The Texas Emissions Reduction Plan

The Issue

Texas has long generated more robust economic growth than most other states. Less well known is the state's dramatic, ongoing environmental improvement, especially in air quality. The Environmental Protection Agency's (EPA) eight-hour National Ambient Air Quality Standard (NAAQS) for ozone has long challenged Texas urban areas, particularly those around Houston and Dallas. At odds with most predictions, the Houston area actually achieved the ozone NAAQS in 2010 and 2011 on the basis of a stringent, targeted, innovative, science-based State Implementation Plan (SIP). And the Dallas/Fort Worth (DFW) region came close to attaining the ozone standard. Despite this progress, EPA has since tightened the ozone standard twice in the last few years on the basis of increasingly implausible scientific grounds.

In 2001, the Texas Legislature created the Texas Emission Reduction Program (TERP) in Senate Bill 5 to create a fund to provide generous grants for the retrofit or purchase of new diesel powered engines, equipment or vehicles. TERP's original purpose was to reduce ozone producing emissions from mobile sources. These mobile source emissions from vehicles and off-road construction equipment were considered key contributors to ozone formation but direct regulation of these sources is pre-empted by EPA's exclusive regulatory authority over mobile sources. The state has authority to regulate stationary sources like a power plant or a refinery. Yet, attainment of the federal ozone standard is impossible without also reducing emissions from mobile sources.

In a rare departure from typically tight-fisted, top-down federal regulation, the EPA agreed to give emission credit in the Texas SIP amounting to one ton of reduced nitrogen oxides for every $5,000 expended through TERP grants. The TERP fund is generated by surcharges on new vehicle titles, registration of truck-tractors and commercial motor vehicles, and emission inspection fees, as well as a percentage of the tax on the purchase or lease of both diesel equipment and heavy-duty motor vehicles. Revenue from title fees is deposited into the Texas Mobility Fund and matched by the State Highway Fund in equal amount. These contributions are combined and funneled into TERP.

As originally enacted, TERP funding is administered by the Texas Commission on Environmental Quality (TCEQ) to award grants for the retrofit or replacement of heavy duty diesel fueled vehicles and engines. Since 2001, TCEQ has awarded more than 1 billion dollars in TERP grants for upwards of 17,500 projects. The price of individual grants widely vary from as much as $45 million to replace switcher engines in rail yards and $20 million for new construction equipment.

In a growing, prosperous and thus "car-buying" state, the revenue generated by TERP fees has consistently exceeded the amount originally appropriated by the Legislature. Over TERP's 15 years, the Legislature has regularly expanded the eligible uses for TERP grants. TERP is now comprised of nine different programs that represent a wide variety of uses. At times, hundreds of millions of TERP dollars sit unused or have been used to balance the state's budget

The Arguments

TERP is heralded by many as a smart program that brings cleaner air to Texas without heavy-handed regulation. TERP supporters argue that the program offers a painless way to attain the federal ozone standard without draconian penalties and regulations, such as setting "no-drive days" or limiting hours of operation for road building. And it is possible that in the TERP program's early years, the grants may have gleaned genuine benefits, especially for the DFW area whose ozone levels are dominated by mobile sources.

It remains unclear, however, whether the billion dollars of TERP grants have meaningfully reduced emissions because the reduced emissions originate on paper and are not measured. Additionally, even the claim that TERP's incentive to purchase newer, cleaner diesel engines leads to fewer emissions is suspect—the cleaner engines to which TERP funds were originally dedicated are now required by federal engine standards in full effect. The natural turnover in the market is already eliminating older vehicles and equipment. There is little evidence that TERP does anything to produce cleaner air in Texas; at best what can be proven about TERP is that $1 billion in corporate subsidies provided by the program have helped keep the EPA off our back.

The State Auditor's Office 2010 report on TERP revealed fundamental problems with grantee accountability. The report concluded that actual usage of grant-funded vehicles and equipment, as reported by grantees themselves, was significantly lower than what was projected in original grant agreements. For example, an application which represented that some diesel-powered off-road construction equipment would be operated for 30 hours per week might operate only 20 hours per week. This disparity between projected and actual hours in operation provides further support that the environmental purpose of TERP is not being accomplished. It might also lead to inflated program benefits being reported to the Legislature; the sheer number and variety of TERP grants preclude consistent evaluation of contract compliance or environmental benefit.

Proponents might respond to this by claiming that TERP is a helpful market incentive that expedites the purchase of new, cleaner-burning engines. However, a grant program that diverts hundreds of millions of Texas taxpayers' money away from the market into a government fund for select businesses is not a market incentive. At its best, TERP subsidizes the goal of pollution abatement without meaningful measurement of that outcome. The state auditor's report found that between December 2006 and July 2010, TCEQ determined that 593 grantees—representing more than $62 million of lost grant funds—failed to comply with requirements specified in the grant agreements.

Recommendations

- Eliminate the TERP program and all related fees, surcharges, and taxes.
- Use any surplus balances in the TERP program to reduce the Texas margin tax.

Resources

Texas Emissions Reduction Plan, Legislative Budget Board (April 2013).

An Audit Report on the Texas Emissions Reduction Plan Program at the Commission on Environmental Quality, State Auditor's Office (Dec. 2010).

Interim Report on the 80th Legislature – State Air Programs, The Senate Committee on Natural Resources (Dec. 2006).

Overview of the Texas Emissions Reduction Plan (TERP), Legislative Budget Board (July 2012).

Texas Emissions Reduction Plan (TERP), Texas Commission on Environmental Quality (Jan. 2016).