14 of engines and vehicles targeted by the Texas emissions reduction  
15 plan, provided that the technologies do not significantly reduce  
16 the fuel economy of those engines and vehicles;

17                   (2) [~~the establishment of a testing facility to~~  
18 ~~evaluate retrofits, add-ons, advanced technologies, and fuels, or~~  
19 ~~combinations of retrofits, add-ons, advanced technologies, and~~  
20 ~~fuels, to determine their effectiveness in producing emissions~~  
21 ~~reductions, with emphasis on the reduction of oxides of nitrogen,~~  
22 ~~and~~

23                   [~~(3)~~] advanced technologies for new engines and  
24 vehicles that produce very-low or zero emissions of oxides of  
25 nitrogen, including stationary and mobile fuel cells;

26                   (3) advanced technologies for reducing oxides of  
27 nitrogen and other emissions from stationary sources; and

1           (4) field validation of innovative technologies that:

2                   (A) reduce emissions of oxides of nitrogen and  
3 other emissions; and

4                   (B) require demonstration of viability for full  
5 commercial acceptance.

6           (b) The commission, directly or through a nonprofit  
7 organization or an institution of higher education described by  
8 Section 387.003(a) [~~386.252(a)(2)~~], shall identify and evaluate  
9 and may consider making grants for technology projects that would  
10 allow qualifying fuels to be produced from energy resources in this  
11 state. In considering projects under this subsection, the  
12 commission shall give preference to projects involving otherwise  
13 unusable energy resources in this state and producing qualifying  
14 fuels at prices lower than otherwise available and low enough to  
15 make the projects to be funded under the program economically  
16 attractive to local businesses in the area for which the project is  
17 proposed.

18           (f) Selection of grant recipients by a nonprofit  
19 organization or an institution of higher education described by  
20 Section 387.003(a) [~~386.252(a)(2)~~] under contract with the  
21 commission for the purpose of establishing and administering a new  
22 technology research and development program as provided by this  
23 chapter is subject to the commission's review and to the other  
24 requirements of this chapter. A grant contract under this chapter  
25 using funds described by Section 386.252 may not be made by a  
26 nonprofit organization or an institution of higher education if the  
27 commission or executive director of the commission does not consent

1 to the grant or contract.

2 SECTION 27. Section 387.006, Health and Safety Code, is  
3 amended to read as follows:

4 Sec. 387.006. EVIDENCE OF COMMERCIALIZATION POTENTIAL  
5 REQUIRED. (a) An application for a technology grant under this  
6 chapter must show reasonable [~~clear and compelling~~] evidence that:

7 (1) the proposed technology project has a substantial  
8 [~~strong~~] commercialization plan and organization; and

9 (2) the technology proposed for funding[+  
10 [~~(A)~~] is likely to be offered for commercial sale  
11 in this state as soon as practicable [~~but no later than five years~~]  
12 after the date of the application for funding[+ and

13 [~~(B) once commercialized, will offer~~  
14 ~~opportunities for projects eligible for funding under Chapter 386~~].

15 (b) The commission shall consider specifically, for each  
16 proposed technology project application:

17 (1) the projected potential for reduced emissions of  
18 oxides of nitrogen and the cost-effectiveness of the technology  
19 once it has been commercialized, including the impact on fuel  
20 consumption and maintenance costs for retrofits and rebuilds;

21 (2) the potential for the technology to contribute  
22 significantly to air quality goals; and

23 (3) the strength of the commercialization plan.

24 SECTION 28. Chapter 387, Health and Safety Code, is amended  
25 by adding Section 387.010 to read as follows:

26 Sec. 387.010. AIR QUALITY RESEARCH. (a) The commission  
27 shall contract with a nonprofit organization or institution of

1 higher education to establish and administer a program to support  
2 research related to air quality.

3 (b) The board of directors of a nonprofit organization  
4 establishing and administering the research program related to air  
5 quality under this section may not have more than 11 members, must  
6 include two persons with relevant scientific expertise to be  
7 nominated by the commission, and may not include more than four  
8 county judges selected from counties in the  
9 Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment  
10 areas. The two persons with relevant scientific expertise to be  
11 nominated by the commission may be employees or officers of the  
12 commission, provided that they do not participate in funding  
13 decisions affecting the granting of funds by the commission to a  
14 nonprofit organization on whose board they serve.

15 (c) The commission shall provide oversight as appropriate  
16 for grants provided under the program established under this  
17 section.

18 (d) A nonprofit organization or institution of higher  
19 education shall submit to the commission for approval a budget for  
20 the disposition of funds granted under the program established  
21 under this section.

22 (e) A nonprofit organization or institution of higher  
23 education shall be reimbursed for costs incurred in establishing  
24 and administering the research program related to air quality under  
25 this section. Reimbursable administrative costs of a nonprofit  
26 organization or institution of higher education may not exceed 10  
27 percent of the program budget.

1       (f) A nonprofit organization that receives grants from the  
2 commission under this section is subject to Chapters 551 and 552,  
3 Government Code.

4       SECTION 29. Chapter 382, Health and Safety Code, is amended  
5 by adding Subchapter J to read as follows:

6       SUBCHAPTER J. FEDERAL GREENHOUSE GAS REPORTING RULE

7       Sec. 382.501. DEVELOPMENT OF FEDERAL GREENHOUSE GAS  
8 REPORTING RULE. (a) The commission and the Railroad Commission of  
9 Texas, the Department of Agriculture, and the Public Utility  
10 Commission of Texas shall jointly participate in the federal  
11 government process for developing federal greenhouse gas reporting  
12 requirements and the federal greenhouse gas registry requirements.

13       (b) The commission shall adopt rules as necessary to comply  
14 with any federal greenhouse gas reporting requirements adopted by  
15 the federal government for private and public facilities eligible  
16 to participate in the federal greenhouse gas registry. In adopting  
17 the rules, the commission shall adopt and incorporate by reference  
18 rules implementing the federal reporting requirements and the  
19 federal registry.

20       Sec. 382.502. VOLUNTARY ACTIONS INVENTORY. The commission  
21 shall:

22       (1) establish an inventory of voluntary actions taken  
23 by businesses in this state or by state agencies since September 1,  
24 2001, to reduce carbon dioxide emissions; and

25       (2) work with the United States Environmental  
26 Protection Agency to give credit for early action under any federal  
27 rules that may be adopted for federal greenhouse gas regulation.

1           SECTION 30. The purpose of the changes in law made by this  
2 Act is to encourage the development of onshore and offshore  
3 geologic storage of carbon dioxide including by encouraging the  
4 development of advanced clean energy projects that capture carbon  
5 dioxide and sequester not less than 50 percent of the captured  
6 carbon dioxide in onshore or offshore geologic repositories.  
7 Securing the necessary capacity for geologic sequestration is  
8 essential to the success of carbon capture strategies, such as the  
9 advanced clean energy projects facilitated by the changes in law  
10 made by this Act. The success of the offshore repositories  
11 facilitated by this Act depends on an adequate supply of  
12 anthropogenic carbon dioxide, which is not currently being captured  
13 at industrial facilities in this state. The advanced clean energy  
14 grants established in this Act are intended to create the supply of  
15 anthropogenic carbon dioxide necessary to the success of the  
16 offshore repositories facilitated by this Act.

17           SECTION 31. This Act takes effect September 1, 2009.



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President of the Senate

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Speaker of the House

I certify that H.B. No. 1796 was passed by the House on May 7, 2009, by the following vote: Yeas 144, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1796 on May 29, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1796 on May 31, 2009, by the following vote: Yeas 143, Nays 0, 1 present, not voting.

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Chief Clerk of the House

H.B. No. 1796

I certify that H.B. No. 1796 was passed by the Senate, with amendments, on May 27, 2009, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1796 on June 1, 2009, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor