

Minutes of the Advisory Committee Meeting on Thursday, July 28, 2005

Dry Cleaner Advisory Committee Members Present:

Dr. Charles Riggs, Chairman  
Ms. Shirley French Reichstadt  
Mr. James Cripe  
Mr. Charles Franklin

TCEQ Dry Cleaner Rule Team Present:

Don Kennedy  
Nathan Weiss  
Caroline Sweeney  
John Racanelli  
Richard Scharlach  
Barbara Watson  
Tim Jones  
Tom Templer

Each member of the rule team and advisory committee members in attendance introduced themselves. Don Kennedy explained that the purpose of the meeting was for the rule team to present the draft rules of Chapter 337 resulting from HB 2376 and SB 444 to the advisory committee for their input.

Don Kennedy explained that the first part of the meeting would be dialog between the rule team and the advisory committee only and comments from the public would be welcome at the conclusion of the meeting.

Charles Riggs asked if there was a direct correlation with the rules and the statutes. Caroline Sweeney said Chapter 374 of the Health and Safety Code was created two legislative sessions ago, and it covers all of the dry cleaning statutes. The two new bills amended Chapter 374. Chapter 374 should have all the amendments together in one place, but the version of Chapter 374 currently available may not have all of the changes yet, but should be updated soon.

The definition of dry cleaning machine was modified by adding the term “dry cleaning unit”. There were no comments.

The definition of “Participating non-perchloroethylene user registration certificate was modified to add “as that subsection existed from September 1, 2003 until August 31, 2005”. There was a passage in HB 1366 that gave the status of participating non-perchloroethylene user, but the new HB 2376 states that this status may not be requested after September 1, 2005, but the status would still be honored for those locations that filed an affidavit prior to September 1, 2005. Don Kennedy explained that some of the people in this status probably missed the deadline the first time to opt out and be nonparticipating, so they may be changing their status this time. Charles Franklin asked how many had opted out originally, and what was the difference between the first year and the second of registered dry cleaners. **Discussion concerning unregistered dry cleaning locations followed.**

Caroline Sweeney stated the language in Section 337.11 contains all the requirements to receive a registration certificate. If a dry cleaner owner cannot meet the requirements in this section, the owner will not receive a certificate. Requirements in HB 2376 concerning the Comptroller verifying data reported to the TCEQ were added in this section. The Comptroller will report to the TCEQ if the dry cleaner is in good standing with the state and has reported their gross receipts consistently with what was reported to the

Comptroller. Caroline Sweeney explained that the statute required the Comptroller to verify information within 3 days. In the event of a delay from the Comptroller's office, the TCEQ did not want to significantly delay issuing a registration certificate, so language was added in the rules to accommodate this. Since this is a new process, no one knows how long it will take, but the TCEQ did not want to be prevented from issuing a certificate if a significant delay took place.

Discussion began concerning enforcement. James Cripe stated he thought the TCEQ was waiting to enforce because the rules were not in place. Caroline Sweeney stated that existing rules have been adopted and are enforceable. Enforcement of statutory requirements may also be performed. The reason there has not been enforcement to date is a manpower issue. Discussion concerning funding sources for enforcement followed and that the amount spent for administration of the program increases from 10% to 15% of revenue effective 9/1/05.

Caroline Sweeney explained why Commission Review was added in both 337.11 and 337.13. The new statute states a final order and there should not be very many final orders in the dry cleaning program. The draft language concerning commission review was written to give owners a way of asking for commission review of a decision made at a lower level, such as denying a registration certificate. The owner could then go to the commission for a final order. The final order would fall under the statute at that time and the owner could appeal it to district court if necessary. Denying a certificate could occur when an owner has gone through some enforcement action.

Discussion occurred on wholesale dry cleaners being registered and paying fees when the law does not apply to these locations. How will the TCEQ distinguish those and what is the agency doing to find out which ones are registered and should not be? Caroline Sweeney and Don Kennedy both explained that as time goes by, the registration program should identify it better and a growing relationship with distributors should help to identify them also. Don Kennedy also stated that once the agency identifies them, the situation could be corrected by refunding fees paid. There were concerns that this could be a major problem in the future, and that a quick solution would be best. Charles Franklin stated there were a large number of these locations registered. Caroline Sweeney asked if Mr. Franklin could help the agency identify those wholesale locations that were registered.

Don Kennedy explained that in 337.14, concerning the registration fees, rule language referred to the statute in the event there are future changes relating to fees.

Section 337.15, Solvent Fees, was discussed. There was discussion with Bankruptcy Counsel of the Office of the Attorney General concerning distributors who fail to meet the solvent fee payment deadline and their suggestion was to put this language concerning the penalties and interest in the rule to make it stronger.

Nathan Weiss discussed the Performance Standards in 337.20. He explained the compliance deadlines. There were no comments concerning this. Caroline Sweeney stated that only secondary containment is possibly delayed due to gross receipts being below \$150,000.

Shirley French Reichstadt had questions on how to properly dispose of contact water from non-chlorinated dry cleaning solvents and asked if they could go down the drain. HB 1366 stated no solvent could go down the drain but the new statutes only address water from chlorinated solvent use. Caroline Sweeney indicated that wastewater (contact or separator water) from non-chlorinated solvents was no longer regulated by this statute but might be by others. There was continued discussion about the nature and limited quantity of waste water resulting from dry cleaning. Caroline Sweeney and Don Kennedy both agreed to provide clarification to the Advisory Committee on this issue.

Nathan Weiss discussed the variance procedure in 337.22. Caroline stated that the variance idea was borrowed from the Petroleum Storage Tank Rules. There were no comments.

Caroline explained Section 337.61 on Non-Participating, Non-Perchloroethylene User Registration Certificate. There were no comments.

There were no other comments on the Rules. The group then reviewed HB 2376.

There was discussion on the NAICS codes and which ones are being used for drop station and which are being used for a facility.

There was discussion concerning reimbursement by the TCEQ for actual and necessary travel expenses that the advisory committee incurs.

The discussion continued to the registration fee changes.

After reviewing the statute, Dr. Riggs suggested a motion should be made to approve the draft rules. Charles Franklin made a motion to approve the draft rules and Shirley French Reichstadt seconded it. It passed unanimously.