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An Audit Report on

The Texas Emissions Reduction Plan Program at the Commission on Environmental Quality

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Report No. 11-012

The Texas Emissions Reduction Plan Program at the Commission on Environmental Quality

Overall Conclusion

The Commission on Environmental Quality (Commission) should strengthen its selection, monitoring, and enforcement of grants for the Texas Emissions Reduction Plan (TERP) program to ensure that it:

- Awards grants to eligible applicants that can achieve the most cost-effective emissions reductions.
- Holds grantees accountable for their compliance with program requirements and achieving projected emissions reductions.
- Recovers grant funds from non-compliant grantees.

Selecting the best applicants and strengthening grant monitoring could increase the number of grantees that comply with grant requirements. Improving compliance is important because the Commission has not been able to recover significant funds from grantees that do not comply with grant requirements. From December 2006 through July 2010, the Commission asserted that it identified a total of more than \$62 million in grant funds from 593 grantees that failed to comply with the disposition and/or usage requirements in the grant agreements. Of that amount, the Commission reported that it had recovered approximately \$1 million (1.6 percent) as of July 2010.

Background Information

The 77th Legislature established the TERP program in 2001 to provide grants to eligible individuals, businesses, or local governments to reduce emissions from polluting vehicles and equipment in six areas of the state (including 41 counties) that did not comply with national air quality standards (non-attainment areas).

Grant-funded vehicles and equipment include trucks, tractors, stationary engines, locomotives, and marine vessels.

The following appropriations were made through the TERP program dedicated fund:

- 2008-2009 biennium: \$337,843,188.
- 2010-2011 biennium: \$234,007,850.

The average individual TERP program grant amount in fiscal year 2009 was \$69,136.61.

The Commission reported that it had awarded approximately \$786 million in TERP program grants through fiscal year 2010.

Sources: The Commission and the General Appropriations Acts (80th and 81st Legislatures).

The Commission should strengthen its TERP program grantee selection process.

The Commission appropriately determined TERP program applicants' eligibility based on the information that the applicants provided; however, it should strengthen its review of that information. For example, the Commission should use information from the Texas Department of Motor Vehicles to identify the applicants whose vehicles may not be eligible for replacement under the TERP program. In addition, while the Commission conducts a limited number of site visits to verify applicant eligibility, it should focus those visits on applicants that

its risk assessment indicates are most likely to be ineligible for TERP program grants.

The Commission should strengthen its monitoring of TERP program grantees.

The Commission should strengthen its processes for monitoring TERP program grantees to determine compliance with program requirements. For example, the Commission does not always verify that grantees destroy the old vehicles and equipment replaced with grant funds. Auditors identified 12 vehicles that grantees re-registered after claiming to have destroyed them. Old vehicles that remain in use negate the emissions reduction benefits of the new vehicles that grantees purchase.

The Commission also should use available information to identify the grantees with the highest risk of non-compliance with program requirements. Completing an adequate risk assessment would help the Commission to more efficiently use limited TERP program resources. For example, the Commission should routinely use data from the Texas Department of Motor Vehicles to review registration and title histories for old and grant-funded vehicles and equipment. This would help the Commission identify grantees with a higher risk of using vehicles outside of eligible counties. It also would help the Commission identify vehicles that may not be eligible for replacement because they are not in working condition or have not been owned by the applicant for the time period required by TERP program guidelines.

Many grantees reported usage of grant-funded vehicles and equipment that was significantly lower than the usage projected in the grant agreements. This is important because it undermines the credibility of the Commission's calculations for the cost-effectiveness of its grants and potentially inflates the TERP program benefits that the Commission reports to the Legislature.

Additionally, the Commission should minimize delays in its efforts to recover grant funds from non-compliant grantees. Taking more prompt action against grantees that have not complied with TERP program requirements could help the Commission recover additional funds and enable it to award other grants to reduce emissions in non-attainment areas.

The Commission should enhance the reliability of its TERP program database.

The Commission should better ensure that program data in its TERP program database is complete and accurate. Currently, inaccurate and incomplete information in that database limits the TERP program staff's ability to monitor grants. For example, 47 percent of the vehicle identification numbers (VINs) for on-road equipment funded by the TERP program and entered into the TERP program database were either an invalid length (not 17 characters) or did not follow the appropriate format. These errors prevented TERP program staff from being able to compare the VINs in the TERP program database with the VINs in the Texas Department of Motor Vehicles' database.

Summary of Management's Response

The Commission generally agrees with the recommendation in this report. The Commission's detailed management responses to the specific recommendations in this report are presented immediately following each set of recommendations in the Detailed Results section of this report. The Commission's overall management response is presented in Appendix 5, page 49.

Summary of Information Technology Review

Auditors reviewed access rights to the TERP program database, as well as the integrity of the information contained in the database. Auditors did not review information technology (IT) security for automated systems used in the TERP program. Prior work by the Commission's internal auditors identified several IT security issues related to the TERP program (see *Data Security Audit*, May 2006, Commission on Environmental Quality Internal Audit Report 06-002).

Auditors identified issues related to the Commission's access controls over the TERP program database. To minimize the risk associated with disclosure, auditors communicated information related to TERP program database access rights separately in writing to the Commission.

Summary of Objectives, Scope, and Methodology

The objectives of this audit were to:

- Determine whether internal controls for TERP grant programs at the Commission provide assurance that the programs comply with state law and that grant recipients comply with the terms of grant agreements and program guidelines.
- Determine whether TERP grant agreements protect the State's financial interests, comply with state contracting best practices, and allow the Commission to hold grantees accountable for grant requirements.

Auditors reviewed documents and processes related to the Commission's TERP program grantee selection, monitoring, and enforcement activities from fiscal year 2006 through fiscal year 2010. Auditors also reviewed specific applications and grants from fiscal year 2006 through July 10, 2010.

To meet the audit objectives, auditors interviewed Commission staff and reviewed documentation related to TERP program grant applications and reports submitted by grantees. Auditors also reviewed the Commission's administrative processes related to grant scoring and selection, monitoring of usage and disposition of old vehicles, and recovering grant funds from non-compliant grantees. Auditors also reviewed Commission policies, rules, and statutes related to TERP program grants. Additionally, auditors obtained vehicle title and registration information from the

Texas Department of Motor Vehicles and compared that information to the information that applicants and grantees submitted to the Commission.

Contents

Detailed Results

| | |
|--|----|
| Chapter 1 | |
| The Commission Should Strengthen Its TERP Program Grantee Selection Process | 1 |
| Chapter 2 | |
| The Commission Should Strengthen Its Monitoring of TERP Program Grants to Ensure that Grantees Comply with Program Requirements | 11 |
| Chapter 3 | |
| The Commission Should Improve Its Efforts to Recover TERP Program Grant Funds from Grantees that Do Not Comply with Program Requirements | 26 |

Appendices

| | |
|---|----|
| Appendix 1 | |
| Objectives, Scope, and Methodology | 29 |
| Appendix 2 | |
| TERP Program Fiscal Year 2010 Fact Sheet | 32 |
| Appendix 3 | |
| TERP Program Eligible Counties | 34 |
| Appendix 4 | |
| Emissions Reduction Incentive Grant Application | 35 |
| Appendix 5 | |
| The Commission's Overall Management Responses | 49 |

Detailed Results

Chapter 1

The Commission Should Strengthen Its TERP Program Grantee Selection Process

The Commission on Environmental Quality (Commission) should strengthen its Texas Emissions Reduction Plan (TERP) program grant selection process to ensure that it selects grantees that are most likely to meet projected emissions reductions and comply with requirements. The Commission accurately determines eligibility based on the information that applicants provide, but it should strengthen its review of the accuracy of applicants' information. To strengthen its review of grant applications, the Commission should review additional information, enhance its risk assessment, and focus its site visits on the highest risk applicants to ensure that its eligibility determinations are based on accurate information. Specifically:

- The Commission should incorporate information from the Texas Department of Motor Vehicles and other sources into its current process for conducting a risk assessment of applicants. Using that information would enable the Commission to better identify applicants that may have submitted inaccurate information that could affect their eligibility for TERP program grants.
- The Commission should enhance its risk assessment to enable it to focus limited resources on identifying ineligible applicants and removing them from consideration for TERP program grants. This also would help the Commission rank eligible applicants on the likelihood that they will meet projected emissions reductions in non-attainment areas.
- The Commission should focus its site visits on applicants it categorizes as high-risk. The Commission also should weight risk factors more heavily when it scores eligible applicants for TERP program grant selection. Currently, only 5 percent of the score the Commission assigns to eligible applications is related to risk factors that may indicate the applicant will be unable to meet projected emissions reductions.

Selecting the applicants that are most likely to deliver the projected emissions reductions and comply with grant requirements is important because the Commission has not been able to recover funds consistently from non-compliant grantees it has identified during its monitoring process (see Chapter 2 for additional information on the Commission's monitoring process and Chapter 3 for additional information on its recovery of funds).

The Commission Should Strengthen Its Review of TERP Program Grant Applications by Enhancing Its Risk Assessment and Conducting Pre-award Site Visits of the Highest Risk Applicants

The Commission's review of self-reported information in TERP program grant applications is sufficient to determine eligibility correctly, based on the information the applicants provide. The Commission correctly determined eligibility for all 60 grant applications that auditors tested. However, the Commission should strengthen its review of the information applicants provide to better ensure that it bases eligibility determinations on accurate information. To improve its review of applications, the Commission should review additional available information to strengthen its risk assessment, and it should focus pre-award site visits on the highest risk applicants. Pre-award site visits are important because they can prevent the Commission from awarding grants to applicants that have provided inaccurate information on their applications.¹

The Commission should consider additional information.

The Commission currently considers only the age and reported usage of the vehicle or equipment the applicant currently owns (and is seeking to replace with TERP program grant funds) when it assesses the risks associated with each TERP program application. However, other information is readily available that could help the Commission identify applicants that may be ineligible for TERP program grants or unlikely to meet the projected emissions reductions. The Commission should use that information when identifying the applicants at which it will conduct site visits to confirm eligibility and the accuracy of the information the applicants provided.

For example, the Commission should review information from the following sources:

- Texas Department of Motor Vehicles. The Commission should review the registration history of an applicant's qualifying vehicles, including gaps and county of registration, as well as whether the registration was temporary at the time of the grant application or whether the vehicle was registered with apportioned tags.² Reviewing vehicle registration history would help the Commission determine the likelihood that the applicant's vehicle is in working condition and operating in an area of the state that is eligible for a TERP program grant (see Appendix 3 for additional details on TERP program eligible counties).

¹ Auditors reviewed 30 applications that the Commission initially determined were eligible for TERP program grants; 3 (10 percent) of those applications were later determined to be ineligible for TERP program funds because of information that the Commission obtained during pre-award site visits.

² Apportioned registration is a program for licensing commercial vehicles engaged in interstate trucking. It is a strong indicator that the vehicle may be used outside of eligible TERP program areas.

- U.S. Social Security Administration. The Commission should better ensure that Social Security numbers (SSNs) applicants provide are valid and match the applicants' names. The Commission reports applicants' SSNs to the Office of the Comptroller of Public Accounts (Comptroller's Office) so that the Comptroller's Office can identify whether the applicants have outstanding debt or tax liabilities or are delinquent in paying child support.³ However, in a limited review, auditors identified two applicants' reported SSNs that U.S. Social Security Administration information indicated belonged to people who are deceased. These anomalies elevate the risk that an applicant may not have provided accurate information, and the Commission should consider this when scheduling on-site verification visits.

Additionally, the Commission should consider:

- The adequacy of applicants' proof of ownership of the old vehicle or equipment that they want to replace with TERP program funds.
- The reliability of applicants' proof of reported usage. (For example, it should consider applicants' answer to the question "Is the odometer or other usage gauge in working condition?")
- The applicants' willingness to install a global positioning system (GPS) in the grant-funded vehicle to automatically report usage.

The Commission should conduct pre-award site visits at applicants most likely to be ineligible.

The Commission does not consistently follow its risk assessment when scheduling pre-award site visits to verify the information that applicants submit. Instead, the Commission routinely conducts some of its pre-award site visits at applicants with specific types of vehicles or equipment, even though these applicants may not have been identified as high risk.

Additionally, the Commission conducted pre-award site visits for only about 9 percent of applicants in fiscal years 2006 through 2009. Because the resources available to the Commission for conducting pre-award site visits are limited, it is important that the Commission focus those resources on verifying information provided by the applicants it has determined have the greatest likelihood of being ineligible for TERP program grants or of not meeting the projected emissions reductions. The Commission needs to improve its processes for identifying applicants unlikely to comply with grant requirements because it reports it is currently attempting to collect more than \$60 million from grantees that did not comply with grant requirements (see Chapter 3 for more information).

³ The Comptroller's Office will not issue a warrant to a TERP program grantee with outstanding debt or tax liabilities or if the Office of Attorney General has reported that the grantee is delinquent in paying child support.

In addition, the Commission did not conduct pre-award site visits for applicants for TERP program rebate grants, which accounted for 29 percent of all TERP program grant funds paid in fiscal years 2009 and 2010. According to Commission staff, TERP program rebate grants are streamlined grants usually limited to a single activity (one vehicle or piece of equipment). Individual rebate grants average approximately \$67,000, compared to \$74,000 for the average standard emissions reductions incentive grant (ERIG).

Recommendations

The Commission should:

- Review additional information from the Texas Department of Motor Vehicles when assessing the information that applicants submit about the vehicle they would like to replace, including:
 - ♦ Gaps in the vehicle's registration history.
 - ♦ County of registration.
 - ♦ Use of temporary registration.
- Verify that applicants' reported SSNs are valid and not included in the U.S. Social Security Administration's file of deceased persons.
- Consider using the consent-based name matching service provided through the U.S. Social Security Administration to ensure that applicants' names match their reported SSNs.
- Follow its risk assessment when scheduling pre-award site visits to verify information on the grant applications.
- Include rebate grants in its risk assessment, and conduct pre-award site visits at applicants for rebate grants when appropriate, based on the risks.

Management's Response

General Response

The statement that "the Commission routinely conducts some of its pre-award site visits at applicants with specific types of vehicles or equipment, even though these applicants may not have been identified as high risk" does not take into account all of the risk factors used by the TCEQ. The TCEQ has used both a standard numerical risk score and identification of additional risk factors unique to a particular grant round to determine which applicants to visit.

Using risk factors unique to a particular grant round has included targeting specific types of equipment and/or applicants that used particular vendors and consultants because of patterns seen in the review of the applications for that grant round that caused suspicion or concern by the reviewers.

The use of additional factors besides just a numerical score to determine risk is an important tool to target site visits to those applicants of most concern. With each grant round, risk factors identified by reviewers and specific to that grant round are often of as much or more concern than the projects labeled as "high risk" based on a standardized numerical risk score.

Management Response to Recommendations

1. Review additional information from the Texas Department of Motor Vehicles (TDMV) when assessing the information that applicants submit about the vehicle they would like to replace, including:

- Gaps in the vehicle's registration history*
- County of registration*
- Use of temporary registration*

Management Response - Agree

The TCEQ will conduct additional checks when a question arises about the documents provided with the application. When needed, records systems available to the TCEQ, such as WestLaw or the Texas Information Management System (TIMS), used by vehicle inspection stations, may also be checked to verify the information provided by applicants. Some situations where records may be checked include: 1) when the applicant cannot provide registration documents, 2) when the applicant used temporary registrations and cannot provide historical documentation of those registrations, and 3) other situations where the documentation provided does not provide complete information on the registration status.

Responsible Staff - Team Leader, Grant Development Team

Time Line - Spring 2011, with the next Rebate Grant Application period.

2. Verify that applicants' reported SSNs are valid and not included in the U.S. Social Security Administration's file of deceased persons.

Management Response - Agree

The TCEQ will purchase online access or will annually purchase a copy of the Social Security Administration's Death Master File on DVD and will compare SSNs of applicants with the list of deceased persons in that file. The TCEQ will conduct verifications using this file either during the

application review process or prior to processing a request for reimbursement.

Responsible Staff - Team Leader, Grant Development Team

Time Line - With the next Emissions Reduction Incentive Grant application period in FY 2012.

- 3. Consider using the consent-based name matching service provided through the U.S. Social Security Administration to ensure that applicants' names match their reported SSNs.*

Management Response – Agree with intent

As an alternative to this recommendation, the TCEQ will require photocopies of state or federal identification documents from individual and sole proprietor applicants to verify the identity of the applicant, which is the focus of this recommendation.

The purpose of this program is to reduce emissions through the replacement or upgrade of vehicles and equipment. The most important components in achieving the reductions are the use and location of the old vehicles, equipment, and engines, and verification that the new or upgraded vehicles, equipment, and engines are used in accordance with the grant requirements. The emphasis on these factors in this audit report points to this fact.

The auditor's recommendation for SSN/name matching would greatly slow the application review process and increase the administrative burden on the program and applicants without a substantial positive impact on the effectiveness of the program in reducing emissions.

The Consent Based Social Security Number Verification (CBSV) Service would require the TCEQ to enter into a master use agreement with the Social Security Administration; pay a \$5,000 enrollment fee; pay a \$5.00 per transaction fee, payable in advance; and obtain a signed federal consent form from each grant applicant.

Responsible Staff - Team Leader, Grant Development Team

Time Line - Spring 2011, with the next Rebate Grant Application Period

4. *Follow its risk assessment when scheduling pre-award site visits to verify information on the grant applicants.*

Management Response - Agree

The TCEQ will follow a risk assessment process in determining what projects to select for a pre-award site visit. The risk assessment factors will be updated to include both numerical scoring factors and other risk factors. These other factors may include targeting specific types of equipment and/or applicants that used particular vendors and consultants and other factors identified as areas of concern during the application review process. The risk assessment process will be established and approved in writing.

Responsible Staff - Team Leader, Monitoring Team

Time Line - Fall 2011

5. *Include rebate grants in its risk assessment, and conduct pre-award site visits at applicants for rebate grants when appropriate, based on risks.*

Management Response - Agree

The TCEQ will conduct pre-award site visits for rebate grants when apparent risks warrant this approach. When appropriate, a limited number of applications will be pulled from processing based on a risk assessment and assigned for a pre-award site visit. The place in the first-come-first-served processing for those applications will be held pending completion of the site visits.

Responsible Staff - Team Leader, Monitoring Team

Time Line - Fall 2011

The Commission Should Strengthen Consideration of Risks When Scoring TERP Program Grant Applications

The Commission scores all ERIG applications on the prospective grants':

TERP Program Grant Application Scoring Process

The Commission uses a scoring committee, generally composed of four members, that independently scores each application on a 100-point scale.

The highest scoring weight is given to the cost per ton of emissions reductions.

Eligible applicants with grant applications projecting emissions reductions costing \$500 or less per ton receive 80 of 100 points. Each additional \$500 dollars in cost per ton reduces the score by 1 point.

The remaining 20 points are assigned as follows:

- Impact on air quality (10 points).
- Impact on achieving TERP program goals (5 points).
- Potential to achieve projected emissions reductions (5 points).

Source: The Commission.

- Cost-effectiveness of projected emissions reductions.
- Impact on air quality.
- Impact on achieving TERP program goals.
- Potential to achieve projected emissions reductions.

Risk scores are not weighted heavily enough. In the Commission's scoring system, the risk that the applicant will not deliver projected emissions reductions is a minor consideration. Of the 100-point scale used to score applications, only 5 points are reserved for the scorers' assessment of the likelihood that applicants will achieve the projected emissions reductions (see text box for more information on the scoring process). Insufficient weighting of this risk can result in the Commission awarding grants to applicants that scorers believe have little chance of delivering the projected emissions reductions.

Many applicants are selected for grants despite scorers' doubts that the applicant will deliver the expected emissions reductions. Auditors identified 201 grants the Commission awarded from its fiscal year 2009 grant round even though one or more scorers considered it unlikely that the applicants would meet the projected emissions reductions.⁴ Twenty-six of these grants went to applicants that three of the four scorers considered unlikely to meet projected emissions reductions. Awarding grants to applicants that are less likely to deliver projected emissions reductions increases the administrative burden on the Commission (because of the additional monitoring and enforcement efforts required) and adversely affects the cost-effectiveness of the TERP program.

The Commission should provide clearer guidance on the risk-related information that application scorers should consider. Additionally, the Commission should provide clearer guidance on available sources of information that scorers should consider when assessing an application's risk factors. In its application review, the Commission considers the age of the applicant's vehicle or equipment, and the amount that the applicant claims to use the vehicle or equipment when it assesses risks for the purposes of scheduling pre-award site visits. These are appropriate considerations for application scoring as well,

⁴ Auditors considered scores of 2 or less (out of 5) for "potential to achieve projected emissions reductions" an indication that the scorer considered it unlikely that the applicant would deliver the emissions reductions projected in the application.

given that ERIG applicants have an incentive to inflate usage to improve their chances of getting a grant and potentially to increase the grant amount⁵ (see Chapter 2-B). However, there are additional potential sources of risk information that scorers should consider when scoring applications. These include:

- Whether the applicant received a pre-award site visit.
- Information that the Commission gathered during pre-award site visits.

The Commission's application scoring system also should consider the same risks (discussed in Chapter 1-A) that the Commission should be using when deciding which applicants will receive site visits.

Recommendations

The Commission should:

- Improve the TERP program grant application scoring methodology by assigning a higher weight to risks that the applicant will not be able to deliver the projected emissions reductions.
- Ensure that TERP program application scorers systematically consider risk information from all available sources, such as pre-award site visits, strength of the applicant's proof of ownership of the old vehicle or equipment, vehicle registration history, and the willingness of the applicant to install a GPS device.

Management's Response

Management Response to Recommendations

1. *Improve the TERP grant application scoring methodology by assigning a greater weight to risks that the applicant will not be able to deliver the projected emissions reductions.*

Management Response - Agree

The application scoring methodology will be revised to include two scoring components. A single score will be assigned based on the cost per ton of nitrogen oxides (NOx) calculated to be reduced by the project. This score will be assigned based on the calculations and will not be assigned by a scoring committee.

⁵ The grant amount cannot exceed the cost-effectiveness limitations in Texas Health and Safety Code, Section 386.106.

A second score will be assigned based on risk factors. The grant solicitation documents will state that the executive director may base grant selection decisions on both the cost per ton score and the risk score.

Responsible Staff - Team Leader, Grant Development Team

Time Line - With the next Emissions Reduction Incentive Grant application period in FY 2012.

2. *Ensure that scorers systematically consider risk information from all available sources, such as pre-award site visits; strength of the applicant's proof of ownership of the old vehicle or equipment; vehicle registration history; and the willingness of the applicant to install a GPS device.*

Management Response - Agree

Specific factors to be used in determining the risk score will be identified and included in the grant solicitation documents and the scoring criteria.

Responsible Staff - Team Leader, Grant Development Team

Time Line - With the next Emissions Reduction Incentive Grant application period in FY 2012.

The Commission Should Strengthen Its Monitoring of TERP Program Grants to Ensure that Grantees Comply with Program Requirements

The Commission requires grantees to dispose of their old vehicles or equipment once those items are replaced with grant funds. Disposition of the old vehicles or equipment ensures that they do not continue to operate and create emissions that would negate the beneficial air-quality effects intended by the TERP program. The Commission currently requires grantees to submit photographic evidence that they have destroyed the old vehicles and equipment. However, the Commission often accepts inconclusive evidence that the grantees submit as evidence of disposition. Auditors used Texas Department of Motor Vehicles data to identify 12 vehicles that were re-registered after the grantees claimed to have destroyed them.

Grantees' actual average reported usage of their grant-funded vehicles and equipment is significantly less than the usage that the Commission projected in the grant agreements. Low actual usage casts doubt on the usage assumptions the Commission used when it calculated cost-effectiveness of grants and emissions reductions outcomes for the TERP program. The Commission requires TERP program grantees to report usage of grant-funded vehicles and equipment every six months for the term of the grant.⁶ However, grantees failed to report usage in a timely manner in 21 percent of the cases that auditors tested. When grantees do not comply with usage reporting requirements, the Commission should more promptly take steps to recover funds from those grantees.

Additionally, auditors identified data errors in the TERP program database that could inhibit the Commission's grant monitoring efforts.

Chapter 2-A

The Commission Should Ensure that Grantees Dispose of Old Vehicles and Equipment According to Program Requirements

The Commission requires grantees to dispose of old vehicles and equipment replaced by TERP program grant funds so that the old vehicles and equipment do not continue to operate and generate emissions. However, the Commission's current process does not ensure that disposition occurs. Auditors identified 12 vehicles that were re-registered in Texas after the grantees claimed to have destroyed them.⁷

⁶ Grant terms are usually five or seven years.

⁷ Auditors checked only for on-road vehicles re-registered in Texas. Other vehicles may have been sold and re-registered outside of Texas.

Evidence showing disposition is often inconclusive. The Commission's current process for proving that grantees disposed of old vehicles and equipment is to

Disposition Requirements

Grantees are required to destroy the vehicle or equipment that is being replaced within 90 days of receiving the TERP grant funds to ensure that the vehicle or equipment is permanently inoperable. Specifically, grantees must:

- Cut the frame rails and drill a hole, usually at least three inches in diameter, through the engine block.
- Certify the disposition of the vehicles and equipment using the form supplied by the Commission within 90 days of reimbursement for a new vehicle/equipment purchase.

Source: The Commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants*, RG-388, Revised May 2010.

accept photographic evidence from grantees showing that they have completed the disposition procedures (see text box) on the vehicle or equipment being replaced with TERP program grant funds. However, the photographic evidence that grantees submit is often inconclusive because it is not always possible to determine that the vehicle and engine depicted in the photographs are the same as the items listed in the TERP program grant application.

Of the 116 case files that auditors reviewed, 52 (45 percent) did not contain sufficient evidence that the old vehicle or equipment had been destroyed as required. A common problem with the submitted photographic evidence was that the evidence of disposition, such as photographs of holes in engine blocks or cuts in frame rails, was not clearly connected with photographs of

VINs and engine identification numbers. As a result, the destroyed engines or cut frames may have belonged to vehicles or equipment other than those the Commission intended to replace with TERP program funds. Therefore, it was not possible for a reviewer to make conclusions on the disposition of the vehicle or equipment based on the photographic evidence submitted.

The Commission's TERP program staff could prevent re-registration of vehicles in Texas by flagging vehicle identification numbers (VIN) through the Texas Department of Motor Vehicles to keep vehicles from being re-titled or re-registered. Another program at the Commission⁸ already uses Texas Department of Motor Vehicles data to prevent abuse and fraud; however, TERP program staff had not used this data to help ensure that vehicles required to be destroyed are not re-titled or re-registered.

The Commission should more promptly address disposition compliance problems.

When the Commission has identified problems with TERP program grantees' evidence of disposition, it has not acted promptly to ensure compliance with disposition requirements or to recover grant funds from non-compliant grantees. The Commission delayed invoicing to recover grant funds in 26 (93 percent) of 28 sampled cases in which it had identified problems with the grantees' disposition of old equipment.

When the Commission identified problems with grantees' disposition of vehicles or equipment related to TERP program grants funded during fiscal

⁸ The Drive a Clean Machine (DACM) program uses Texas Department of Motor Vehicles data and blocks re-titling and re-registration of replaced vehicles associated with that program.

years 2007 through 2009, it waited 383 days on average before attempting to recover the funds. The Commission's delays make it less likely it will recover funds because the Commission often loses contact with grantees that do not comply. Additionally, delays make it less likely that the Commission can return a grantee to compliance because the vehicle and/or evidence of its disposition become harder to find as more time passes.

Recommendations

The Commission should:

- Use Texas Department of Motor Vehicles data to identify old vehicles that have been re-titled or re-registered in Texas after the grantee reported them as destroyed.
- Work with the Texas Department of Motor Vehicles to flag VINs of vehicles that the Commission requires grantees to destroy so that those vehicles cannot be re-titled or re-registered in Texas.
- Consider pursuing agreements with other states to enable it to identify additional vehicles re-titled or re-registered outside of Texas.
- Consider requiring video of vehicle and equipment destruction and/or significantly increasing site visits to witness vehicle and equipment disposition.
- Promptly begin efforts to recover grant funds when grantees fail to comply with vehicle and equipment disposition requirements.

Management's Response

General Response

The TCEQ notes that not all of the 12 vehicles identified as having been registered after the disposition date represent fraudulent disposition. Of the 12 vehicles identified in the audit report as being re-registered, six of the vehicles were confirmed by the agency to have been re-registered in error and the vehicles and engines had been properly destroyed. Of the six other vehicles, the grant recipient owning one of the vehicles had been invoiced for noncompliance with the grant requirements and the owner of two of the vehicles was already under investigation by the agency.

Management Response to Recommendations

1. *Use Texas Department of Motor Vehicles data to identify old vehicles that have been re-titled or re-registered in Texas after the grantee reported them as destroyed.*

Management Response - Agree

The TCEQ has revised its disposition forms and contract language to require that grant recipients obtain a TDMV Non-Repairable Vehicle Title for any on-road vehicle replaced under this program. A non-repairable vehicle title will preclude a vehicle from being re-registered or used for anything other than scrap and parts.

In addition, the TCEQ will run title and registration checks on vehicles replaced under this program, to the extent resources allow. However, the requirement for obtaining a Non-Repairable Vehicle Title will eliminate most of the risks that a vehicle may be re-registered and used after it is reported destroyed.

The TCEQ will be cognizant of the additional time needed by applicants to obtain a TDMV Non-Repairable Vehicle Title and implement any changes to the timeline as needed.

Responsible Staff - Team Leader, Monitoring Team

Time Line - The requirement for obtaining a Non-Repairable Vehicle Title will be implemented with the current Emissions Reduction Incentive Grant contracts, expected to be awarded in January 2011. The additional checks on vehicle title and registration data will be incorporated into the monitoring SOPs and fully implemented by Fall 2011.

- 2. Work with Texas Department of Motor Vehicles to flag VINs of vehicles that the Commission requires grantees to destroy so that those vehicles cannot be re-titled or re-registered in Texas.*

Management Response – Agree with intent

As an alternative to implementing this recommendation, the TCEQ has revised its disposition forms and contract language to require that grant recipients obtain a TDMV Non-Repairable Vehicle Title for any on-road vehicle replaced under this program. A non-repairable vehicle title will preclude a vehicle from being re-registered or used for anything other than scrap and parts.

With this new requirement, flagging the VINs in the TDMV system will not be necessary, since the non-repairable vehicle title would accomplish the same thing without the administrative work required.

Responsible Staff - Team Leader, Monitoring Team

Time Line - The requirement for obtaining a Non-Repairable Vehicle Title will be implemented with the current Emissions Reduction Incentive Grant contracts, expected to be awarded in January 2011.

3. *Consider pursuing agreements with other states to enable it to identify additional vehicles re-titled or re-registered outside of Texas.*

Management Response – Agree with intent

As an alternative to implementing this recommendation, the TCEQ has revised its disposition forms and contract language to require that grant recipients obtain a TDMV Non-Repairable Vehicle Title for any on-road vehicle replaced under this program. A non-repairable vehicle title will preclude a vehicle from being re-registered or used for anything other than scrap and parts.

With this new requirement, establishing agreements with other states will not be necessary, since the non-repairable vehicle title would accomplish the same thing.

Responsible Staff - Team Leader, Monitoring Team

Time Line - The requirement for obtaining a Non-Repairable Vehicle Title will be implemented with the current Emissions Reduction Incentive Grant contracts, expected to be awarded in January 2011.

4. *Consider requiring video of vehicle and equipment destruction and/or significantly increasing site visits to witness vehicle and equipment disposition.*

Management Response - Agree

To the extent resources allow, the program will conduct additional targeted site visits to confirm proper disposition of equipment. These visits will be chosen based on risk factors. In addition, the program will consider mechanisms for enhancing the photographic evidence of destruction.

Responsible Staff - Team Leader, Monitoring Team

Time Line - Additional disposition verification site visits and enhancements to the disposition verification forms and documentation will be implemented by Spring 2012. A decision on whether to require video documentation of destruction will also be made by that time.

5. *Promptly begin efforts to recover grant funds when grantees fail to comply with vehicle and equipment disposition requirements.*

Management Response - Agree

Over the last six months, the program has averaged less than 30 days between the date that noncompliance was identified and the date an invoice was issued.

The program will incorporate deadlines and expected time lines into the monitoring SOPs and ensure that staff follows the SOPs. The TCEQ also may need to allow extra time for grant recipients to obtain and submit copies of a TMDV Non-Repairable Vehicle Title for replaced vehicles. The TCEQ will consider this added requirement when establishing deadlines and time lines for issuing invoices for failure to provide the required disposition forms and documentation.

Responsible Staff - Team Leader, Monitoring Team

Time Line - Additional efforts have already been implemented to ensure that contracts needing disposition are not overlooked. The monitoring SOPs will be updated with specific deadlines and procedures by Fall 2011.

Chapter 2-B

The Commission Should Ensure that Grantees Comply with Usage and Usage Reporting Requirements

Actual usage the grantees report to the Commission for their vehicles and equipment funded by the TERP program is important because it indicates the reasonableness of the usage projections in the grant agreements. These projections, established during grant selection, are the basis of (1) the grants' cost-effectiveness calculations and (2) the TERP program benefits the Commission reports to the Legislature biennially. There is a statutory limit on the amount the Commission can pay for each ton of emissions it reduces through TERP program grants. If the usage projections in a grant are inflated, the cost-effectiveness (cost per ton of emissions reduced) of the grant is overstated, and there is a risk that some grants do not comply with the statutory limits.

From the beginning of fiscal year 2007 through July 2010, TERP program grantees reported significantly lower actual usage than the usage that the Commission projected in the grant agreements. While there may sometimes be legitimate reasons for a grantee to have lower usage for the grant-funded vehicle than was projected,⁹ low actual usage compared to projected usage is a strong indicator that the original usage assumptions in the grant contract were overstated. It is important that the Commission strengthen its grant selection processes (see Chapter 1) and revise the default usage projections it uses to calculate cost-effectiveness for rebate grants to minimize the differences between grantees' reported usage and their projected usage.

The Commission requires grantees to report usage on their grant-funded vehicles and equipment every six months. Non-compliance with usage

⁹ For example, grantees' usage may be affected by economic downturn or by illness.

reporting requirements is common, and the Commission does not always take action to recover funds from grantees that fail to report usage. Additionally, the Commission does not consistently use available information, such as evidence from site visits and information from the Texas Department of Motor Vehicles, that could help it identify non-compliance and verify self-reported usage from grantees.

Reported Usage versus Projected Usage

The Commission establishes projected usage for grant-funded vehicles and equipment in two ways based on the grant type. Specifically:

- ERIG grants – Grantees make a commitment to use the grant-funded vehicle or equipment at the same level of usage they claimed for their old vehicle or equipment in the application documents. Projected usage reflects these commitments.
- Rebate grants – Grantees commit to use the grant-funded vehicle or equipment for a set minimum percent of the time in the TERP-eligible areas of the state.¹⁰ Grantees make no commitments regarding the amount of use. The Commission projects usage based on the U.S. Environmental Protection Agency’s (EPA) average for the particular type of vehicle or equipment being replaced and the type of vehicle or equipment being purchased with grant funds.

Usage projections are the basis for the Commission’s cost-effectiveness calculations. The Commission uses its projections to calculate the cost-effectiveness of emissions reductions for each application before it awards the grants. Cost-effectiveness calculations are important because the Commission has a statutory limit on the amount it can pay for each ton of emissions it reduces through TERP program grants¹¹, and because it has an interest in using grant funds as efficiently as possible.

It is not cost-effective for the Commission to pay for a grantee to replace a vehicle that is used only lightly because the vehicle already had low emissions. Consequently, there is an incentive for ERIG applicants to overstate the amount they use their current vehicles or equipment because overstating usage increases the applicants’ chances of getting a grant and potentially increases the size of the grant.¹²

¹⁰ Applicants can commit to one of three different levels of in-area usage (at least 25 percent, at least 50 percent, or at least 75 percent). The higher the commitment that the applicant makes, the larger the grant amount will be.

¹¹ Texas Health and Safety Code, Section 386.106, limits the cost of reducing a ton of nitrogen oxide (NOx) emissions to \$15,000.

¹² The possibility that applicants will overstate usage levels is partially addressed in the Commission’s grant selection procedures (see Chapter 1-B).

Grantees' reported usage reflects the reasonableness of their projected usage. The grantees' semi-annual reports of their actual usage help the Commission determine whether the usage projections were reasonable, and whether the cost-effectiveness calculations for each grant are accurate. When an ERIG grantee reports usage that is significantly lower than commitments in the grant agreement¹³, this could be a strong indicator that usage information in the application was inflated. For rebate grants, low reported average usage may indicate that the default usage projections the Commission uses are too high. For both ERIG and rebate grants, low reported usage calls into question the integrity of the Commission's cost-effectiveness calculations and could mean that some grants do not comply with the statutory limit on the cost of emissions reductions.

Table 1 compares the reported usage and projected usage for ERIG and rebate grants from fiscal year 2007 through July 2010. Grantees for both types of grants reported lower average usage than the amounts that the Commission projected in the grant agreements. Reported usage for rebate grants is only about two-thirds of the projected usage in the grant agreements. This indicates that the Commission should revisit the default usage rates it uses for rebate grants to ensure that its grants comply with statutory limitations on cost-effectiveness.

Table 1

| TERP Program Grants Reported Usage and Projected Usage Fiscal Year 2007 through July 2010 | | |
|--|--|---------------|
| | Emissions Reductions Incentive Grants | Rebate Grants |
| Total grants | 1,279 | 1,222 |
| Grantees reporting usage that was less than 75 percent of projected usage | 465 (36%) | 813 (67%) |
| Reported actual usage as a percent of projected usage | 91% | 66% |

Source: The Commission's TERP program database.

¹³ ERIG grantees also have an incentive to report greater-than-actual usage to avoid the Commission's attempts to recover grant funds for low usage.

The Commission should review projected emissions reductions and cost-effectiveness information it reports to the Legislature. The Commission uses the potentially overstated usage commitments from ERIG grants and the default usage projections from rebate grants to calculate projected emissions reductions for the TERP program. It reports these projected emissions reductions and the associated cost-effectiveness to the Legislature in a biennial report.¹⁴ Because of the number of grantees that reported low usage, the projected emissions reductions may not accurately reflect the benefits of the TERP program. The Commission should consider revising its methodology for estimating TERP program outcomes by taking into account evidence from reported usage that indicates the projected emissions reductions are overstated.

Non-compliance with Usage Reporting Requirements

Recovering Grant Funds for Usage Issues

According to its procedures, the Commission should invoice grantees to recover all or part of TERP program grant funds if the grantees:

- Fail to report semi-annual usage for two reporting periods.
- Report usage that is less than 75 percent of the grantees' commitment for 24 months or more.

Source: The Commission's TERP Standard Operating Procedure 7-5, *Usage Monitoring Process*.

Grantees often fail to report usage according to TERP program grant requirements. Auditors reviewed a sample of 253 grant-funded activities¹⁵ and determined that in 53 (21 percent) cases, the grantee had not reported usage within the time frames required by the grant terms (see text box). For 45 of the 53 activities for which grantees had not reported usage according to requirements, grantees had failed to report usage for two reporting periods.¹⁶ According to the Commission's policies, it should have invoiced the grantees to recover all or part of the grant funds associated with these activities. As of July 2010, the Commission had not attempted to recover grant funds from any of the non-compliant grantees.

The Commission should use available information to strengthen usage monitoring. Because almost all grantees self-report usage¹⁷, the Commission should use any available information to verify the usage of TERP program grant-funded vehicles. For example, the Commission conducts site visits after it awards grants to verify that grantees purchased vehicles with grant funds. The monitors conducting these asset verification site visits often document evidence of out-of-area usage of grant-funded vehicles; however, the Commission does not consistently follow up on these findings to ensure the grantees comply with the terms of the grants or reimburse the Commission for grant funds. Auditors reviewed 30 documented monitoring recommendations that had resulted from site visits and determined that the Commission had not followed up on 11 (37 percent) of the recommendations as of September 1, 2010.

¹⁴ Texas Health and Safety Code, Section 386.057, requires the Commission to submit this report no later than December 1 of even numbered years.

¹⁵ A single grant agreement may include multiple vehicles and/or equipment. Each vehicle/equipment is a separate activity.

¹⁶ The 45 activities were associated with 3 multi-activity grants.

¹⁷ The Commission offers grantees the option of using a GPS device that will allow for automated usage reporting. The Commission reported on November 2, 2010, that only 29 grantees had elected to install the GPS device on a grant-funded vehicle.

Additionally, the Commission could use Texas Department of Motor Vehicles data to identify changes in a vehicle's title and/or county of registration to help it identify grantees that may have sold their grant-funded vehicle, had it repossessed, or are operating it outside of the eligible areas.

Recommendations

The Commission should:

- Promptly act to recover grant funds or return grantees to compliance when they fail to submit usage reports according to grant requirements.
- Review its methodology for establishing default usage projections for rebate grants to ensure that usage projections are a reasonable basis for cost-effectiveness and projected emissions reductions calculations.
- Consider reporting to the Legislature projected emissions reductions from the TERP program that are adjusted to reflect the difference between reported usage and projected usage.
- Consistently use available information to focus usage monitoring on grantees that are most likely not complying with usage and reporting requirements.
- Ensure that it consistently follows up on issues identified during site visits.

Management's Response

General Response

The TCEQ appreciates acknowledgement in the audit report that the downturn in economic conditions may impact the grant recipients' ability to utilize the grant-funded vehicles and equipment to expected levels.

Management Response to Recommendations

1. *Promptly act to recover grant funds or return grantees to compliance when they fail to submit usage reports according to grant requirements.*

Management Response - Agree

The program's goal is to work with grant recipients to ensure compliance, so that the emissions reductions will be achieved, rather than to quickly obtain a refund of the grant. In many cases, the goal of emissions reductions has been accomplished, but the documentation submitted to the TCEQ is lacking. Particularly in these cases, the TCEQ's preference is to assist the grant recipient in verification.

With that in mind, the TCEQ agrees that additional efforts should be taken to ensure that late usage reports are dealt with promptly. The program is now conducting more comprehensive regular reconciliation to confirm that outstanding items are invoiced or cleared within established deadlines.

The program will incorporate those deadlines and expected time lines into the monitoring SOPs and ensure that staff follows the SOPs.

Responsible Staff - Team Leader, Monitoring Team

Time Line - Additional efforts have already been implemented to ensure that contracts needing disposition are not overlooked. The monitoring SOPs will be updated with specific deadlines and procedures by Fall 2011.

2. *Review its methodology for establishing default usage projections for Rebate Grants to ensure that usage projections are a reasonable basis for cost effectiveness and projected emissions reductions calculations.*

Management Response - Agree

Much of the reason for the low reported usage by grant recipients can be attributed to the downturn in the economy and a nationwide increase in the price of diesel, which in turn resulted in an increase in locomotive shipping rather than trucking.

The TCEQ will continue to monitor the reported usage from rebate grant recipients. If the average usage does not trend upward substantially as the economy improves, the TCEQ will further evaluate whether changes are needed to the default usage rates.

Responsible Staff - Team Leader, Grant Development Team

Time Line - The TCEQ will evaluate the status of usage rates in Fall 2011.

3. *Consider reporting to the Legislature projected emissions reductions from the TERP program that are adjusted to reflect the difference between actual usage and projected usage.*

Management Response - Agree

Since the establishment of the TERP, the TCEQ has reported both the projected emissions reductions for projects funded that fiscal year and the actual emissions reductions reported from projects active and reporting usage during that fiscal year.

The program also regularly provides reports and updates to agency management on the status of reported usage. That information is available to the Legislature as requested.

The TCEQ will evaluate the information provided in the Biennial Report and consider how to best present the status of the program in the future.

Responsible Staff - Team Leader, Grant Development Team

Time Line - The TCEQ will continue to report on performance measures as directed by the Legislature. How information is presented in the Biennial Report will be made when the next report is due in December 2012.

4. *Consistently use available information to focus usage monitoring on grantees that are most likely not complying with usage and reporting requirements.*

Management Response - Agree

The TCEQ has used compliance issues as a factor in determining which projects should receive a monitoring site visit. However, the TCEQ agrees that a more comprehensive risk assessment process is warranted.

The TCEQ will follow a risk assessment process to ensure that noncompliance with usage and reporting requirements is a major factor in determining those projects to visit.

Responsible Staff - Team Leader, Monitoring Team

Time Line - Fall 2011

5. *Ensure that it consistently follows up on issues identified during site visits.*

Management Response - Agree

The TCEQ agrees that additional efforts should be taken to ensure that issues identified during site visits are resolved. The program is now conducting more comprehensive regular reconciliation to confirm that outstanding items are tracked and cleared within established deadlines.

The program will incorporate those deadlines and expected time lines into the monitoring SOPs and ensure that staff follows the SOPs.

Responsible Staff - Team Leader, Monitoring Team

Time Line – The monitoring SOPs will be updated with specific deadlines and procedures by Fall 2011.

The Commission Should Ensure that Data in Its TERP Program Database Is Complete and Accurate

The Commission maintains most TERP program data in its TERP program database. The TERP program database contains information about grant applicants, old and grant-funded vehicles, status of disposition, usage, and other basic program data. The information in the TERP program database should serve as the basis for the Commission's monitoring efforts. However, errors in the information contained in the TERP program database diminish the database's usefulness to Commission staff who are responsible for monitoring grantees to determine whether the grantees are complying with grant terms. Auditors identified a number of errors in the database that inhibit the Commission's monitoring efforts. These errors are summarized below.

- Auditors tested 6,237 VINs for on-road vehicles that were funded by the TERP program and determined that 2,944 (47 percent) of the VINs in the TERP program database were either an incorrect length or did not conform to the appropriate format. Inaccurate and invalid VINs hinder the Commission's monitoring efforts because they prevent the Commission from comparing the information that it keeps on grant-funded vehicles with registration and titling information maintained at the Texas Department of Motor Vehicles. Comparing the VINs would enable the Commission to identify when grantees sell vehicles and when vehicles may be operating outside of eligible areas.
- Of all grant-funded activities recorded in the TERP program database, 5 percent of the records for old equipment and 23 percent of the records for new equipment did not contain an identification (ID) number.
- For new equipment, 3 (10 percent) of 30 grant-funded activities tested had an equipment ID number that had been transferred incorrectly from the paper files to the TERP program database.
- Usage recorded in the TERP program database did not always match the usage reported by grantees in the Commission's hard-copy files. Auditors tested 206 activities and determined that the Commission incorrectly entered usage for 38 (18 percent) of the activities into the database.

Auditors also identified issues related to the Commission's access controls over the TERP program database. To minimize the risk associated with disclosure, auditors communicated information related to TERP program database access rights separately in writing to the Commission.

Recommendations

The Commission should:

- Implement quality control processes to ensure that TERP program staff correctly enter information into the TERP program database.
- Consider including automated edits in the TERP program database to ensure that VINs and other identification numbers that TERP program staff enter into the database comply with length and format criteria.

Management's Response

General Response

The program has been working on a new Oracle database that will help address many of the reliability issues identified in the report. Funding for the database was approved under the Capital Budget Rider for the current fiscal biennium. The new database is expected to be in place by Fall 2011.

In addition, the statement that in 18 percent of the records tested, the usage data from the hardcopy reports was incorrectly transferred to the database, does not acknowledge that some of these discrepancies reflect corrections made by program staff. In at least some of these cases, the data originally provided on the reports was corrected by the usage review staff, through discussion with the grant recipient and other evaluation, and the correct usage amounts were entered into the database. Usage staff may not have included a notation in the hardcopy file to document the change. The TCEQ is now taking steps to better document changes made to the usage information.

Management Response to Recommendations

1. *Implement quality control processes to ensure that the TERP staff correctly enter information into the TERP database.*

Management Response - Agree

The TCEQ agrees that additional quality control processes should be implemented to ensure that information is correctly entered into the TERP database. The program will establish a data entry QA/QC plan and SOP.

The TCEQ will perform an evaluation to identify data elements that have been and/or are most likely to be entered incorrectly in the database. The TCEQ will also assess what data elements are most crucial to the successful implementation of the program.

The SOP will highlight these data elements to be discussed in training conducted for grant application reviewers and data entry staff.

The QA/QC plan will also include periodic testing of key data elements to identify problems and to also identify staff that may be consistently entering

data incorrectly. When needed, action will be taken to ensure that the identified staff corrects their deficiencies with data entry.

Responsible Staff - Technical Specialist, Implementation Grants Section

Time Line - Staff training on correct data entry and data entry QA will be conducted by Spring 2011. A more comprehensive data QA/QC plan and SOP will be developed and implemented prior to the next Emissions Reduction Incentive Grant application period in FY 2012. The plan and SOP will then be updated as needed as part of the implementation of the new Oracle database in FY 2012.

2. *Consider including automated edits in the TERP database to ensure that VINs and other identification numbers that TERP staff enter into the database comply with length and format criteria.*

Management Response - Agree

The TCEQ will assess options for checks in the database and emissions reduction calculation spreadsheets to ensure that key data elements comply with length and format criteria.

The TCEQ will also assess where the application and reporting forms should include formatted entry blocks to ensure that the applicant enters correctly formatted data.

Responsible Staff – Technical Specialist, Implantation Grants Section

Time Line - Assessments will be completed and any updates will be made to the database, calculation spreadsheets, and application forms prior to the next Emissions Reduction Incentive Grant application period in FY 2012.

The Commission Should Improve Its Efforts to Recover TERP Program Grant Funds from Grantees that Do Not Comply with Program Requirements

From December 2006 through July 2010, the Commission asserted that it identified a total of more than \$62 million in grant funds from 593 TERP program grantees that failed to comply with disposition and/or usage requirements in the grant agreements. As of July 2010, the Commission had collected only about \$1 million of this amount. More consistent and timely enforcement efforts may result in the Commission recovering additional grant funds from non-compliant grantees.

The Commission attempts to recover grant funds from non-compliant grantees by invoicing these grantees. However, the Commission does not always promptly begin the invoicing process. The Commission's delays in taking action to recover funds from grantees that have not complied with vehicle disposition requirements (see Chapter 2-A) and usage requirements (see Chapter 2-B) may contribute to the Commission's low collection rate.

From December 2006 through July 2010, the Commission waited nearly six months on average before involving its General Law Division in efforts to recover grant funds from non-compliant grantees. More prompt communications between the Commission and its General Law Division may result in the Commission recovering additional grant funds from non-compliant grantees.

Warrant Holds

All state agencies and institutions of higher education are required to notify the Comptroller's Office about every person or debtor with an outstanding state debt (indebtedness, tax delinquency, or student loan default). Reporting these debts enables the Comptroller's Office to hold state payments issued to these individuals or entities in accordance with Texas Government Code, Section 403.055.

Source: *Hold Procedures Guide*, Comptroller of Public Accounts, January 8, 2010.

In addition, the Commission rarely placed warrant holds on non-compliant grantees that did not return grant funds. Warrant holds prevent non-compliant grantees from receiving payments from the State (see text box for additional information). The Commission asserted that it applied only five warrant holds on non-compliant TERP program grantees from fiscal year 2007 through fiscal year 2010. The five grantees owed the Commission a total of \$311,799, or less than 0.5 percent of the total amount the Commission was attempting to recover from non-compliant grantees. Applying warrant holds on more non-compliant grantees may increase the amount of funds the Commission recovers and encourage more grantees to comply with grant requirements.

Recommendations

The Commission should:

- Promptly invoice TERP program grantees that fail to comply with disposition and usage requirements.

- Promptly apply warrant holds to non-compliant TERP program grantees that owe the Commission grant funds.

Management's Response

General Response

The report states that from December 2006 through July 2010, the Commission had identified more than \$62 million in grant funds from 593 grantees who failed to comply with grant requirements. However, this amount represents all grantees that are currently in some stage of working with the TCEQ to correct deficiencies.

The TCEQ issues invoices to notify grantees of noncompliance and to facilitate recovery of grant funds if the noncompliance is not addressed. The invoice is used to notify the grantee that action is being taken by the TCEQ to address noncompliance with the conditions of the grant contract. The grantee may choose to pay the invoice and cancel the grant contract obligations or, where partial performance is made, pay partial reimbursement of the grant and revise the commitments under the grant. The grantee may also work to rectify the deficiencies and continue under the grant agreement without having to reimburse the state.

Of the approximately \$62 million in invoices, about \$17 million is outstanding from grantees for which the TERP program has exhausted attempts to work with the grantee to resolve the deficiencies. In these cases, the TERP program has turned over the projects to the General Law Division to request the Attorney General of Texas (AG) to file suit to recover the grant funds based on breach of the grant agreement. This amount represents 2.2 percent of the \$786 million in grants awarded from the beginning of the program in 2002 to present.

Management Response to Recommendations

1. Promptly invoice grantees who fail to comply with disposition and usage requirements.

Management Response - Agree

The invoices issued by the TCEQ are a tool to notify the grant recipient that the TCEQ finds the grantee in noncompliance with the conditions of the grant contract and that the grantee must either rectify that noncompliance or return some or all of the grant funds.

The program's goal is to work with grant recipients to ensure compliance, so that the emissions reductions will be achieved, rather than to quickly receive a refund from the grantee for not meeting certain deadlines.

The TCEQ agrees that it is important for the program to adhere to certain deadlines for taking progressively more stringent action against a deficient grantee. The program has revised its processes to ensure that deficiencies are not overlooked. Regular reconciliation is now being performed to confirm that outstanding items are invoiced or cleared within established deadlines.

Responsible Staff - Team Leader, Monitoring Team

Time Line - The program has already taken steps to refer grantees to the General Law Division for consideration in a timely manner.

2. *Promptly apply warrant holds to non-compliant grantees that owe the Commission grant funds.*

Management Response - Agree

The TCEQ agrees with the need for quick resolution of issues. Upon exhaustion of remedial efforts signified by the referral of the case to the TCEQ General Law Division (GLD), GLD, in consultation with the Office of the Attorney General, will make the determination to apply a warrant hold to a non-compliant grantee.

Responsible Staff - General Law Division

Time Line – This recommendation will be implemented by Fall 2011. The General Law Division will revise its case review procedures to include a review and determination regarding application of a warrant hold to a non-compliant grantee and shall apply warrant holds as legally appropriate.

Appendices

Appendix 1

Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to:

- Determine whether internal controls for Texas Emissions Reduction Plan (TERP) grant programs at the Commission on Environmental Quality (Commission) provide assurance that the programs comply with state law and that grant recipients comply with the terms of grant agreements and program guidelines.
- Determine whether TERP grant agreements protect the State's financial interests, comply with state contracting best practices, and allow the Commission to hold grantees accountable for grant requirements.

Scope

The scope of this audit covered documents and processes related to the Commission's TERP program grantee selection, monitoring, and enforcement activities from fiscal year 2006 through fiscal year 2010. Auditors also reviewed specific applications and grants from fiscal year 2006 through July 10, 2010.

Methodology

The audit methodology included interviewing Commission staff and reviewing documentation related to TERP program grant applications and reports submitted by grantees. Auditors also reviewed the Commission's administrative processes related to grant scoring and selection, monitoring of usage and disposition of old vehicles, and recovering grant funds from non-compliant grantees. Auditors also reviewed related Commission policies, rules, and statutes related to TERP program grants. Additionally, auditors obtained vehicle title and registration information from the Texas Department of Motor Vehicles and compared that information to the information that applicants and grantees submitted to the Commission.

Information collected and reviewed included the following:

- Statutes, guidelines, policies, and procedures relevant to the TERP program.
- The Commission's internal audit reports.

- TERP program grant application (see Appendix 4 for a copy of the application).
- Grantees' semi-annual usage reports.
- Grantees' documentation proving disposition of their old vehicles and equipment.
- Program information from the TERP program database.
- Documentation resulting from the Commission's site visits to applicants and grantees.
- Vehicle registration and titling information from the Texas Department of Motor Vehicles database.
- Social Security numbers (SSNs) from the death master file provided by U.S. Social Security Administration.

Procedures and tests conducted included the following:

- Tested compliance with eligibility determination procedures.
- Tested compliance with usage reporting requirements.
- Tested the accuracy of the TERP program database.
- Tested compliance with the disposition requirements of vehicles and equipment replaced by TERP program funds.
- Performed walk-throughs of the site visits performed by the Commission's TERP program consultant.
- Analyzed projected usage versus reported usage for TERP program grants.
- Reviewed disposition reasonableness for replaced equipment that was re-titled after the disposition was approved.
- Validated vehicle identification numbers in the TERP program database.
- Validated the SSNs in TERP program database.

Criteria used included the following:

- Texas Health and Safety Code, Chapters 386 through 391.
- *State of Texas Contract Management Guide*.
- The Commission's *Guideline for Emissions Reduction Incentive Grants* (RG-388).

- The Commission's *Standard Operating Procedures*.
- Code of Federal Regulations, Title 49, Section 565.2 (Vehicle Identification Number Requirements).
- Texas Administrative Code, Title 30, Chapter 114.

Project Information

Audit fieldwork was conducted from July 2010 through September 2010. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Scott Boston, MPAff (Project Manager)
- Anca Pinchas, MAcy, CIDA, CPA (Assistant Project Manager)
- George Eure, MPA
- Tessa Mlynar
- Tony Patrick, MBA
- Michele Pheeny, MBA
- Leslie Ashton, CPA (Quality Control Reviewer)
- Angelica Ramirez, CPA (Audit Manager)

TERP Program Fiscal Year 2010 Fact Sheet



GRANT PROGRAMS FY 2010 FACT SHEET

| | Incentive Grant (ERIG) | Rebate Grant |
|--------------------------------------|---|---|
| Eligible Counties | See Map | See Map |
| Eligible Applicants | Any person that owns and operates eligible vehicles and equipment in the eligible counties. Persons may include: individuals, businesses, non-profits government agencies, and school districts | Same |
| Project Categories | On-Road Vehicle Non-Road Equipment Marine Vessels Locomotives & Rail Relocation Stationary Engines | On-Road Vehicle Non-Road Equipment (diesel only) |
| Project Types | <ul style="list-style-type: none"> • New Purchase (<i>fleet expansion</i>) • Replacement of Old Vehicle/Equipment • Repower Existing Vehicle/Equipment (<i>engine replacement</i>) • Retrofit and Add-On Devices • Infrastructure for Idle-Reduction or Electrification Systems & Qualifying Fuel Infrastructure | <ul style="list-style-type: none"> • Replacement of Old Vehicle/Equipment • Repower Existing Vehicle/Equipment (<i>engine replacement</i>) |
| Total # of Grant Applications | No limit; Activities in the same area and same emissions source can be included in one application (separate supplemental forms for each project required) | Up to 10 vehicles/equipment; Each must have separate application |
| Max Funding Amount Based On | \$10,000 per ton of NOx reduced over the activity life (<i>\$5,000 for marine & locomotives</i>) | Predetermined Amounts – See tables |
| Approval Process | Competitive; Grants awarded by selection committee | Grants awarded on a first-come, first-served basis |
| Commitments | <u>Period</u> : 5 to 7 years non-road, on-road, and stationary. All other project types vary with a minimum of 5 years. <u>Usage</u> : Commitment to annual mileage/hour/fuel usage and percentage of usage in eligible areas listed in the application. | <u>Period</u> : 5 or 7 years non-road and 7 years for on-road. <u>Usage</u> : Commitment to percentage of usage in the eligible areas based on the chosen set of tables (25-49%, 50-74%, and 75-100%) in the eligible areas for on-road. No mileage/hour usage commitment. |

CONTACT INFORMATION

www.terpgrants.org 1-800-919-TERP (8377)

Para preguntas en Español: 512.239.3602

EXAMPLES OF REPLACEMENT GRANTS

REBATE EXAMPLE

| Example Applicant | Currently Owns & Operates a: | Wants to Purchase a: | Gross Vehicle Weight Rating: | Default HP (range): | % of Travel in Eligible Counties: | Maximum Eligibility: |
|-------------------|--------------------------------------|--|------------------------------|---------------------|-----------------------------------|----------------------|
| Applicant #1 | 1990 dump truck diesel (1989 engine) | 2006 dump truck diesel (2005 engine) | 52,000 | NA | 75-100% | \$56,782 |
| Applicant #2 | 1993 semi truck diesel (1992 engine) | 2008 semi truck diesel (2007 engine – default 2.375 emissions) | 80,000 | NA | 50-74% | \$20,283 |
| Applicant #3 | 1968 rubber tire loader | 2006 rubber tire loader | NA | (100-174) | 75-100% (7-year commitment) | \$25,292 |

Maximum rebate grant amount is predetermined based on default usage rates (miles/hours) and percentage of usage in the eligible areas. For non-road equipment, the required minimum usage in the eligible area(s) is 75%. For on-road equipment, the required minimum usage is 25%; however, three sets of tables are available with default ranges of 25-49%, 50-74% and 75-100% usage in eligible areas.

ERIG EXAMPLE

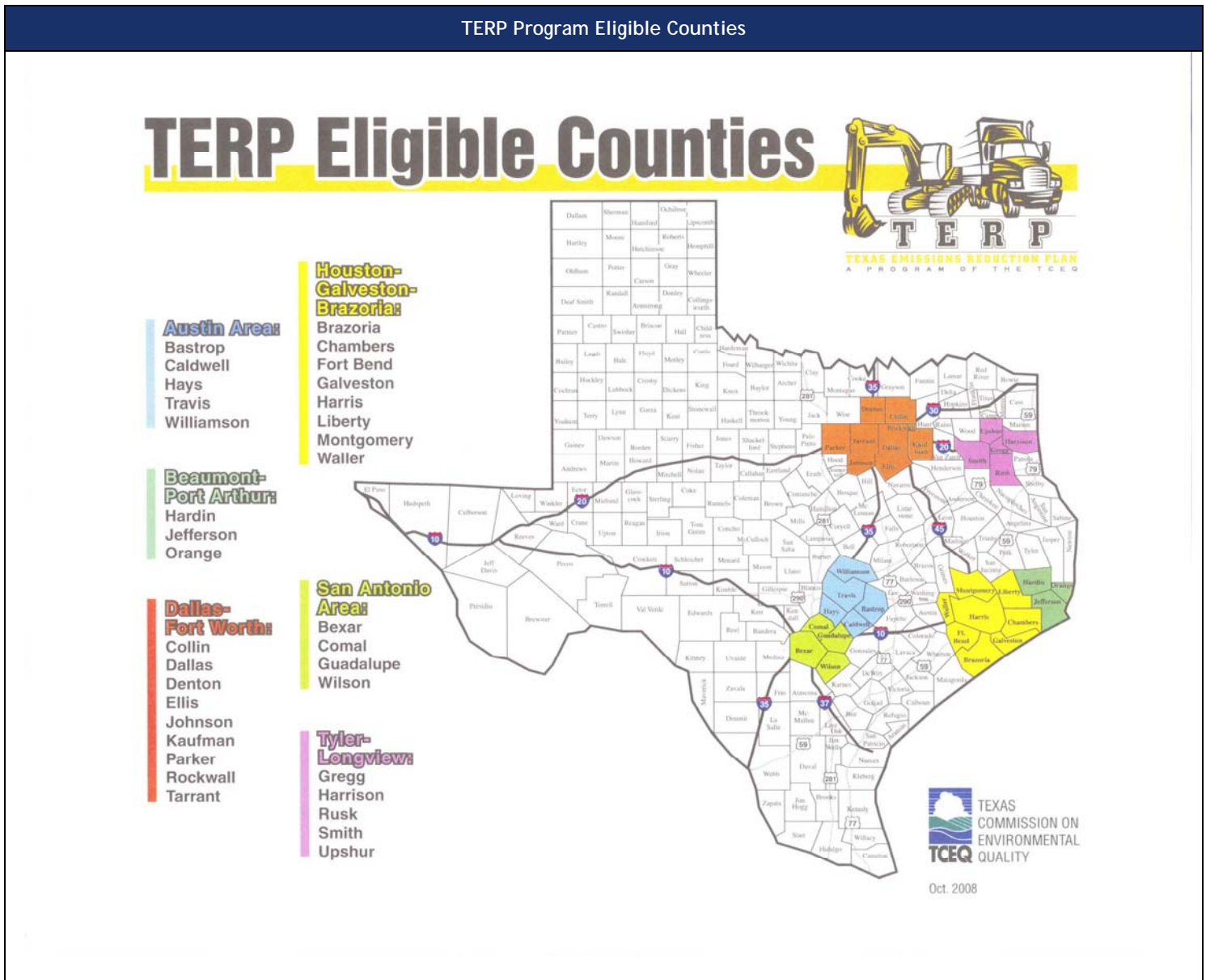
| Example Applicant | Currently Owns & Operates a: | Wants to Purchase a: | Gross Vehicle Weight Rating: | | Miles Committed to Travel | % of Travel within Eligible Counties | Maximum Eligibility: |
|-------------------|--|--|------------------------------|--------|---------------------------|--------------------------------------|----------------------|
| | | | Old HP | New HP | | | |
| Applicant #1 | 1990 dump truck diesel (1989 engine) | 2006 dump truck diesel (2005 engine) | 52,000 | | 45,000 | 75% | \$60,829 |
| Applicant #2 | 1993 semi truck diesel (1992 engine) | 2008 semi truck diesel (2007 engine – default 2.375 emissions) | 80,000 | | 67,500 | 50% | \$31,324 |
| Applicant #3 | 1968 rubber tire loader (7 year project) | 2006 rubber tire loader | 160hp | 134hp | 1,500 | 100% | \$56,959 |

Maximum ERIG grant amount is calculated using the actual usage rates (miles/hours), the actual percentage of usage in the eligible area, and the cost per ton of NOx reduced.

TERP Program Eligible Counties

Figure 1 shows the counties in which vehicles and equipment must operate to be eligible for Texas Emissions Reduction Plan (TERP) program grants.

Figure 1



Source: Commission on Environmental Quality.

Emissions Reduction Incentive Grant Application



Emissions Reduction Incentive Grant

Project Application Form

TCEQ- 10430

Version 10.01

1. Applications with altered language or forms will be void.
2. The maximum cost per ton for different types of projects is as follows: \$5,000 for marine vessel and locomotive projects and \$10,000 for non-road equipment, on-road vehicle, and stationary equipment projects. Applications are selected for funding on a competitive basis and projects with a lower cost per ton may have a greater chance of selection.
3. Applications may not contain activities from more than one type of emissions source (on-road, non-road, marine, locomotive, or stationary). Separate applications will be required for each type of emissions source activity.

ELIGIBLE COUNTIES

Austin: Bastrop, Caldwell, Hays, Travis, and Williamson Counties
Beaumont-Port Arthur: Hardin, Jefferson, and Orange Counties
Dallas-Fort Worth: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties
Houston-Galveston-Brazoria: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties
San Antonio: Bexar, Comal, Guadalupe, and Wilson
Tyler-Longview: Gregg, Harrison, Rusk, Smith, and Upshur

Application Deadline:

ERIG applications will be accepted until 5 p.m. on August 13, 2010, unless extended to a later date by the TCEQ.



Texas Commission on Environmental Quality
Air Quality Division
Implementation Grants Section (Incentive Grants), MC-204
P.O. Box 13087
Austin, TX 78711-3087
1-800-919-TERP (8377)
www.terpgrants.org

**TERP
EMISSIONS REDUCTION INCENTIVE GRANT (ERIG)
APPLICATION INSTRUCTIONS**

This application is to be used to apply for a Emissions Reduction Incentive Grant (ERIG) for projects under the Texas Commission on Environmental Quality's (TCEQ) Texas Emission Reduction Plan (TERP) program.

Project eligibility criteria and types of purchases eligible under this program are explained in the TCEQ's *Request for Applications (RFA)* and the *Guidelines for Emissions Reduction Incentive Grants (RG-388)*. Both can be found at www.terpgrants.org. Applicants should review both before completing this application.

HOW TO APPLY:

1. Complete a Project Application Form (10430). The application must be signed and dated.
2. Complete and attach the appropriate Supplemental Activity Form (10430a - 10430i) for each vehicle or piece of equipment to be funded.
Please note:
 - Applications must be typed or completed in blue or black ink, and should be signed in **BLUE** ink.
 - An application may not contain activities from more than one type of emissions source (on-road, non-road, marine, locomotive, or stationary).
 - Applications should not be put into binders or stapled. Please rubber band or paperclip applications.
 - All forms must be legible and unaltered. Application forms that are altered will not be accepted.
 - Please place multiple applications in different folders or envelopes, so that it is clear that more than one application is being submitted by the applicant.
3. Attach all required attachments. Depending on the project type, attachments may include: detailed quotes/bids, photographs of the vehicle/equipment to be replaced, proof of registration and current safety inspection, and/or a copy of the vehicle title.
4. Submit **three** copies (at least one copy must have an original signature) of the completed application to:

Regular Mail:

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

Express Mail:

Texas Commission on Environmental Quality
Air Quality Division
Implementation Grants (ERIG), MC-204
12100 Park 35 Circle, Bldg. F
Austin, TX 78753

Applications may be hand delivered to TCEQ at the reception desk, Rm. 2202, 2nd floor of Building F.

PLEASE NOTE:

- Applicants may not apply simultaneously for the same project under both the Emissions Reduction Incentive Grant (ERIG) Program and the Rebate Grant Program.
- Applications will not be accepted for an activity that was previously awarded a TERP grant and that was subsequently canceled by the grant recipient after the date of issuance of this Request for Applications (RFA).

EXCEL INSTRUCTIONS:

Each of the forms is on an individual Excel worksheet within a Workbook. Use the tabs located at the bottom of the worksheet to access each form.

PRINTING FROM EXCEL:

In order to print all the pages located in the workbook, please follow these directions
(1) Click on "File" (2) Click on "Print" (3) Under the "Print What" section, select "Entire Workbook"

APPLICATION PROCESSING

- After the close date of the application period, TCEQ staff will review all received grant applications. The applicant will be notified if any additional information is needed or if there are any discrepancies. Applications will then be scored and ranked according to the process listed in the RFA.
- This is a reimbursement program and applications are considered in a competitive manner. Submission of an application does not guarantee grant funding.
- For on-road activities only, the make, model, and manufacture year of the vehicle and/or engine that you purchase may differ from the information originally listed in the application. However, in all cases, the engine purchased must be certified to the federal NO_x emissions standard that corresponds to the Engine Emissions Model Year listed. Also, the vehicle must be of the same weight category as the one listed. Finally, you may not substitute the vehicle, equipment, and/or engine being replaced with a different unit.

PUBLIC INFORMATION NOTICES

If you have questions on how to fill out this form or about the Texas Emissions Reduction Plan program, please contact us at 1-800-919-TERP (8377).

Upon submission, all proposals become the property of the State of Texas and as such become subject to the Texas Open Records Act, Texas Government Code, Chapter 552.

Personal Information Policy: Individuals are entitled to request and review their personal information the agency gathers on its forms. They may also have any errors in their information corrected. To review such information, contact the TCEQ TERP program at 1-800-919-TERP (8377).

**TERP - ERIG GRANT
GRANT INFORMATION AND REQUIREMENTS**

Below is a list of the basic grant requirements for the ERIG Program. Please refer to the Request for Applications (RFA) for a complete list of grant requirements as well as additional information about the program.

USAGE REQUIREMENTS

ON-ROAD: The applicant must designate in the application the percentage of the annual mileage or fuel usage that will occur in the eligible counties, which may not be less than 25 percent of the annual mileage or fuel usage. In addition to the percentage of annual miles or fuel usage in the eligible counties committed to by the applicant, the applicant must also commit to operating the vehicle at least 75 percent of the annual miles or fuel usage in a combination of the eligible counties and on one or more of the designated highways or roadways.

NON-ROAD, LOCOMOTIVE, MARINE VESSELS, STATIONARY EQUIPMENT, AND ALL INFRASTRUCTURE PROJECTS: The applicant must designate in the application the percentage of usage that will occur in the eligible counties, which may not be less than 75 percent of the annual usage. Usage outside of the eligible counties, regardless if it occurs on a designated highway or roadway, will not count towards the 75 percent requirement.

Applicants are cautioned against overstating the historical and/or projected annual usage (mileage, hours of operation, and/or fuel use) and the percentage of that usage in eligible counties in order to qualify for a grant. The grant contract will require the return of a share of the grant funds if the annual usage targets and the percentage of that usage in the eligible counties are not met. Semi-annual monitoring reports will be required and the TCEQ will periodically conduct site visits to verify that the information provided is correct.

USE OF CONSULTANTS

Private consultants may be available to assist an applicant to complete and submit an application. These consultants do not represent the TCEQ, and the TCEQ neither encourages nor discourages the use of a consultant to assist with the application process. The TCEQ has no agreement with any consultant that applications submitted by a particular consultant will receive more favorable treatment than other applications. Any fees charged by a consultant are the responsibility of the applicant and may not be charged to the grant, either directly or as an addition to the cost basis of the grant-funded vehicle or equipment. Also, all purchase decisions must be based on sound business practices and arm's length bargaining. It is generally considered acceptable for an applicant to accept assistance from a dealer or an agent of a dealer in preparing an application, as long as any decision by the applicant to purchase the grant-funded vehicle or equipment from that dealer is made independently and meets the other reasonableness provisions in the grant contract.

However, if the consultant is paid directly by the applicant to complete the application documents and to act as the applicant's agent for the grants process, purchases of grant-funded vehicles or equipment from a company in which the consultant has an interest would not normally be considered appropriate by the TCEQ under the reasonableness requirements of the grant contract.

USE OF GLOBAL POSITIONING SYSTEMS (GPS)

The costs to purchase and install a GPS to track and log the location and use of the equipment may be included in the incremental costs. Ongoing operational and maintenance charges may not be included. The GPS system must be purchased from the vendor authorized by and contracted with the TCEQ to provide the system. Contact TCEQ for information on the approved GPS provider.

If the costs for the purchase and installation of a TCEQ-approved Global Positioning System (GPS) are included in the grant, the grant recipient must agree to pay for any required ongoing operational costs of using the GPS, including the reporting system provided by the vendor, for the Activity Life. Failure to maintain and use the GPS may result in a requirement to return any grant funds used to pay for all or part of the purchase and installation of the GPS.

If the grant recipient installs a GPS from the TCEQ-authorized GPS contractor, either as part of the grant or with other funds, the TCEQ may accept the reports available from the GPS service provider in lieu of the grant recipient submitting semi-annual usage reports. The grant contract will contain specific requirements for using this reporting option. In particular, the grant recipient must agree to periodically verify the information being reported and to pay for the ongoing costs associated with obtaining the reports from the GPS provider.

TCEQ EMPLOYEES

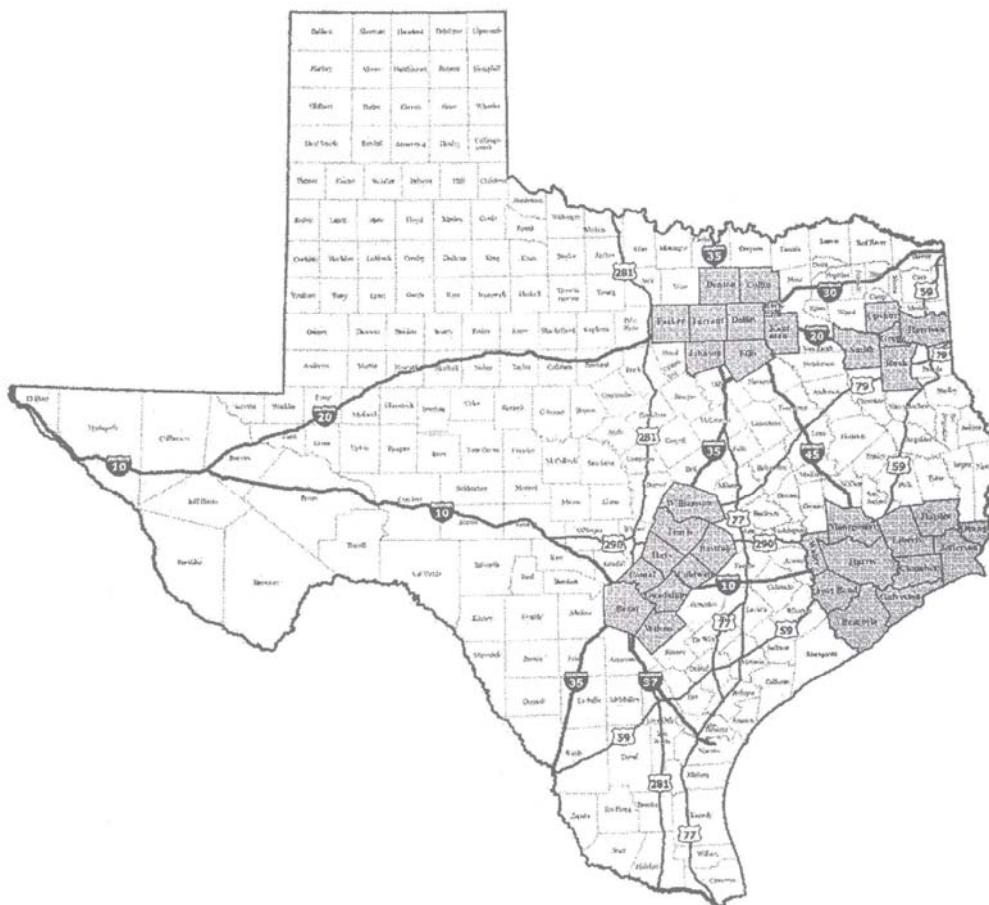
Businesses or other entities in which a TCEQ employee, spouse, or family member of a TCEQ employee has a direct or indirect interest, financial or otherwise, may be prohibited from receiving a grant, depending upon the nature of the interest. Any questions regarding the eligibility of an entity to apply for a grant should be referred to the TERP staff early in the application process.

TAXES

Grant recipients are responsible for complying with all U.S. Internal Revenue Service (IRS) laws and rules regarding the taxable status of grants. The grant payments are Form 1099 reportable.

TERP - ERIG GRANT

MAP OF THE ELIGIBLE COUNTIES,
INCLUDING THE DESIGNATED HIGHWAYS AND ROADWAYS



Texas Commission on Environmental Quality (TCEQ)
TEXAS EMISSIONS REDUCTION PLAN (TERP)
EMISSIONS REDUCTION INCENTIVE GRANTS PROGRAM

APPLICANT SURVEY FORM

Please complete and submit with the application

In order to better serve our customers, the TCEQ would appreciate your completion of this survey regarding how you first learned about the TERP grant programs. Completion and inclusion in the application is optional.

Applicant Name: _____

County: _____

Please indicate how you first learned about the TERP grant programs:

- | | |
|--------------------------|---|
| <input type="checkbox"/> | TERP Web Site |
| <input type="checkbox"/> | Direct Mailing |
| <input type="checkbox"/> | Phone Call |
| <input type="checkbox"/> | Presentation and Information at Meeting or Convention |
| <input type="checkbox"/> | Dealer or Vendor |
| <input type="checkbox"/> | Consultant |
| <input type="checkbox"/> | Advertisement in Newspaper |
| <input type="checkbox"/> | Advertisement in Magazine or other Periodical |
| <input type="checkbox"/> | Radio |
| <input type="checkbox"/> | Billboard |
| <input type="checkbox"/> | Television News |
| <input type="checkbox"/> | Other Applicants or Grant Recipients |
| <input type="checkbox"/> | Other (explain below): |

After you first learned about the TERP grant programs, please indicate how you first learned about the opening of this grant application period:

- | | |
|--------------------------|---|
| <input type="checkbox"/> | TERP Web Site |
| <input type="checkbox"/> | Email Notice |
| <input type="checkbox"/> | Direct Mailing Notice |
| <input type="checkbox"/> | Called TERP 800 Number |
| <input type="checkbox"/> | Presentation and Information at Meeting or Convention |
| <input type="checkbox"/> | Phone Call from TCEQ or Outreach Representatives |
| <input type="checkbox"/> | Dealer or Vendor |
| <input type="checkbox"/> | Consultant |
| <input type="checkbox"/> | Advertisement in Newspaper |
| <input type="checkbox"/> | Advertisement in Magazine or other Periodical |
| <input type="checkbox"/> | Radio |
| <input type="checkbox"/> | Billboard |
| <input type="checkbox"/> | Television News |
| <input type="checkbox"/> | Other Applicants or Grant Recipients |
| <input type="checkbox"/> | Other (explain below): |

TCEQ USE ONLY
Application #

TCEQ USE ONLY
Contract #

Texas Commission on Environmental Quality (TCEQ)
TEXAS EMISSIONS REDUCTION PLAN (TERP)
EMISSIONS REDUCTION INCENTIVE GRANT APPLICATION

FORM 1a: Signature Page

1. Applicant/Company Name:

This block is for information purposes only. The legal name entered on Form 3 will apply for contracting purposes, regardless of the name entered in this block.

Please note: The applicant must be the owner of the vehicle or equipment.

2. Primary Area for the Project? Please only check ONE

- Austin Area (Williamson, Travis, Bastrop, Caldwell, Hays)
 Beaumont-Port Arthur Area (Hardin, Orange, Jefferson)
 Dallas - Ft. Worth Area (Denton, Collin, Tarrant, Dallas, Rockwall, Kaufman, Ellis, Johnson, Parker)
 Houston-Galveston-Brazoria Area (Brazoria, Fort Bend, Waller, Montgomery, Liberty, Chambers, Galveston, Harris)
 San Antonio Area (Comal, Guadalupe, Wilson, Bexar)
 Tyler-Longview Area (Upshur, Gregg, Rusk, Smith, Harrison)

Authorized Official: Applicant or an employee of the applicant authorized to apply for the grant

I hereby certify that to the best of my knowledge and belief, all information provided in this application and any attachments is true and correct. If the application was prepared by a third party, I certify that I have read the complete application after all forms and information were completed. I agree with the information provided, and the date provided below is the date I signed the form. I further understand that prior to incorporating these forms and information into a grant contract the data and information may be revised by the TCEQ for accuracy and that our acceptance of a grant contract will constitute agreement with those revisions. Failure to sign the application or signing it with a false statement may make the submitted offer or any resulting contracts voidable.

Signature of Authorized Official:

PLEASE SIGN IN BLUE INK. Faxed or photocopied signature pages will not be accepted. The application, with an original signature, must be received by the application deadline or the application will not be accepted.

Printed Name of Authorized Official:

Authorized Official's Title:

Date of Signature (must be the date the form was signed in ink):

Intentional falsification of these forms will be prosecuted to the extent allowed under the law and may be used as an adverse factor in future grant selection decisions.

If you have questions on how to fill out this form or about the Texas Emissions Reduction Plan (TERP) program, please contact us at 1-800-919-TERP (8377).

Upon submission, all proposals become the property of the State of Texas and as such become subject to the Texas Open Records Act, V.T.C.S. art. 6252-17a.

Personal Information Policy: Individuals are entitled to request and review their personal information that the agency gathers on its forms. Individuals may also have any errors in their information corrected. To review such information, contact the TCEQ TERP program at 1-800-919-TERP (8377).

Do NOT alter forms. Altered forms will be void.
This form is only valid for the application period ending August 13, 2010.

Texas Commission on Environmental Quality (TCEQ)
TEXAS EMISSIONS REDUCTION PLAN (TERP)

EMISSIONS REDUCTION INCENTIVE GRANT APPLICATION

FORM 1b: Third-Party Preparer Signature Page

| | | | |
|---|--|----|--|
| Was this application substantially completed or otherwise prepared by a third party, including a consultant, dealer, or other person not employed by the applicant? Check either "yes" or "no" below. | | | |
| Yes | | No | |
| If "yes" then the preparer must sign below. Please sign in BLUE Ink. | | | |

| | |
|--|--|
| I hereby certify that to the best of my knowledge and belief all information provided in this application and any attachments is true and correct, as represented to me by the applicant. I understand that failure to sign the application or signing it with a false statement may make the submitted offer or any resulting contracts voidable. | |
| Must be original signature | |
| Signature of Third-Party Preparer | |
| Printed Name (include Mr. or Ms.) | |
| Title | |
| Company Name | |
| Address | |
| Phone Number | |
| Intentional falsification of these forms will be prosecuted to the extent allowed under the law and may be used as an adverse factor in future grant approval decisions for applications involving the third-party preparer. | |
| Date of Signature (in Ink) | |

EMISSIONS REDUCTION INCENTIVE GRANT APPLICATION

FORM 2: Activity Information

Each activity requires a separate Supplemental Activity Application Form .

1. Supplemental Activity Attachments

Each activity (purchase, replacement, repower, retrofit/add-on, or infrastructure) will require a separate Supplemental Activity Application Form. Please note, a project application may not contain activities from more than one emissions source (on-road, non-road, marine, locomotive, or stationary). Separate applications will be required for each type of emissions source activity.

Indicate which Supplemental Activity Attachments are included with this application.

Lease/Purchase, Replacement, Repower, Retrofit, Add-on Technology Projects (Only one source allowed.)

- On-road Heavy Duty Vehicles (Form 10430a)
- Non-road Heavy Duty Equipment (Form 10430b)
- Marine Vessels (Form 10430c)
- Locomotives (Form 10430d)
- Stationary Equipment (Form 10430e)

Infrastructure Projects (The following may be combined with the sources listed above if applicable.)

- Refueling (Form 10430f)
- On-Site Electrification & Idle Reduction (Form 10430g)
- On-Vehicle Electrification & Idle Reduction (Form 10430h)
- Rail Relocation and Improvement (Form 10430i)

* Applications for school bus retrofits may be ranked and selected separate from other projects. In order to qualify for this consideration, all activities included in an application must be for the retrofit of school buses.

2. Total number of Supplemental Activity Application Forms attached:
(Total number of projects/activities included in this application)

Note: The grant selections will be based, in part, on the cost per ton of NO_x projected to be reduced by the project. If you are approved for a project involving multiple activities and you do not complete all of those activities, and the decision to not complete all of the activities will result in an increase to the overall project cost per ton, then the TCEQ may need to reduce the authorized activity grant amounts for the activities completed in order to keep the cost per ton at the same level. If reimbursements were already made for some of the activities, some of the reimbursed amounts may need to be refunded to the TCEQ in order to comply with this requirement.

| 3. Project Grant Amount | Applicant's Request | Approved by TCEQ |
|---|---------------------|------------------|
| Total Incremental Cost of the Project <small>(totals from the attached Supplemental Activity Forms)</small> | | \$ |
| Total Grant Amount Requested <small>(totals from the attached Supplemental Activity Forms)</small> | | \$ |
| Grant amounts may be taxable. Consult your tax professional. | | |

4. Agricultural Activities: Projects involving **non-road and stationary equipment** used in agriculture may be considered for special funding allocation separate from other types of applications. To qualify, all of the activities included in the application must be involved in agriculture, to include: (1) the cultivation of the soil to produce crops; (2) horticulture, floriculture, or viticulture; (3) forestry; (4) pumping of water for agricultural purposes; or (5) the raising or keeping of livestock or poultry.

| | | | | |
|---|-------------|--|------------|--|
| Do all of the activities included in this application involve non-road or stationary equipment used in agriculture, as defined above? | Yes: | | No: | |
|---|-------------|--|------------|--|

Completion of this section is optional.

| 5. NO _x Reductions and Cost Per Ton | Applicant's Estimate | Approved by TCEQ |
|---|----------------------|------------------|
| Applicant's estimated total NO_x reductions for the project (in tons): | | |
| Applicant's estimate of the cost per ton of NO_x reduced*: | | \$ |

*Grants involving locomotive and marine vessels may not exceed \$5,000 per ton of NO_x reduced. Grants involving non-road equipment, on-road vehicles, and stationary equipment may not exceed \$10,000 per ton of NO_x reduced.

EMISSIONS REDUCTION INCENTIVE GRANT APPLICATION

FORM 3: Applicant Information

| | | | | |
|--|--|---|--|------------------------------|
| 1. Applicant/Company Legal Name for Contracting Purposes: Applicant must be the owner of the vehicle or equipment. The legal name should match the name listed on the vehicle title and registration. For instance, if the applicant is a company, the company (not the individual owning the company) must be the owner of record of the vehicle or equipment. | | | | |
| | | | | |
| 2. Payee Identification Number (PIN): Indicate the type of number you are providing to be used for your PIN. | | | | |
| Provide only <u>one</u> (1) of the following numbers. Do <u>not</u> complete both A and B. | | | | |
| A. Only complete if you are applying as an individual. Social Security Number (SSN): _____ | | | | |
| OR | | | | |
| B. Only complete if you are applying as a company or other entity (including DBA's). Federal Employer Identification (FEI) Number: _____ | | | | |
| 3. Is the applicant currently reporting any Texas tax to the Comptroller's Office other than unemployment (e.g., sales tax, franchise tax)? | | | | |
| Yes, enter Texas Taxpayer Number _____ | | | | |
| No _____ | | | | |
| 4. Mailing Address for Grant Payments: Include individual or entity name, address, city, state, and zip code. | | | | |
| | | | | |
| <i>(Name)</i> | | <i>(Address)</i> | | <i>(City)</i> |
| | | | | <i>(State)</i> |
| | | | | <i>(Zip)</i> |
| 5. Ownership Codes: Check only one (1) ownership type that applies to this application and matches the legal name. | | | | |
| <input type="checkbox"/> I - Individual Recipient (not owning a business) | | <input type="checkbox"/> J - Joint Venture | | |
| <input type="checkbox"/> S - Sole Ownership (individual owning a business) Owner's Name: _____ Owner's SSN: _____ | | <input type="checkbox"/> L - Limited Partnership Texas File #: _____ | | |
| <input type="checkbox"/> P - Partnership, if checked, enter two partner's names and Social Security Numbers (SSN). If a partner is a corporation, use the corporation's Federal Employer's Identification (FEI) Number. Name: _____ SSN/FEI#: _____ | | <input type="checkbox"/> T - Texas Corporation / Limited Liability Corporation Texas Charter #: _____ | | |
| <input type="checkbox"/> N - Other (explain): _____ | | <input type="checkbox"/> A - Professional Association Texas Charter #: _____ | | |
| | | <input type="checkbox"/> C - Professional Corporation Texas Charter #: _____ | | |
| | | <input type="checkbox"/> O - Out-of-State Corporation | | |
| | | <input type="checkbox"/> G - Governmental Entity | | |
| | | <input type="checkbox"/> U - State Agency/University | | |
| | | <input type="checkbox"/> R - Foreign (outside of USA) | | |
| 6. Do you plan to assign your grant payments to a third party "Assignee"? | | | | |
| | | | | <input type="checkbox"/> Yes |
| | | | | <input type="checkbox"/> No |
| If "yes", you must submit a completed "Notice of Assignment" and a "Texas Application for Payee Identification Number (AP-152)". These forms will be provided for you to complete and submit if you are awarded a grant. | | | | |
| 7. Describe Applicant's Primary Business Type: (i.e., transit system, gravel hauling, excavation, school, etc.) | | | | |
| | | | | |
| 8. Date Business Founded/Started: _____ | | | | |
| Attach any materials (ex: brochures, website address) that provide general information about your business. | | | | |

EMISSIONS REDUCTION INCENTIVE GRANT APPLICATION

FORM 4: Contact Information

| | | | |
|---|-------------------------------|---------------------|---|
| 1. Authorized Official <small>The person signing this application.</small> | | | |
| Name: (Mr. or Ms.) _____ | Title: _____ | | |
| Mailing Address: | _____ | _____ | _____ |
| | <small>Street Address</small> | <small>City</small> | <small>State</small> <small>Zip</small> |
| Physical Address: <small>(for express delivery)</small> | _____ | _____ | _____ |
| | <small>Street Address</small> | <small>City</small> | <small>State</small> <small>Zip</small> |
| Contact Phone #s: _____ | Fax: _____ | | |
| Email Address: _____ | | | |

| | | | |
|---|-------------------------------|---------------------|---|
| 2. Designated Project Representative <small>The applicant or an employee of the applicant who will serve as the grant contact and will be responsible for receiving and submitting grant documents, including annual usage reports. This person may not be a consultant or dealer.</small> | | | |
| <input type="checkbox"/> Same as Authorized Official | | | |
| Name: (Mr. or Ms.) _____ | Title: _____ | | |
| Mailing Address: | _____ | _____ | _____ |
| | <small>Street Address</small> | <small>City</small> | <small>State</small> <small>Zip</small> |
| The physical address is a place where you can receive overnight express packages containing legal documents. | | | |
| Physical Address: <small>(for express delivery)</small> | _____ | _____ | _____ |
| | <small>Street Address</small> | <small>City</small> | <small>State</small> <small>Zip</small> |
| Contact Phone #s: _____ | Fax: _____ | | |
| Email Address: _____ | | | |

| | | | |
|---|-------------------------------|---------------------|---|
| 3. Financial Officer (if applicable) | | | |
| <input type="checkbox"/> Same as Authorized Official | | | |
| Name: (Mr. or Ms.) _____ | Title: _____ | | |
| Mailing Address: | _____ | _____ | _____ |
| | <small>Street Address</small> | <small>City</small> | <small>State</small> <small>Zip</small> |
| Physical Address: <small>(for express delivery)</small> | _____ | _____ | _____ |
| | <small>Street Address</small> | <small>City</small> | <small>State</small> <small>Zip</small> |
| Contact Phone #s: _____ | Fax: _____ | | |
| Email Address: _____ | | | |

| | | | |
|---|-------------------------------|---------------------|---|
| 4. Designated Location for Records Access and Review by TCEQ or its Representative | | | |
| Physical Address: | _____ | _____ | _____ |
| | <small>Street Address</small> | <small>City</small> | <small>State</small> <small>Zip</small> |

EMISSIONS REDUCTION GRANT PROGRAM

FORM 5: CERTIFICATIONS

All individuals or business entities, including sole proprietors must complete this section, regardless if child support obligations apply to the applicant.

| Certification Regarding Child Support Obligations | |
|---|---|
| <p>Under Section 231.006, Texas Family Code, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive a state-funded grant or loan. All applicants must include in the application the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of 25 percent of the business entity submitting the application.</p> | |
| <p><i>Please check one of the options below. If the first option is checked, list the Name and Social Security Numbers of any individual who owns 25% or more of the business entity submitting this application, regardless if child support obligations apply to that individual.</i></p> | |
| <input type="checkbox"/> | Check if the applicant is an individual or sole proprietorship, or if one or more individuals own 25% or more of the business entity. List the names and social security numbers (SSN) below. |
| Name: _____ | SSN: _____ |
| Name: _____ | SSN: _____ |
| Name: _____ | SSN: _____ |
| Name: _____ | SSN: _____ |
| <input type="checkbox"/> | Check if there is not a single individual who owns 25% or more of the business. |
| <input type="checkbox"/> | Check if the applicant is not an individual or business entity. |

| | |
|--|----------------------|
| <p>I certify that to the best of my knowledge and belief that the individual or business entity submitting this application is eligible to receive a grant. I acknowledge that the grant contract may be terminated and any payments withheld if this certification is inaccurate.</p> | |
| Signature of Authorized Official: _____ | Date (in ink): _____ |

EMISSIONS REDUCTION INCENTIVE GRANT APPLICATION

FORM 6: Program-Specific Certifications and Assurances

By signing this application, the applicant indicates their understanding of and agreement to adhere to the identified program-specific requirements.

The applicant hereby assures and certifies compliance with all state statutes, regulations, policies, guidelines, and requirements as they relate to the application, acceptance, and use of funds for this project. The applicant further understands, assures and/or certifies that:

- 1 To the best of its knowledge, the proposed activities are not required by any state or federal law, rule, or regulation, memorandum of agreement, or other legally binding document.
- 2 It understands that any marketable credits under state or federal emissions reduction credit averaging, banking, or trading programs, that may be generated by the proposed activities, are transferred to the state implementation plan or permanently retired, and may not be used by the applicant. If the project is funded, the applicant waives, for all time, its right to claim emissions reduction credits which may accrue during the activity life as a result of the use of the low-emission technology which is funded under this program, and agrees not to apply for any such credits based on reductions generated in the eligible counties. Credits that accrue after the end of the activity life are not transferred, but may not be used to calculate the cost-effectiveness of the project.
- 3 All public financial incentives that will be used by the applicant that directly offset the costs of the proposed activities, including tax credits or deductions, other grants, or any other public financial assistance have been properly listed where indicated on the application forms and the incentive amounts requested reflect a reduction in the eligible incremental costs based on the value of those incentives.
- 4 It understands that failure to achieve the NO_x emissions reductions projected to be achieved for this project may result in the TCEQ requiring the return of all or a share of the grant funds. Achievement of the emission reductions will be based on the grant equipment being used for the annual amount of hours, miles, or fuel use that occurs in the eligible counties, as designated in the application for that activity.
- 5 It understands that failure to operate the grant equipment for the annual usage and percentage of annual use in the eligible counties as designated in the application may be considered non-compliance with the grant agreement and may result in the TCEQ requiring return of all or a share of the grant funds.
- 6 It will monitor the use of grant-funded vehicles, equipment, infrastructure, or qualifying fuel, and report semi-annually to the TCEQ over the designated activity life. If a TCEQ-approved GPS system is installed, it agrees to maintain and use that system and to verify the data reported in accordance with the provisions of the grant contract.
- 7 It will notify the TCEQ of any termination of use, change in use, sale, transfer, or destruction of grant-funded vehicles or equipment, or change in use of qualifying fuel, during the activity life. It further agrees that, during the activity life, the TCEQ may be entitled to the return of all or a share of the grant funds for any loss of emissions reductions compared with the emissions reductions projected in awarding the grant.
- 8 It will maintain, for the term of the activity, property loss insurance or self-insurance coverage on any vehicles, equipment, or infrastructure acquired, leased, repowered, retrofitted, or constructed using these funds, sufficient to cover the costs of reimbursing the state for its pro rata share of the activity costs.

EMISSIONS REDUCTION INCENTIVE GRANT APPLICATION

FORM 7: General Certifications and Assurances

This section serves to assure the TCEQ that you understand and agree to the statements. These provisions relate to the basic contract form which will be in force between the applicant and the TCEQ upon award of a grant. TCEQ urges applicants to download a copy of the example grant contract from www.terpgrants.org and review it so that any questions can be discussed early in the application review process. By signing this application, the applicant assures and certifies that:

- 1 **Legal Authority.** It possesses legal authority in the State of Texas to apply for the grant and that the applicant's governing body has authorized the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the authorized official to act in connection with the application and to provide such additional information as may be required.
- 2 **Uniform Grant Management Standards.** It will comply the Uniform Grant Management Standards (UGMS), adopted by the Texas Office of the Governor, in accordance with Chapter 783, Texas Government Code.
- 3 **Procurement of Goods and Services.** In procuring goods and services, it will comply with Part II. Cost Principles for State and Local Governments and Other Affected Parties and Part III. State Uniform Administrative Requirements for Grants of the UGMS. All procurement transactions will be conducted in a manner providing full and open competition.
- 4 **Historically Underutilized Businesses (HUBs).** Qualified HUBs, as defined and designated under state law, shall have the maximum practicable opportunity to participate in the performance of the work arising out of this project.
- 5 **Conflict of Interest.** Applicant has not given, offered to give, nor intends to give at anytime hereafter, any economic opportunity, future employment, gift, loan gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted application.

Under Government Code § 2155.004, no person involved in the preparation of the Request for Grant Applications may have any financial interest in this application. If applicant is not eligible, then any contract resulting from this application shall be immediately terminated. Furthermore, under Section 2155.004, Government Code, the applicant certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

- 6 **Nondiscrimination.** It will comply with all State and Federal statutes relating to nondiscrimination.
- 7 **Grant Administration.** It will maintain an appropriate grant administration system to ensure that all terms, conditions, and specifications of the grant, including these certifications and assurances, are met.
- 8 **Audit.** Pursuant to Section 2262.003 of the Texas Government Code, the state auditor may conduct an audit or investigation of the vendor or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the applicant or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the applicant or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Applicant will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract it awards.
- 9 **Debt to the State.** It is not indebted to the state or have an outstanding tax delinquency. It further understands that the Texas Comptroller is precluded by law from paying a person who is indebted to the state or has a tax delinquency. The applicant must comply with all State and Federal tax laws and fee requirements and is solely responsible for filing all State and Federal tax and fee forms.

Continued on next page

EMISSIONS REDUCTION INCENTIVE GRANT APPLICATION
FORM 7: General Certifications and Assurances (continued)

- 10 **Grant Contract.** It understands that a copy of the grant contract shell is available from the TCEQ, including a copy posted on the TCEQ's web site at www.terpgrants.org. It further understands that the TCEQ will not normally change the contract language to deal with individual requests from grant recipients.
- 11 **Contracting with an Executive of a State Agency.** Under Government Code § 669.003, relating to contracting with an executive of a state agency, Applicant represents that no person who, in the past four years, served as an executive of the Texas Commission on Environmental Quality (TCEQ) or any other state agency, was involved with or has any interest in this Application. If Applicant employs or has used the services of a former executive head of TCEQ or other state agency, then Respondent shall provide the following information: Name of former executive, name of state agency, date of separation from state agency, position with Applicant, and date of employment with Applicant.
- 12 **Debarment.** Applicant certifies that the applying entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.
- 13 **Hurricane Katrina and Other Natural Disasters.** Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

Under Section 2155.006 of the Texas Government Code, the bidder certifies that the individual or business entity named in this Application is not ineligible to receive the specified contract and acknowledges that any contract resulting from this IFB may be terminated and payment withheld if this certification is inaccurate.

The Commission's Overall Management Responses

**Texas Commission on Environmental Quality (TCEQ)
Management Responses to
State Auditor's Office Audit Report on
The Texas Emissions Reduction Plan Grants Program
At the Commission on Environmental Quality
November 23, 2010**

Comments Regarding the Overall Conclusion

The Texas Commission on Environmental Quality (TCEQ) agrees with many of the recommendations and has already made improvements to some areas. In some cases, the TCEQ agrees with intent of the recommendation but has provided an alternative approach for dealing with the issue identified in the audit report.

Most of the recommendations in the audit report require additional administrative oversight. In contrast to many other grant programs where oversight responsibilities of the granting agency end with the reimbursement, the Texas Emissions Reduction Plan (TERP) grants require oversight and monitoring of the grant projects for up to seven years after reimbursement payments are made. Accordingly, the administrative responsibilities of the program grow with each grant round. The TCEQ must continually assess the most cost-effective approaches when making decisions on administrative activities.

In 2009, additional full-time equivalents were approved and the percentage of the TERP Fund that may be used for administration was increased to administer additional TERP programs as directed by legislation. Because the allocation of administrative funds is based on a percentage of the overall allocation, which was reduced over the current fiscal biennium, the "actual" increase in administrative funding was limited.

As explained in the response to each recommendation, the TCEQ will work to implement the recommendations with available resources. However, additional resources would be needed if significant increases in administrative and field oversight are desired to further evaluate and reduce program risk.

In evaluating the TCEQ's implementation of the TERP program, it is also important to note the unique nature of the program. Many other state programs are either aimed at ensuring regulatory compliance or provide funding under entitlement benefits programs. In contrast to those other types of programs, the TERP program provides voluntary incentives to reduce emissions of nitrogen oxides (NO_x) in the TERP-eligible counties. The approach taken by the TCEQ has been to work with grantees to address problems or issues so that the emissions reductions are achieved. The return of grant funds has been the option of last resort, only after efforts are exhausted to work with grantees to bring them into compliance.

In particular, the TCEQ would like to clarify statements regarding the inability of the commission to recover significant grant funds to ensure compliance with the grant requirements. The report states that from December 2006 through July 2010, the Commission had identified more than \$62 million in grant funds from 593 grantees who failed to comply with grant requirements. However, this amount represents all grantees that are in some stage of working with the TCEQ to correct deficiencies.

The TCEQ issues invoices to notify grantees of noncompliance and to facilitate recovery of grant funds if the noncompliance is not addressed. The invoice is used to notify the grantee that action is being taken by the TCEQ to address noncompliance with the conditions of the grant contract. The grantee may choose to pay the invoice and cancel the grant contract obligations or, where partial performance is made, pay partial reimbursement of the grant and revise the commitments under the grant. The grantee may also work to rectify the deficiencies and continue under the grant agreement without having to reimburse the state.

Most invoices issued by the TCEQ result in compliance by the grantee or voluntary return of grant funds. Only those projects for which the grantee refuses to correct the deficiencies or voluntarily return the funds are referred to the Attorney General of Texas (AG).

Of the approximately \$62 million in invoices, about \$17 million is outstanding from grantees for which the TERP program has exhausted attempts to work with the grantee to resolve the deficiencies. In these cases, the TERP program has turned over the projects to the General Law Division to request the AG to file suit to recover the grant funds based on breach of the grant agreement. This amount represents 2.2 percent of the \$786 million in grants awarded from the beginning of the program in 2002 to present.

The TCEQ also has an active fraud investigation program. The TCEQ funds an environmental prosecutor in the Travis County District Attorney's (DA) office. TCEQ investigators have worked closely with the DA's office to investigate fraud in the TERP program and to actively pursue criminal action. These efforts have resulted in several successful prosecutions. The agency has made a point to notify grantees and stakeholders about these convictions as a deterrent to future fraud.

Finally, the TCEQ agrees with the findings and recommendations regarding the TERP database. The program has been working on a new Oracle database that will help address many of the reliability issues identified in the report. Funding for the database was approved under the Capital Budget Rider for the current fiscal biennium. The new database is expected to be in place by Fall 2011.

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable David Dewhurst, Lieutenant Governor, Joint Chair
The Honorable Joe Straus III, Speaker of the House, Joint Chair
The Honorable Steve Ogden, Senate Finance Committee
The Honorable Thomas “Tommy” Williams, Member, Texas Senate
The Honorable Jim Pitts, House Appropriations Committee
The Honorable Rene Oliveira, House Ways and Means Committee

Office of the Governor

The Honorable Rick Perry, Governor

Commission on Environmental Quality

Members of the Commission on Environmental Quality

Dr. Bryan W. Shaw, Commission Chair

Mr. Buddy Garcia, Commissioner

Mr. Carlos Rubinstein, Commissioner

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



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