

Meetings of this committee are not governed by the Open Meetings Act. However, per TCEQ rules, advisory committee meetings are open to the public.

**Texas Commission on Environmental Quality
Dry Cleaners Advisory Committee Meeting Minutes
December 15, 2003**

I. CALL TO ORDER

The Dry Cleaners Advisory Committee was called to order on Monday, December 15, 2003 at approximately 1:30 p.m. in Building F, Room 2210 at 12100 Park 35 Circle.

II. ROLL CALL

Those members present were Mr. Michael L. Trollinger, Mr. James Cripe, Ms. Shirley French Reichstadt, Dr. Charles Riggs, and Mr. Chuck Franklin. Those present representing Texas Commission on Environmental Quality were Mr. Jay Carsten, Ms. Caroline Sweeney, Mr. Derek Chapin, Mr. Michael Bame, Mr. Michael Leckie, Mr. Don Kennedy, and Ms. Christi Townsend. Ms. Debra Clonts, Chief of Staff of Representative Elkins, was also present. Total attendance was approximately 32 people.

III. OPENING INFORMATION, REVIEW MEETING FORMAT AND AGENDA

Mr. Jay Carsten gave brief introductions, instructions to the audience, and reviewed the following agenda.

Agenda

- Opening Info. Review Meeting Format/Agenda
- Advisory Committee Issues - Select Presiding Officer
- Outstanding Issues from Previous Meeting
- Status of Reg. Review Responsibilities Dry Cleaners and Suppliers after January 1st
- Discussion of Site Ranking and Priority Approach
- Discussion of 10 questions from Advisory Committee

IV. APPROVAL OF MINUTES

Copies of the November 24, 2003 minutes were distributed to the Advisory Committee. Advisory Committee Members (hereafter referred to as Members) were notified that the minutes are located on the TCEQ Dry Cleaner Environmental Response website (<http://www.tnrcc.state.tx.us/permitting/remed/vcp/dryclean.html>). It was agreed that in the future the TCEQ Dry Cleaner Team will send the Members the minutes for review and comment before posting them on the website.

The Members requested that information (e.g., items of priority and handouts) also be included in the minutes. The TCEQ Dry Cleaner Team agreed that additional information could be posted on the website.

The Members requested that the minutes should reflect more discussion, as the previous minutes did not include all of the discussions that took place during the meeting. The minutes of the November 24, 2003 meeting will be revised and posted on the web with the handouts.

V. OUTSTANDING ISSUES FROM PREVIOUS MEETING

Discussion on the letter from Rep. Elkins and the TCEQ response letter. Copies of the November 14, 2003 letter from Rep. Elkins to the TCEQ's Executive Director, Ms. Margaret Hoffman and the December 10, 2003 letter from Ms. Hoffman to Rep. Elkins were distributed to the Advisory Committee. The audience requested a copy of the letters. It was stated that copies would be made available.

Discussion on the dates set in the statute. The Advisory Committee posed the question, could the dates be postponed in order to fix the \$1000 fee for drop stations that are owned by a dry cleaning facility. The TCEQ responded by stating that where there is flexibility we can work within the law, but we can not go beyond the law. TCEQ also stated that all fee dates are effective dates of the law. It was understood and agreed upon, that it would take a special session to occur in order to make changes to the law.

Discussion on the date set by the law for rule adoption. The Advisory Committee and the TCEQ could not adopt rules by December 1, 2003 due to time restraints. The TCEQ set up registration and fees in order to have money in the fund by January 2005 when corrective action is supposed to start.

The Advisory Committee Members were in agreement to implement the law until the legislature comes back into session.

At the last Advisory Committee meeting, the Members requested a list of VCP dry cleaner sites. Copies of the VCP dry cleaner list and other documents were distributed to the Advisory Committee. The Members were notified that the list and other documents would be posted on the website. TCEQ noted that there are dry cleaners and hotels in VCP.

Discussion on the definition of dry cleaner facility. Mr. Franklin e-mailed a list of hotels that had dry cleaning equipment. The Advisory Committee asked if hotels/motels and formal wear shops were included in the definition of dry cleaner facility. One interpretation of the law is that hotels/motels and formal wear should be excluded. Minutes reflect that the Members are split on this issue, with three members favoring exclusion and two opposing it.

Discussion on the Opt out Provision (i.e. Affidavit B). Ms. Reichstradt recommended the affidavit be amended to say "have used in the dry cleaning process." Due to time restraints set by the statute, the TCEQ can not change the language in the affidavit, but is encouraging applicants to add an addendum describing the use of the solvent (e.g. as pre-spot remover, degreaser, etc.) to clarify that only small amounts were used.

An update on the status of the number of affidavits received by the TCEQ was given. A total of 204 affidavits have been received, and out of those 174 opted out completely.

Discussion on the Open Meetings law and how the law impacts the interactions between the Committee. TCEQ's Legal representative, Ms. Caroline Sweeney, explained that the Open Meetings Act does not apply to committees that are purely advisory, so the Open Meetings Act does not apply to this committee, however, the TCEQ rules on Advisory Committees states that

these meetings are open. Mr. Riggs asked if it is appropriate for less than five Members to meet to discuss dry cleaning issues. Ms. Sweeney informed the Members that it's okay to meet if there are less than five Members present to discuss dry cleaning issues as long as the issues are brought back to the open meeting.

VI. ADVISORY COMMITTEE ISSUES - SELECT PRESIDING OFFICER

Ms. Sweeney explained the main purposes of selecting a Presiding Officer. A Presiding Officer serves as a point of contact for the TCEQ and may represent Members if they are not able to attend an Advisory Committee Meeting.

Mr. Trollinger nominated Dr. Riggs. Dr. Riggs abstained. Dr. Riggs nomination was seconded. Motion was carried.

VII. STATUS OF REG. REVIEW RESPONSIBILITIES DRY CLEANERS AND SUPPLIERS AFTER JANUARY 1st

Discussion on the distributors' needs. Ms. Townsend, TCEQ's Small Business representative, stated distributors want to be able to type in a dry cleaner's name on a website and find out whether it is registered. The Members agreed that this was a good idea and understood that updating the information in a timely manner was a concern. Mr Don Kennedy, TCEQ's Registration representative, informed the Committee that information could be posted, however, there might be a slight delay. Once registration is complete, the TCEQ can focus on providing a website that could provide the name, address, and type of certificate given to a dry cleaner facility or drop station.

Distributors also want to know if they can collect cash on delivery (COD) for the fee. TCEQ stated that COD is a business decision for distributors.

Discussion on the concerns from actual dry cleaners. TCEQ receives hundreds of calls from actual dry cleaners with concerns about what is going to happen on January 1st if they're not registered. Ms. Sweeney stated that January 1st is the deadline date for buying solvent, we are not shutting them down.

Discussion on the regulated community awareness of this program. TCEQ and the distributors have been trying to inform the dry cleaners for the last four months, however, the TCEQ is still receiving calls from dry cleaners that don't know about this program.

An update of the status of registration was given. Mr. Kennedy stated, as of last week, the TCEQ received 2,961 registration forms and out of those 2,515 have been processed. There are about the same number of facilities as drop stations registering. When asked about the volume of registrations, Mr. Kennedy replied that the TCEQ had received approximately 400 registrations in the last week.

Discussion pertaining to the concerns expressed by distributors. Some distributors are concerned that they have to collect fees. They feel that are doing the TCEQ's job, it's making them out to be the bad guys, and they are concerned that they are not getting anything in return. The distributors are also concerned, because they are spending a lot of their own money making

copies of registration forms to help their customers. The TCEQ Dry Cleaner Team replied that other states have had good results with distributors collecting the fees and that if they need copies of forms we will send them as many copies as they request. The Dry Cleaner Team also stated that the TCEQ cannot allow distributors to retain a percentage of the fees they collect on TCEQ's behalf because it would result in altering fee rates that are set in statute.

VIII. DISCUSSION OF SITE RANKING AND PRIORITY APPROACH

Mr. Leckie discussed the draft Site Ranking and Priority text. There are two parts: (1) ranking and (2) prioritization. Most of the section is a restatement of different portions of how the law brings (1) and (2) together. The first section sets up a time line. Section (b) 2, 3, 4, and 7 are out of the statute, and the other parts were felt to be of importance to help establish priority. Section (c) is information we anticipate using for ranking, section (d) states that sites requiring emergency response must be ranked section (e) states there is nothing to stop you from taking action at site, section (f) is a restatement of sections of statute, section (g) discusses reapplying for ranking, and (h) discusses re-prioritization of sites each year.

Discussion on the benefit to ranking a site from a financial standpoint. It was asked, if a site has a ranking, but has not been cleaned up, could the bank call the loan/note? Ms. Reichstadt stated she has heard that other states have not had problems with this, in fact, it has helped the dry cleaners to have a ranking.

When asked, all Members agreed that the distinction between ranking and prioritization was clear.

IX. DISCUSSION OF 10 QUESTIONS FROM ADVISORY COMMITTEE

The following 10 questions were distributed to the Members. The discussions that occurred follows the TCEQ's answers (in bold).

1. A new owner of an existing facility is required to register with the TCEQ and obtain a new and different registration number and certificate, correct? **Yes.** What is to prevent the new owner from using the previous owner's registration number to buy solvent, etc?

Audit/enforcement action.

No discussion.

2. Would a new owner of an existing facility be eligible to apply for ranking if the previous owner failed to register? **Yes.** What if the previous owner opted out? **No. Once a facility is listed as nonparticipating, that facility cannot rejoin the fund, regardless of change of ownership.**

Discussion: Concerns were expressed by the Members, however the Members understood that that's what the law says. Discussion on the intent of the law and the pros and cons of opting out. The intent was to be based on the owner, however the previous owner may have used perc. Many dry cleaners never thought to check. Buyer beware. Opt out is tied to the facility. Can't opt out after January 1.

3. If a facility is operating properly and paying fees, will it be eligible to apply for ranking regardless of when the contamination occurred? **Yes.**

Discussion: Yes, unless previous owner opted out.

4. If a plant removes its dry cleaning machinery and becomes a drop station, does its registration fee change? **Yes, provided the owner files a new registration form to alert TCEQ to the change. The fee change would be reflected on the next annual registration bill [i.e. TCEQ will not pro-rate or rebate registration fees].** Would such a change affect the location's eligibility for cleanup or its ranking? **It will not affect the location's eligibility, and most likely will not affect its ranking.**

Discussion: Yes, provided new registration form filed.

5. Penalties: What is the penalty for not registering? **"...may not exceed \$1,000." [Section 2 (end of HB1366) -- Water Code 7.0525(b)]** What is the penalty for registering after the due date or after the first of the year? **Same as above**
What is the penalty for not filing a new registration for change of ownership, etc? **Same as not registering.** What is the penalty for a distributor for selling solvent to an unregistered dry cleaner? **Need to address in rule.**

Discussion: \$1000 for each? Law allows for a penalty, however, the TCEQ would have to invoke enforcement. There are no specific penalties for distributors in law, these must be considered in developing the rules.

6. Why does the delivery prohibition (to unregistered facilities) apply to drop stations when presumably a drop station is not providing dry cleaning services? **Presumably, to prevent a loophole in which a facility owner accepts solvent delivery at a drop station and then transfers and uses the solvent at a facility.**

Discussion: Many Members stated that this should not happen and asked why this would ever happen. The Members discussed addressing this in the rules.

7. In the case of an independently-owned drop station, is there no distinction between one that contracts with a perc facility vs. one that contracts with a petroleum facility? **No, there is no distinction in fee amount, registration type, or any other matter based upon the type of facility with which the drop station contracts.**

No discussion.

8. How do you classify a facility that has machines for doing laundry and also is a drop station? Is it a drop station only, or is it a plant because it does laundry even though it does no dry cleaning? **It would be a drop station because it does not perform dry cleaning activities using dry cleaning solvents.**

No discussion.

9. Property owners: Has the TCEQ made any effort to inform property owners about the dry cleaning program? **No.** Will TCEQ notify land owners if a dry cleaning tenant files to opt out? **No.** If a dry cleaning tenant has filed to opt out, can the property owner force the tenant to rescind the application, and would the tenant be allowed to join the fund at that point? **The property owner cannot rescind the application and join the fund if the January 1, 2004 deadline has passed. The landowner would still have legal remedy since the dry cleaner -- by virtue of opting out -- does not have any legal indemnity.**

No discussion.

10. Are there any rules regarding improper removal and/or illegal dumping of old machinery? **Nothing machine-specific in statute. Need to address in rule under Subchapter C. Already addressed by other laws (i.e. RCRA, Water Code, local dumping laws, etc....).** What about a case in which a perc dry cleaner changes to petro machines, and the dry cleaner illegally dumps the old perc machine before the commission adopts final rules? **Already addressed by other laws (i.e. RCRA, Water Code, local dumping laws, etc....).** If the site where the machine is dumped is not otherwise associated with a dry cleaning operation, is that site **eligible** to be ranked? **No, the dump site is not eligible for ranking unless a facility also existed on the site.**

Discussion: Other TCEQ rules and laws outside this bill address these issues.

X. NEXT MEETING

Next meeting to be Friday, January 9, 2004 1:00 p.m. to 3:30 p.m. [This has subsequently been delayed.]

November 24, 2003 minutes will be revised and handouts posted.

The minutes of this meeting will be sent out to the Advisory Committee for review and comments before posting.

XI. PUBLIC COMMENTS

Floor open to public comments.

Alan Johnson, Peerless Cleaners

Mr. Alan Johnson from Peerless Cleaners expressed his concerns about the registration fees for facilities and drop stations. He disagrees with the \$1000 fee for each drop station and stated that Rep. Elkins has told everyone calling his office that it is \$250 per site because that was his intent.

Johnson implored the Members to advise TCEQ and Ms. Sweeney to interpret the law differently.

Johnson questioned the wording in Affidavits A and B ("for use of perc in any amounts") and the definition of dry cleaning solvent.

The Advisory Committee Members responded that they will not give legal advice to TCEQ. The Members agreed that the drop station fee is not structured fairly, however, that structure is in the statute.

Jack Godfrey, Comet Cleaners

Mr. Godfrey is concerned about the use of perc. He stated that he doesn't have a problem with perc because it has not been proven that it's a human carcinogen. If we're going to go to all this effort, then when are we going to stop using it? Nothing in this bill addresses this. He is glad that VCP sites will be included. We need relief, but the relief needs to be equitable and site specific. He never used perc. If the dry cleaner used perc before and changed over to be a good steward, he still has to pay. He hasn't sold a perc machine in 10 years. Perc is not a problem. It's not a human carcinogen. Other issues with trial attorneys and environmental consultants industry. He's paid lots, but not a spoonful has been cleaned up.

Mr. Riggs asked would it be advantageous to buy new perc machines? This bill does not and cannot ban perc, but doesn't the fee structure encourage less use?

Mr. Godfrey answered perc machines have a longer operational life, only a \$10 difference in fee. This difference in fees doesn't make up the difference for new machines, but it is worthwhile for existing perc machines.

Mr. Godfrey also noted that military users make up 20% of the users in the perc industry.

Charles Johnson

Mr. Johnson hopes the Committee will not include tuxedo rental shops and hotels. This fund is for retail dry cleaners. Tuxedo rentals and hotels will deplete the fund for retail dry cleaners. He is also concerned that dry cleaners will be sued by landlords. He feels that there is not a lot of protection for him as an owner of a dry cleaning business.

Discussion on corrective action. The landowner cannot sue for corrective action costs but could sue for devaluation of property, however, a third party could sue for devaluation. His landlord is requiring he carry pollution insurance in his lease or will kick him out.