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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 20, 2009

Mr. Ronnie Barnes
Program Manager
Houston-Galveston Area Council
PO Box 22777
Houston, Texas 77227

Subject: Leasing agreements for replacement vehicles

Dear Mr. Barnes:

The Texas Commission on Environmental Quality was recently petitioned on the possibility of an automobile dealership constructing financing for an eligible replacement vehicle using a leasing structure. The leasing structure would allow for a participant to accept the vehicle at a lower monthly payment, but would leave a residual balance at the end of the contracted term. These transactions are not eligible for reimbursements as they do not meet the requirements of the Health and Safety Code Section 382.210(a)(2) which is explicit in requiring that the assistance be toward the "purchase" price of a replacement vehicle. Additionally, Health and Safety Code §382.210(d) requires a participating county to transfer funds to participating dealerships only after the county has received proof of the "sale" of the vehicle.

The statute's explicit use of the terms "purchase" and "sale" in these two sections would preclude reimbursement for an agreement such as a lease.

I have attached a copy of Texas Health and Safety Code §382.210, the statute which prescribes implementation guidelines and requirements for the Drive A Clean Machine Program.

If you should have any further questions, please contact Mr. Chad Lenz at (512) 239-6154 or at clenz@tceq.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna F. Huff".

Donna F. Huff, Team Leader
Mobile Source Programs

CL/sy

Chapter 382 Clean Air Act
Subchapter G. Vehicle Emissions

Sec. 382.210. IMPLEMENTATION GUIDELINES AND REQUIREMENTS. (a) The commission by rule shall adopt guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized under Section 382.209. The guidelines at a minimum shall recommend:

(1) a minimum and maximum amount for repair assistance;

(2) a minimum and maximum amount toward the purchase price of a replacement vehicle qualified for the accelerated retirement program, based on vehicle type and model year, with the maximum amount not to exceed:

(A) \$3,000 for a replacement car of the current model year or the previous three model years, except as provided by Paragraph (C);

(B) \$3,000 for a replacement truck of the current model year or the previous two model years, except as provided by Paragraph (C); and

(C) \$3,500 for a replacement hybrid vehicle of the current model year or the previous model year;

(3) criteria for determining eligibility, taking into account:

(A) the vehicle owner's income, which may not exceed 300 percent of the federal poverty level;

(B) the fair market value of the vehicle;
and

(C) any other relevant considerations;

(4) safeguards for preventing fraud in the repair, purchase, or sale of a vehicle in the program; and

(5) procedures for determining the degree and amount of repair assistance a vehicle is allowed, based on:

(A) the amount of money the vehicle owner has spent on repairs;

(B) the vehicle owner's income; and

(C) any other relevant factors.

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(b) A replacement vehicle described by Subsection (a) (2) must:

(1) except as provided by Subsection (c), be a vehicle in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or a cleaner Bin certification under 40 C.F.R. Section 86.1811-04, as published in the February 10, 2000, Federal Register;

(2) have a gross vehicle weight rating of less than 10,000 pounds; and

(3) be a vehicle the total cost of which does not exceed \$25,000.

(c) The commission may adopt any revisions made by the federal government to the emissions standards described by Subsection (b) (1).

(d) A participating county shall provide an electronic means for distributing vehicle repair or replacement funds once all program criteria have been met with regard to the repair or replacement. The county shall ensure that funds are transferred to a participating dealer under this section not later than five business days after the date the county receives proof of the sale and any required administrative documents from the participating dealer.

(e) In rules adopted under this section, the commission shall require a mandatory procedure that:

(1) produces a document confirming that a person is eligible to purchase a replacement vehicle in the manner provided by this chapter, and the amount of money available to the participating purchaser;

(2) provides that a person who seeks to purchase a replacement vehicle in the manner provided by this chapter is required to have the document required by Subdivision (1) before the person enters into negotiation for a replacement vehicle in the manner provided by this chapter; and

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(3) provides that a participating dealer who relies on a document issued as required by Subdivision (1) has no duty to otherwise confirm the eligibility of a person to purchase a replacement vehicle in the manner provided by this chapter.

(f) In this section, "total cost" means the total amount of money paid or to be paid for the purchase of a motor vehicle as set forth as "sales price" in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Transportation. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as "sales price" on the Application for Texas Certificate of Title if that form were involved.