

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §114.62 and §114.64.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes these revisions in order to implement requirements of House Bill (HB) 1611, authored by Representative Warren Chisum, passed during the 79th Legislature, 2005. During the 77th Legislature, 2001, the legislature adopted provisions, HB 2134, to assist low income individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. As required by HB 2134, the commission adopted rules providing the minimum guidelines for counties to implement a low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program (LIRAP).

Only those counties that have implemented a vehicle inspection and maintenance (I/M) program are eligible for participation in the LIRAP. Under the program, monetary assistance is provided for emission-related repairs directly related to bringing the vehicle into compliance or for replacement assistance for a vehicle that has failed the required emissions test. Vehicle eligibility criteria, such as the vehicle having been registered for the past two years in the participating county, have been developed and adopted by the commission. Emission-related repairs covered by the program are required to be performed at a Texas Department of Public Safety (DPS)-recognized emissions repair facility. Participating counties may administer the program themselves or contract with a private entity or another county to administer the program. Participating counties may expend no more than 5.0% of the funds received from the state for administrative costs. These rules provide for a minimum of \$30 and a maximum amount of \$600 for emission-related repairs, retrofit equipment, and installation; and a

minimum of \$600 and a maximum amount of \$1,000 toward the purchase price of a replacement vehicle.

During the 79th Legislature, the legislature adopted HB 1611, revising three key elements of the program. The legislation allows for the LIRAP to be administered by the counties in accordance with Texas Government Code, Chapter 783 (relating to Uniform Grant and Contract Management), and allows for programmatic costs such as call-center management, application oversight, invoice analysis, education, outreach, and advertising to be covered by LIRAP funds. This revision allows for program administrators to utilize additional resources to attract and increase program participation. The legislation deleted the requirement that only 5.0% of the funds provided to a county to fund the LIRAP be used to cover administrative costs. Finally, the legislation changed the vehicle registration eligibility requirement from two years to 12 months. This revision will increase participation and make assistance available to those vehicle owners who have lived in the county for at least one year.

#### SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are proposed throughout the sections to bring the existing rule language into agreement with Texas Register requirements, agency guidelines, and guidance provided in the *Texas Legislative Council Drafting Manual*, November, 2004.

The proposed amendment to §114.62, LIRAP Funding, establishes revised program requirements. Section 114.62(b) would delete the requirement that no more than 5.0% of the money provided by the commission to a local county or its LIRAP designee may be used for administration of the program.

Subsection (b) would also require the LIRAP to be administered in accordance with Texas Government Code, Chapter 783, and allow for programmatic costs such as call-center management, application oversight, invoice analysis, education, outreach, and advertising to be covered by the LIRAP funds.

The proposed amendment to §114.64, LIRAP Requirements, updates the requirements for establishing and implementing a LIRAP. Subsection (b)(3) deletes the requirement that an eligible vehicle be currently registered in and have been registered in the program county for the two years immediately preceding the application for assistance. Subsection (b)(3) decreases the time required for a vehicle to be registered in a participating county to 12 months in order to meet eligibility for the LIRAP.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment, Budget and Planning Division, determined that, for the first five-year period that the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state government. However, fiscal implications are anticipated for county governments participating in the LIRAP as a result of the administration or enforcement of the proposed rules.

The proposed rules implement provisions of HB 1611, relating to the LIRAP. The proposed rules would allow program administrators to utilize additional resources to attract and increase program participation. The proposed rules would require the LIRAP to be administered by participating counties in accordance with Texas Government Code, Chapter 783, Uniform Grant and Contract Management, and allow for programmatic costs such as call-center management, application oversight, invoice analysis, education,

outreach, and advertising to be covered with LIRAP funds. In addition, the requirement that only 5.0% of the funds provided to a county to fund the LIRAP be used to cover administrative costs would be removed in order to increase program managers' ability to effectively manage the program. Finally, the proposed rules change the vehicle registration eligibility requirement from two years to 12 months in a participating county. This revision is expected to increase participation by making assistance available to more vehicle owners.

The proposed rulemaking will affect local county governments participating in the LIRAP, as well as administrators that have been contracted by counties to administer the LIRAP in their specific area. County governments and program administrators will realize an increase in financial resources to administer the LIRAP.

During the last two years, 14 counties have implemented the vehicle I/M program and the LIRAP. In the Houston-Galveston-Brazoria area, Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties have implemented the LIRAP, and in the Dallas-Fort Worth area, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties participate. As of September 1, 2005, Travis and Williamson Counties implemented the I/M program and were allocated LIRAP funding beginning in Fiscal Year 2006.

Under current rules, administrative costs for local governments to administer the LIRAP are limited to 5% of the funds received. Under the proposed rules, this cap is removed and other programmatic costs are allowed to be covered by LIRAP funds. Agency staff have determined that the direct and indirect

program administration costs including call-center management, application oversight, invoice analysis, education, and outreach and advertising are anticipated to be approximately 20% of the annual expenditures. Administrative costs under the proposed rules for the 14 LIRAP counties (excluding Travis and Williamson Counties) are estimated to be approximately \$800,000 in Fiscal Years 2006 and 2007. Future administrative costs will depend upon legislative appropriations but are expected to remain at about 20%. Administrative costs for Travis and Williamson Counties are expected to be approximately \$261,208 in Fiscal Year 2006 and \$269,044 in Fiscal Year 2007.

Agency staff will have to determine what activities performed by the counties or program administrators in support of the LIRAP meet the requirements of Texas Government Code, Chapter 783, and the activities allowed under the provisions of HB 1611. The agency was appropriated approximately \$300,000 for Fiscal Years 2006 and 2007 to perform these duties and administer the LIRAP. Because local governments already are reporting their LIRAP activities under the current contracts, the requirement that they report under Texas Government Code, Chapter 783, is not expected to result in any additional administrative costs.

#### **PUBLIC BENEFITS AND COSTS**

Mr. Horvath also determined that for each year of the first five years that the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be an increase in low-income vehicle owners repairing or replacing polluting vehicles, which could result in decreased emissions in affected counties. Additionally, counties and program administrators will have additional resources to promote and increase participation in the LIRAP.

Fiscal implications are anticipated for individuals whose vehicles fail an emissions test, meet certain eligibility requirements, and are registered in a participating LIRAP county, as additional vehicle owners are anticipated to be eligible for financial assistance.

The proposed rules change the vehicle registration eligibility requirement from two years to 12 months. This revision will make assistance available to those vehicle owners who have lived in the participating county for at least one year instead of two years. Program staff estimate that this change in the registration requirement is expected to increase participation in the program by about 10% or approximately 783 vehicle owners. At an average of \$480 per vehicle repair, an increase of approximately \$375,000 in assistance is expected as a result of the proposed rulemaking.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. If a small or micro-business contracts with a county to administer the LIRAP, it will be eligible to receive more funding to administer the program.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission 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 proposed amendments in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the amendments do not meet the definition of a “major environmental rule.” Under Texas Government Code, §2001.0225, “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, 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. The proposed amendments are intended to attract and increase program participation, and allow more effective management by local program administrators. While the LIRAP as a whole is intended to protect the environment and reduce risks to human health from environmental exposure, the proposed amendments to the program are administrative and do not possess that specific intent. Because the proposal concerns local administration of the LIRAP, the amendments are unlikely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. As previously stated, the LIRAP is intended to protect human health and the environment, and regardless of the proposed amendments, the program will continue. It is therefore unlikely that this proposal will adversely affect in a material way the environment or the public health and safety of the state or a sector of the state. Because the proposed amendments 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, the proposal does not fit the definition of “major environmental rule” in Texas Government Code, §2001.0225.

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because this proposal does not constitute a major environmental rule, a regulatory

impact analysis is not required. The commission invites public comment regarding this draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), “taking” means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact assessment for the proposed amendments. The proposed amendments will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed amendments will not cause a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking action and found that the proposal is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in §505.11, and therefore will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission determined that under 31 TAC §505.22, the proposed rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and ozone levels will be reduced as a result of the proposed rulemaking. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal area (31 TAC §501.32). This rulemaking does not authorize any new air contaminants and is intended to revise administrative and eligibility requirements of the existing LIRAP as a result of new legislation. Therefore, this rulemaking is consistent with the applicable policy and goal.

The commission seeks public comment on the consistency of the proposed rulemaking with applicable CMP goals and policies.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on January 24, 2006, at 10:00 a.m. in Building F, Room 2210, at the Texas Commission on Environmental Quality complex, located

at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, 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.

All comments must be received by 5:00 p.m., January 30, 2006. All comments should reference Rule Project Number 2005-073-114-EN. The proposed rules may be viewed on the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information or questions concerning this proposal, please contact Bob Wierzowiecki, Air Quality Planning and Implementation Division, at (512) 239-1769.

**SUBCHAPTER C: VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME  
VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE  
RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES**

**DIVISION 2: LOW INCOME VEHICLE REPAIR ASSISTANCE,  
RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM**

**§114.62, §114.64**

**STATUTORY AUTHORITY**

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and §5.013, which states the commission's authority over various statutory programs. The amendments are also proposed under Texas Health and Safety Code (THSC), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC, Chapter 382 (also known as the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The amendments are also proposed under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.013, which authorizes the commission to designate air quality control

regions in order to implement air quality standards; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §§382.201 - 382.216, which provide the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act (42 United States Code, §§7401 *et seq.*), to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of the National Ambient Air Quality Standards, and to fund the establishment of the LIRAP. Specifically, the amendments are proposed under THSC, §382.209, as amended by HB 1611.

The proposed amendments implement TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.019, and 382.201 - 382.216.

**§114.62. LIRAP Funding.**

(a) (No change.)

(b) The program shall be administered in accordance with Texas Government Code, Chapter 783. Programmatic costs may include call-center management, application oversight, invoice analysis, education, outreach, and advertising. [Not more than 5.0% of the money provided by the commission to a participating county or its LIRAP designee may be used for administration of the program.]

(c) (No change.)

**§114.64. LIRAP Requirements.**

(a) (No change.)

(b) Repair and retrofit assistance [Retrofit Assistance]. A LIRAP shall provide for monetary or other compensatory assistance to eligible vehicle owners for repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements or for installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed to bring a vehicle into compliance with emissions requirements. Vehicles under the LIRAP must be repaired or retrofitted at a recognized emissions repair facility. To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(1) - (2) (No change.)

(3) the vehicle is currently registered in and has been registered in the program county for the 12 months [two years] immediately preceding the application for assistance;

(4) - (6) (No change.)

(c) Accelerated vehicle retirement [Vehicle Retirement]. A LIRAP shall provide monetary or other compensatory assistance to eligible vehicle owners to be used toward the purchase of a replacement vehicle. To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(1) the vehicle meets the requirements under subsection (b)(1) - (3)[,] and (5) of this section;

(2) - (3) (No change.)

(d) Compensation. The participating county must determine eligibility and approve or deny the application promptly. If the requirements of subsection (b) or (c) of this section are met and based on available funding, the county shall authorize monetary or other compensations to the eligible vehicle owner.

(1) (No change.)

(2) Vehicle owners shall be responsible for paying the first \$30 of emission-related repairs or retrofit costs that [which] may include diagnostics tests performed on the vehicle.

(3) (No change.)

(e) (No change.)