

# **Texas Clean Air Cities Coalition**

## **Texas Legislative Priorities**

### **1. Encourage Assessment and Reduction of Greenhouse Gases**

- Develop a statewide greenhouse gas inventory
- Adopt a “no regrets” strategy to reduce greenhouse gases and save money
- Encourage carbon capture from coal fired power plants and adopt regulations to ensure appropriate controls on carbon capture projects

### **2. Increase Availability of Renewable Power**

- Increase mandatory goals for renewable power supply

### **3. Reduce Energy Consumption**

- Adopt enhanced appliance standards for consumer products such as pool pumps and bottled water dispensers
- Adopt enhanced building codes such as those already passed in Dallas and Houston
- Increase funding to the LoanSTAR program, which provides a revolving loan fund to increase energy conservation programs in buildings
- Encourage the installation of smart meters
- Increase each electric utility’s investment in energy efficiency programs to 30% of its annual growth in residential and commercial customers

### **4. Improve Ambient Air Quality**

- Require cumulative impact analysis and nationwide technology reviews of new major stationary sources and existing sources upon permit renewal
- Require an analysis of ozone impacts from major stationary sources on ozone non-attainment areas
- Support legislation to increase ambient air quality monitors in Texas for priority pollutants and fence line monitoring for major stationary sources
- Strengthen the Air Pollution Watch List program



# Texas Clean Air Working Group

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A project of the  
Texas Conference of Urban Counties

Co-Chairman:  
Honorable Chad Adams,  
Ellis County Judge

Co-Chairman  
Mr. Kelly Frels  
Bracewell & Giuliani

Participating Entities:  
Alamo Area COG  
American Lung Association of Texas  
Bexar County  
Business Coalition for Clean Air  
Capitol Area COG  
Chambers County  
City of Austin  
City of Dallas  
City of Fort Worth  
City of Houston  
City of Longview  
City of Lubbock  
City of Plano  
City of Richardson  
City of San Antonio  
City of Victoria  
Clean Air Force of Central Texas  
Collin County  
Conference of Urban Counties  
Corpus Christi COC  
Dallas County  
Dallas Regional Mobility Coalition  
El Paso COG  
El Paso County  
El Paso MPO  
Ellis County  
Emisstar  
Environmental Defense  
Fort Bend County  
Fort Worth COC  
Good Company Associates  
Greater Austin COC  
Greater Dallas Chamber  
Greater Houston Partnership  
Greater San Antonio COC  
Gregg County  
Harris County  
Houston-Galveston Area Council  
Lower Colorado River Authority  
Mobile Emissions Reduction Coalition  
North Central Texas COG  
North East Texas Air Care  
North Texas Commission  
Paso del Norte Clean Cities Coalition  
Port of Houston Authority  
Public Citizen  
Southeast Texas Regional  
Planning Commission  
Tarrant County  
Texas Air Research Center  
Texas Association of Counties  
Texas Association of School Boards  
Texas Campaign for Clean Transportation  
Travis County  
Victoria County  
Webb County  
West Houston Association  
Williamson County

Nonvoting participating entities:  
Capitol Area MPO  
House Committee on  
Environmental Regulations  
House Committee on Transportation  
Senate Committee on Natural Resources  
Senate Committee on State Affairs  
State Energy Conservation Office  
Texas Commission on  
Environmental Quality  
Texas Department of Transportation  
Texas A&M Energy Systems Laboratory  
Texas General Land Office  
Texas Railroad Commission  
Texas Sunset Commission  
U.S. Environmental Protection Agency

## RESOLUTION OF LEGISLATIVE PRIORITIES FOR THE 81<sup>ST</sup> TEXAS LEGISLATURE

**WHEREAS**, air quality impacts public health as well as the economic health of our entire state, making compliance with the federal Clean Air Act essential to Texas' long-term growth and prosperity, given the integrated nature of the Texas economy; and

**WHEREAS**, federally designated Clean Air Act nonattainment areas and near-nonattainment areas of Texas include forty-one counties; the cities of Arlington, Austin, Beaumont, Corpus Christi, Dallas, El Paso, Fort Worth, Galveston, Houston, Longview, Port Arthur, San Antonio, Tyler, and Victoria; and represent 70% of the state's population; and

**WHEREAS**, failure of clean air plans to reduce Nitrogen Oxides (NOx) in these affected areas will trigger sanctions that will negatively impact the entire Texas economy; and

**WHEREAS**, the Texas Clean Air Working Group is an alliance of local governments, business groups and environmental organizations committed to serve as a resource and as an advocate for prudent and effectively stated policies that will assist affected nonattainment and near-nonattainment communities in meeting their clean air goals; and

**WHEREAS**, reductions in mobile source emissions are some of the most effective mechanisms in reducing ozone; and

**WHEREAS**, the Texas Emissions Reduction Plan (TERP) program has been a cost-effective, successful program in reducing on-road and off-road mobile source emissions; and

**WHEREAS**, the Low Income Repair and Assistance Program (LIRAP) is a valuable program that reduces emissions from high emitting vehicles by offering financial assistance for qualified owners of vehicles who fail the emissions test; and

**WHEREAS**, new Federal clean air standards will likely increase the number of affected areas that will need to work toward attainment in the near future;

**NOW THEREFORE BE IT RESOLVED** by the Texas Clean Air Working Group that the 81st Legislature is hereby urged to adopt the following initiatives to preserve Texas air quality, enhance public health, and promote economic prosperity:

- Extend the TERP program through 2019 and appropriate all funds collected from TERP fees and any remaining balances that exist as of August 31, 2009. Reauthorize and retain the current set of TERP fees through 2019 and retain the current allocation formula to assure that 87.5% of the TERP revenues are used to support the Diesel Emissions Reduction Incentive Program and that 9.5% of the TERP revenues continue to be used by the Texas Environmental Research Consortium to administer the New Technology Research and Development Program and the Air Quality Research Program;
- Appropriate all collected funds to the Low Income Repair and Replacement Assistance Program (LIRAP) and enhance both LIRAP and the existing Inspection and Maintenance (I&M) Program in the Houston and Dallas Areas in a manner consistent with HB 1611 (79<sup>th</sup> Legislature) and the recommendations in the Texas Environmental Research Consortium's 2007 report on the LIRAP program (H72C);
- Continue biennial funding of \$5,075,000 for five existing near non-attainment areas to conduct air quality planning activities to reduce ozone. If near non-attainment areas are expanded to include additional areas, provide supplemental funding for those areas as appropriate;

**AND BE IT FURTHER RESOLVED** by the Texas Clean Air Working Group that the 81<sup>st</sup> Legislature is urged to consider the improvements and additional options outlined in the four attached whitepapers to assist nonattainment and near nonattainment areas in cleaning the air.

ADOPTED THIS 24<sup>th</sup> DAY OF OCTOBER BY THE TEXAS CLEAN AIR WORKING GROUP.

**Honorable Chad Adams**  
Ellis County Judge  
Co-Chairman, Texas Clean Air Working Group

**Mr. Kelly Frels**  
Managing Partner - Houston Office  
Bracewell & Giuliani  
Co-Chairman, Texas Clean Air Working Group

## TEXAS CLEAN AIR WORKING GROUP

### Texas Emissions Reduction Plan (TERP) for the 81st Texas Legislative Session

#### Background:

##### General

- The Texas Emissions Reduction Plan (TERP) has attracted good participation due to its voluntary rather than regulatory nature.
- There is much greater demand for TERP funding than supply. Texas Commission on Environmental Quality (TCEQ) received over \$200 million in grant requests in April 2008 with only \$140 million available, thus demonstrating a need to appropriate all available funding to capture these additional reductions.
- TERP will continue to be instrumental in the achievement of Nitrogen Oxides (NO<sub>x</sub>) emission reductions needed in order to demonstrate compliance with the 1997 8-Hour Ozone Standard and the recently revised, more stringent 2008 8-Hour Ozone Standard.
- All current nonattainment regions within the State of Texas will be required to meet federal air quality standards no later than 2019. Preemptively extending program funding through this deadline will ensure that a steady stream of funding will be available for the retrofit and replacement of heavy-duty vehicles for every nonattainment region within Texas.
- Health & Safety Code Chapter 386 utilizes the terminology “cost-effectiveness” throughout the legislation and subsection 386.105 (a) states, “In calculating cost-effectiveness, one-time grants of money at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by the commission, taking into account the interest rate on bonds, interest earned by state funds, and other factors the commission considers appropriate.” The impact of this language is that TCEQ is required to take into account the time value of money whenever the actual cost per ton of NO<sub>x</sub> reduced approaches the statutory limitation of \$15,000 per ton cost-effectiveness, which equates to only a \$13,000 cost per ton maximum limit over the life of a TERP project. Thus, changing legislative terminology from “cost-effectiveness” to “cost per ton” is requisite to enable more flexibility in funding projects.
- Improvements need to be made to improve the effectiveness of the program including increasing available funds, expanding eligibility, and restructuring retrofits funding to garner more interest and participation.

##### Dallas-Fort Worth

- Modeling indicates that 73 percent of North Central Texas NO<sub>x</sub> emissions are from on-road and non-road mobile sources, a sizeable proportion coming from heavy-duty diesel engines.
- The TCEQ committed 22.2 tons of NO<sub>x</sub> per day in 2007 through the TERP in the 1-Hour Ozone Attainment Demonstration State Implementation Plan (SIP) and 5 Percent Increment of Progress SIP and in the 2007 8-Hour Ozone Attainment Demonstration SIP recognized that if additional funds were appropriated by the legislature some could be applied in the DFW area for continued emission reductions from the program.
- TCEQ has awarded \$175 million in TERP grants in North Central Texas as of April 2, 2008, to achieve an emission reduction of 18.5 tons per day in 2009 (32 percent of committed reductions).
- The long haul trucking sector contributes roughly 38 percent of the on-road emissions of NO<sub>x</sub> in the Dallas-Fort Worth (DFW) region, although, to date, very few TERP dollars have been awarded for projects in this sector.

- There is very little monetary incentive to install a retrofit technology because it often results in increased maintenance and operation costs and there is no gain in vehicle or engine reliability. Therefore, in order to implement more retrofit projects, which are often quite cost-effective, potential applicants need an increased incentive beyond simply the cost of the retrofit, in order to justify committing to all of the requirements associated with accepting TERP funds. By providing a supplementary incentive for retrofit projects, the benefit of installing a retrofit may finally outweigh the additional burden of semi-annual usage reporting for seven-plus years.

Houston-Galveston-Brazoria

- Minimum operating criteria should be adjusted to allow greater consideration to the large amount of emissions that are generated by vessels that are operating for short time durations within the Houston-Galveston-Brazoria (HGB) nonattainment region, but also operate for extended time periods throughout the Texas portion of the Gulf Intracoastal Waterway. An increase in the number of approved marine vessels will allow for greater flexibility for owners and operators who work within the region to replace older, more polluting vessels with newer vessels that may significantly reduce Texas port emissions. These changes will also allow ports and other agencies within nonattainment and near nonattainment regions to advocate for greater participation in this program.
- Port-related trucking applications, such as drayage services, result in heavy-duty vehicles, which work mainly in low-mileage situations. This can result in vehicles which spend significant periods of time idling during the loading and unloading of freight as well as the transport of freight through security checkpoints within and around port facilities. Vehicles which participate in these low-mileage activities are not eligible for TERP. The establishment of a revolving loan fund would allow TERP to focus on offering financial incentives for cost effective retrofits, replacements, or the implementation of Environmental Protection Agency (EPA) Smartway Truck Technology or other advanced technologies which will result in emissions reductions for vehicles performing this type of task.

**Legislative Action Requested:**

- Fully fund TERP for currently authorized and future fiscal years by appropriating all revenue collected under this program.
- Extend TERP to 2019.
- Incorporate emission reductions achieved during intrastate travel, particularly usage on highways between Texas nonattainment and near nonattainment areas, in total tons of NOx reduced when determining project cost-effectiveness and eligible award amount.
- For retrofit projects: 1) Allow incentives to exceed 100 percent of the incremental cost; and 2) Allow funding for increased maintenance and operation costs.
- Maintain NOx emission reductions as the primary focus of TERP funding, with other pollutants, such as particulate mater (PM), a secondary focus.
- Consider allowing TERP to fund a revolving loan fund project for vehicles used in drayage activities and other, similar applications throughout Texas ports.
- Change the term “Cost-effectiveness” to “Cost per ton” in language requiring TCEQ to evaluate projects.

**Regulatory Action Requested:**

- Activate and fund the Light-Duty Motor Vehicle Purchase or Lease Incentive Program.
- Increase cost per ton threshold in calls to \$15,000 per ton of NOx reduced.
- Adjust TERP project requirements for marine vessels to allow for an expanded selection of vessels which meet TERP eligibility standards.

## TEXAS CLEAN AIR WORKING GROUP

### Proposed Amendments for the 81<sup>st</sup> Texas Legislative Session

#### Low-Income Repair and Replacement Assistance Program (LIRAP) Also Known As the AirCheckTexas Drive a Clean Machine Program

#### Background:

- The U.S. Environmental Protection Agency has approved the Governor's request to designate the Houston-Galveston-Brazoria (HGB) region as severe nonattainment for the current 1997 Eight-Hour Ozone standard. The re-designation moves HGB's ground-level ozone attainment date to 2019.
- Modeling indicates that 46 percent of Dallas-Fort Worth (DFW) Nitrogen Oxides (NO<sub>x</sub>) emissions are from on-road sources.
- Modeling indicates that in the Austin-Round Rock Metropolitan Statistical Area (A-RR MSA) on-road sources contribute 47 percent of Nitrogen Oxides (NO<sub>x</sub>) emissions and 20 percent of Volatile Organic Compound (VOC) emissions.
- For fiscal year 2008 (FY08), the following statistics report how successful LIRAP was overall in the DFW, HGB, and A-RR MSA areas:

<b>FY08 Vouchers</b>	<b>DFW</b>	<b>HGB</b>	<b>Travis County</b>	<b>Williamson County *</b>	<b>TOTAL</b>
Total Vouchers Issued	13,468	13,044	1242	406	26,918
Replacement Vouchers Redeemed	8,138	6,452	664	230	14,820
Repair Vouchers Redeemed	1,448	2,285	125	35	3,768
Unused Vouchers	3,882	4,307	437	141	8,330

\* Sum from the time of inception of program change in December 2008.

- Vouchers went unused primarily because the participants lack the funds to pay the difference in the cost of purchasing a replacement vehicle or are unable to qualify for a loan.
- LIRAP will continue to be instrumental in the achievement of NO<sub>x</sub> emissions reductions needed in DFW, HGB, A-RR MSA in order to demonstrate compliance with the 1997 8-Hour Ozone Standard and the recently revised, more stringent 2008 8-Hour Ozone Standard.
- LIRAP attracts significant participation due to its voluntary rather than regulatory nature and is a win-win situation for air quality, the vehicle owner, the dealer, and the overall economy. In FY08, LIRAP temporarily suspended operations in DFW and HGB because the Program exhausted all funding due to demand being higher than funding available.
- LIRAP Administrators struggle to meet the stringent 5-day turnaround timeframe for paying an auto dealer. Due to the numerous documents that must be reviewed before releasing payment and the overwhelming volume, the payment timeframe should be modified.
- Light-duty regulated fleets (taxicabs, limousines, shuttle buses, and hotel courtesy vans) accrue high annual mileage and drive in congested conditions on a daily basis; therefore, they should operate low-emitting vehicles to minimize their harmful impact on air quality in North Central Texas and in the A-RR MSA. The North Texas Green & Go Clean Taxi Partnership Program currently provides incentives to encourage the purchase and use of clean taxicabs in the Dallas-Fort Worth region, but funding is limited. By allowing LIRAP funds to also be utilized for light-duty regulated fleets,

nonattainment regions will be able to address light-duty regulated fleets that often contribute large NO<sub>x</sub> emissions.

- Senate Bill 12, passed by the 80<sup>th</sup> Texas Legislature, authorizes the appropriation of up to \$5 million per fiscal year from LIRAP funds, on a matching basis, to allow participation in the LIRAP Local Initiative Projects, whereby money is provided to a county in the same amount that the county dedicates to a valid local air quality project. The funds originated from inspection and maintenance counties, but yet those same counties must provide a one-for-one match to utilize them. Most counties find this requirement difficult to meet, especially since many counties in South Texas diverted funds into disaster relief efforts following Hurricane Ike. Meanwhile, many of the more effective air-quality initiatives that fall outside of the scope of conventionally-funded county programs will be left under-funded: implementing an enforcement program against fraudulent emission inspections; intelligent transportation system (ITS) improvements to reduce traffic congestion; coordinating the synchronizing of traffic signals between local governments; replacing county fleets and buses with hybrids or other alternative-fueled transportation; and enhanced remote sensing of smoking vehicles.
- Currently, participating counties contract with the Texas Commission on Environmental Quality (TCEQ) to receive funding for the LIRAP program. Each of the 14 counties (Brazoria, Collin, Dallas, Denton, Ellis, Ft. Bend, Galveston, Harris, Johnson, Kaufman, Montgomery, Parker, Rockwall, and Tarrant) that are in nonattainment for ground-level ozone has a separate contract with TCEQ to obtain funds for the program. Counties then enter into separate contracts with NCTCOG or H-GAC to implement the LIRAP program. The repetitive paperwork performed by nonattainment counties has created numerous contracts -- 14 with TCEQ and 14 with NCTCOG and H-GAC, complicating the administrative process and procedure for drawing funds.

**Legislative Action Requested:**

- Fully fund LIRAP for future fiscal years by appropriating all revenue collected under LIRAP and ensure Program stability to 2019 to allow for inclusion as a control strategy in the HGB SIP that is currently being prepared.
- Remove or limit the matching requirement imposed upon counties to promote participation in LIRAP Local Initiative Air Quality Projects.
- Study the benefit of reducing unused vouchers by setting up financing strategies e.g., low-interest or revolving loans, for those with low income or bad credit.
- Allow for the counties to designate one central administrator, i.e. Council of Governments, who can contract on behalf of the counties with TCEQ for funds for both LIRAP and for the Local Initiatives Program.
- Modify dealer payment requirements from 5 to 14 business days.
- Include specifications for light-duty regulated fleets.

**Regulatory Action Requested:**

- Allow LIRAP participants the ability to utilize anyone as a cosigner for the replacement vehicle loan application.

## **TEXAS CLEAN AIR WORKING GROUP**

### **Proposed Amendments for the 81<sup>st</sup> Texas Legislative Session**

#### **Inspection and Maintenance (I/M) Program Recommendations**

##### **Background:**

- Nonattainment regions are required to conduct emissions test as part of annual state inspection for light duty gasoline vehicles. Emissions inspections are becoming increasingly ineffective due to neglect, fraud and lack of proper oversight as documented by the 2008 Legislative Sunset Advisory Commission's review of the Texas Department of Public Safety.
- Requirements and standards established at the inception of the I/M program have not been updated or strengthened appreciably.
- The "Test on Resale" rule, established in House Bill 2134 passed by the 79th Texas Legislature, is not effective in preventing the resale of pre-owned vehicles that have not obtained required emissions test.
- Beginning with the 1997 model year, the U.S. Environmental Protection Agency (EPA) created a mandate requiring all diesel vehicles to be On-Board Diagnostic (OBD) compliant by the year 2013. Currently diesel vehicles are not subject to emissions testing; however, the program to test OBD diesel vehicles is already established and could easily be implemented at minimal costs.
- "Initial" cut points were established and approved by EPA in 2002 when the current I/M Program began. EPA guidance requires a state to complete one test cycle before going to "final" cut-points and to-date, Texas has completed six test cycles. Reducing allowable levels of Nitrogen Oxides (NO<sub>x</sub>) emitted by older vehicles will result in additional emissions savings and possibly additional State Implementation Plan (SIP) credits.
- Light duty gasoline vehicles 2-24 years old are currently subject to emissions testing. Vehicles older than 24 years are deleted from the list each year and, from that point forward, are only subjected to a safety only inspection despite the fact these older vehicles emit considerably more pollutants than newer vehicles.
- Vehicle owners are subject to the same Class C Misdemeanor fine regardless of how many times they display a counterfeit or fraudulent inspection sticker. Having the fine increase with each offense (as done for misuse of disabled parking placards) will provide a deterrent to repeat offenders.
- Currently there is no statute requiring the seller to remove the registration and/or inspection stickers off vehicles sold at auction. The Dallas Emissions Enforcement Program found many of the auction vehicles displaying current registration and/or inspection certificates were counterfeit, fraudulent or stolen. Requiring the removal of these certificates will immediately alert law enforcement officers to a potential violation and will have a significant impact on the buyer who is unaware the stickers may be fraudulent or stolen.

**Legislative Recommendations:**

- Enhance requirements for becoming a State Emissions Inspector or Station.
- Require proof of inspection for registration or renewal of registration.
- Require 1997 and newer light duty diesel vehicles that are OBD compliant to be emissions tested.
- Require the Texas Commissions on Environmental Quality to establish “Final Cut-Points” for vehicles tested by the acceleration simulation mode (ASM) method.
- Remove the current 2-24 year rolling window for emissions inspections and replace with the following:
  - Maintain the 2 year exemption for new vehicles.
  - 3 model years old – 10 model years old: tested by the OBD method
  - 11 model years old – 1984 model year vehicles will be tested by the ASM method using final cut-points.
- Create an enhanced Class C misdemeanor fine for repeat offenses involving a counterfeit/fictitious inspection sticker.
- Require removal of emission inspection certificate and registration certificate from a vehicle prior to auctioning.
- Allow any Peace Officer to verify and/or enforce emissions compliance on any auto dealer lot.

**Regulatory Recommendations:**

- Strengthen penalties for conducting improper inspections.

## TEXAS CLEAN AIR WORKING GROUP

### Locally Enforced Motor Vehicle Idling Limitations for the 81st Texas Legislative Session

#### Background:

- Currently, the Texas Commission on Environmental Quality (TCEQ) idling limitations rule restricts idling to no more than five minutes within participating jurisdictions and is applicable to vehicles with a gross vehicle weight rating (GVWR) of 14,000 lbs or greater during the months of April through October. Idling restrictions may be enforced only by entities that sign a Memorandum of Agreement with TCEQ.
- Modeling indicates that 72.76 tons per day of on-road Nitrogen Oxide (NO<sub>x</sub>) emissions are attributable to heavy-duty diesel vehicle classes 8a and 8b vehicles in Dallas-Fort Worth (DFW) with roughly 2.47 tons per day attributable to idling.
- With the instigation of a new, more stringent 8-hour ozone standard, exceedances are expected to occur in more months out of the year; thus, instigating a longer ozone season and a need to extend idling restrictions to year round.
- The main focus of idling restrictions has been on heavy-duty vehicles. However, much more NO<sub>x</sub> emissions could be obtained if light-duty commercial vehicles having a GVWR of 6,000 – 14,000 lbs were included. Examples of such light-duty vehicles are delivery vans, pickup trucks, and large SUVs.
- Approximately 17 percent of the light-duty truck fleet in the United States (classes 1 and 2) are used commercially, consuming upwards of 600 million gallons of fuel per year solely from idling. In the DFW region, there are over 60,000 vehicles in this class range presumed to be used commercially. These vehicles are responsible for around five and a half tons of NO<sub>x</sub> emitted per day and equal roughly 1.5 times the number of registered heavy-duty trucks.

#### Legislative Action Requested:

- Extend the TCEQ Motor Vehicle Idling Limitation Rule to be applicable year round.
- Extend the TCEQ Motor Vehicle Idling Limitation Rule to incorporate light-duty commercial vehicles with a GVWR of 6,000 lbs or greater.

#### Sources:

Clean Cities. Industry News: Auxiliary Units Can Reduce Idling in Light-Duty Fleet Vehicles. Dec. 2007.

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