

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** February 12, 2016

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Steve Hagle, P.E., Deputy Director, Office of Air

Docket No.: 2015-1650-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 114, Control of Air Pollution from Motor Vehicles
Texas Emissions Reduction Incentive Plan
Rule Project No. 2016-004-114-AI

Background and reason(s) for the rulemaking:

The Texas Emissions Reduction Plan (TERP) is established under Texas Health and Safety Code (THSC), Chapter 386. Under the TERP, the commission administers several grant programs to achieve reductions in nitrogen oxides (NO_x) to demonstrate compliance with the state implementation plan and prevent areas of the state from being in violation of National Ambient Air Quality Standards. One of the TERP grant programs is the Drayage Truck Incentive Program (DTIP) established under THSC, Chapter 386, Subchapter D-1.

Staff proposes to revise DTIP rules under Chapter 114, Subchapter K, Division 8, to expand the types of eligible vehicles and equipment and clarify the areas considered a seaport.

The DTIP provides incentives to reduce emissions from drayage trucks operating in and around seaports and rail yards located in the state's nonattainment areas. The rules developed to implement the DTIP include criteria for the models of drayage trucks eligible for replacement and purchase under the program and definitions of seaports and rail yards.

Current TCEQ rules limit the drayage trucks purchased under the DTIP to those vehicles with a day cab only (i.e., no sleeper berth). Staff, in consultation with Port Authorities and drayage fleet owners, has determined that a significant amount of truck traffic at eligible facilities consists of vehicles with sleeper berths owned by individuals who are contracted to provide drayage services. Independent owners/operators and smaller businesses in particular are prone to buying sleeper cab trucks that are utilized for drayage purposes. Staff proposes to remove the day cab requirement to expand eligibility to include those individual contract haulers that would not otherwise participate in the program because of that requirement.

Also, the rules limit the eligible drayage trucks to on-road heavy-duty vehicles and non-road yard trucks. However, other types of non-road equipment used to move cargo, referred to as cargo handling equipment, also contribute to the concentration of emissions in and around seaports and rail yards. This equipment includes, but is not limited to rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers,

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forklifts, loaders, and aerial lifts. Staff proposes to expand the eligibility criteria to include other cargo handling equipment in order to improve the ability of the DTIP to achieve its goals and the goals of the TERP.

In addition, based on visits to multiple seaport facilities and discussion with facility administrators and users, staff has determined that the area in which emissions from drayage trucks are concentrated is not limited to just the specific location where cargo is transferred to or from a ship or barge. Particularly in the Port of Houston area, there are multiple businesses and facilities with substantial drayage truck activity located on property and at facilities in proximity to, but not located at, the locations where cargo is loaded on or off a ship or barge. The proposed revision to the definition of a seaport would include publically or privately owned property within a ship channel security district established under Texas Water Code (TWC), Chapter 68. Under this additional language, the property within the Houston Ship Channel Security District, including multiple chemical facilities, warehouses, plants, and other facilities, would be considered part of the seaport for purposes of eligibility under the DTIP.

In conjunction with this proposed rulemaking, staff also anticipates proposing changes to the guidelines developed to help implement the DTIP and the guidelines developed to help implement the Diesel Emissions Reduction Incentive Program established under THSC, Chapter 386, Subchapter C. The guideline documents are entitled *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program (RG-524)* and *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants (RG-388)*. The revisions to the DTIP guidelines would incorporate changes to be consistent with the changes proposed in this rulemaking, as well as other changes. Staff anticipates making the draft guideline revisions available for public review and comment concurrent with the public comment period for this proposed rulemaking. Staff will accept oral or written comments on the proposed guideline changes at the public hearings for this proposed rulemaking.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

Staff proposes to revise the DTIP rules under Chapter 114, Subchapter K, Division 8, to expand the types of eligible vehicles and equipment and clarify the areas considered a seaport. The proposed changes to the DTIP rules would expand the program eligibility in order to improve its effectiveness in reducing emissions in and around seaports and rail yards located in the state's nonattainment areas.

Staff proposes to expand the definition of a drayage truck to remove the requirement that the vehicle being purchased may only have a day cab and to include other cargo handling equipment operating at seaports and rail yards in the list of models of drayage trucks eligible for replacement and purchase.

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In addition, a change is proposed to the definition of a seaport to include publically or privately owned property within a ship channel security district established under TWC, Chapter 68.

B.) Scope required by federal regulations or state statutes: The proposed rules are not required by federal regulations or state statutes.

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

1. The following changes are proposed for DTIP rules, Chapter 114, Subchapter K, Division 8:
 - a. remove the requirement that an on-road vehicle purchased under the program may have a day cab only;
 - b. expand the types of non-road equipment eligible for replacement and purchase under the program to include cargo handling equipment; and
 - c. expand the definition of "seaport" to include publically or privately owned property within a ship channel security district established under TWC, Chapter 68.

Statutory authority:

- TWC, §5.102, which provides the commission with the general powers to carry out its duties;
- TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of the state;
- TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission;
- THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act;
- THSC, §382.011, which authorizes the commission to establish the level of air quality to be maintained in the state's air and to control the quality of the state's air;
- THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and
- THSC, Chapter 386, which establishes the DERI Program and DTIP.

Effect on the:

A.) Regulated community: The proposed rulemaking will not affect regulated entities.

B.) Public: The proposed rulemaking makes changes to an existing TERP grant program. Persons and entities interested in applying to this program will benefit from the changes.

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C.) Agency programs: Program procedures and documents will need to be updated.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, rule public hearings will be held during the comment period in Austin and Houston.

Potential controversial concerns and legislative interest:

The changes are proposed to help make the DTIP more effective in achieving the goals of the TERP. Staff does not anticipate any concerns regarding the proposed changes. Staff anticipates positive responses from legislators interested in the DTIP.

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

The guideline document for the DTIP will need to be updated and considered for adoption by the commission. The procedures for the DTIP will need to be updated.

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

The rulemaking could be delayed or postponed. These changes are proposed to help make the DTIP more effective in achieving the program goals. The consequence of not proceeding with this rulemaking will be that the DTIP will continue to be implemented under the existing criteria with the limitations as noted.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: March 3, 2016

Anticipated *Texas Register* publication date: March 18, 2016

Anticipated public hearing dates (if any): April 12, 2016 and April 14, 2016

Anticipated public comment period: March 18 through April 18, 2016

Anticipated adoption date: August 2016

Agency contacts:

Steve Dayton, Rule Project Manager, (512) 239-6824, Air Quality Division

Sierra Redding, Attorney, (512) 239-2496

Derek Baxter, Texas Register Coordinator, (512) 239-2613

Attachments

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk

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Office of General Counsel
Steve Dayton
Derek Baxter
Sierra Redding