

Texas Commission on Environmental Quality Dry Cleaner Advisory Committee Meeting Minutes 11.5.2010

Dry Cleaner Advisory Committee Members in Attendance:

James Cripe, Industry Representative
Norberto Garcia, Rural Public Representative
Shirley French Reichstadt, Industry Representative
Dr. Charles Riggs, Urban Public Representative

Texas Commission on Environmental Quality Employees in Attendance:

Michael Bame, Remediation Division
Kristine Elliott, Remediation Division
Martha Glasgow, Permitting and Registration Support
Cedric Grice, Chief Financial Office
Tim Haase, Enforcement Division
Don Kennedy, Permitting and Registration Support
Bryan Maynard, Remediation Division
Richard Scharlach, Remediation Division
Merrie Smith, Field Operations
Jonathan Walling, Remediation Division
Barbara Watson, Office of Legal Services
Laressa Wong, Small Business and Local Government Assistance

Handouts:

Agenda
Report to the 82nd Texas Legislature
Supplemental Report November 5, 2010

Michael Bame - We'll go ahead and start the meeting, we're all here. I'd like to introduce Ashley .

Ashley Forbes - I just wanted to thank you all for coming; I'll turn it back over to Michael.

Michael Bame - We'll begin. First we have to do a biennial report. In front of you is the draft. It goes to the governor and legislature, before its final you must review and provide comments. We'd like to go over the report first, please feel free to ask questions.

We'll start with the report, in the statute there are 4 things the report must contain: how much was deposited into the dry cleaning fund, how much was spent, extent of corrective action conducted in the biennium in FY 09 and 10, and the ranking of sites as of today. As far as the report, we don't have copies for the public, because it is a draft and won't be made public until it is finalized. As far as funds collected, 6.4 million in registration fees in the two years. Slight drop in FY10 due to drop in solvent fees and

also a drop in interest. As far as solvent fees, there was 784 thousand less from 2009 to FY2010.

Shirley Reichstadt – People aren't cleaning clothes these days.

Michael Bame - And also 250K difference in interest. Are there any questions on funds? Don Kennedy will now talk about Dry Cleaner Registration.

Don Kennedy - Numbers for registration were taken from Oct. 2010; we had 33 solvent distributors, 192 property owners, which has remained static for 3 yrs. For fy10, 1470 facilities, and 1418 drop stations were registered. Gross receipts show a drop of about 200 and this has remained consistent over 4 years. Other registered facilities; 59% used perc [perchloroethene] in the past but may not be in current use. Current use is 693 facilities, and 777 facilities use other solvents. This has been consistent throughout the life of the program. It fluctuates a little, but the industry has shrunk, not the percentage of perc users. Below is a breakdown of fees which haven't changed, it would require a statutory change [82nd Report, Table 3]. Any questions on registration?

Chairman Riggs – Do we know how any new cleaners have opened up? New registrations?

Don Kennedy – No, but we can look into that.

Chairman Riggs - Are they building new plants, putting in perc when they build them or some other solvent?

Don Kennedy - We don't have an easy way to track that.

Chairman Riggs - You'd think perc use would taper off, but it looks to me I see a bunch of new facilities going in using perc. I'm not sure why they would do that.

Don Kennedy- Quite a few have written in saying they are switching to wet machines, and getting out of the dry cleaning portion. It is noticeable that there are more in the last couple of years than previously.

Michael Bame- Next section is on disbursements from the fund; what we spent per cleanup, what we obligated. Let me explain obligated versus actual amounts. There is an asterisk next to the corrective action cost [82nd Report, Table 4]. Obligated, 12.9 million and why we say its 'obligated', we have not actually been invoiced or paid, and we track how much has been paid out and it's a real check versus how much we've obligated in work. And as far as obligated amount it's probably closer to the actual amount that we spent. I think there is still about 3 million that we have not paid yet for FY10 that is due, that the work was completed that we have an actual work order written meaning we actually did the work, they just haven't invoiced us yet for the final work, so we decided to do the obligated amount which is probably a truer picture of what we actually spent. So we've almost spent 13 million in the two year period, which is exactly

what the legislature appropriated us for each year (6.5 million). So it comes out to what they gave us, that's what we obligated in work.

Chairman Riggs – Would you have spent more if they'd authorized more?

Michael Bame - Yes. Yes we would have.

Chairman Riggs - Are you going to ask for an increase in the appropriation?

Michael Bame - As a state agency we are not allowed to lobby for increase or any kind of legislative request which would require asking appropriations of the LBB [Legislative Budget Board].

Chairman Riggs – We're actually looking at a decrease because of the 10% reduction in state agencies, correct?

Michael Bame- Potentially, yes.

Chairman Riggs - So for us, it's not a matter of revenue, it's a matter of appropriations and the effect is the slow down our cleanup actions.

Michael Bame - That's exactly right, yes.

Shirley Reichstatd - They didn't cut it last time though did they? They said that everybody needed to cut but then they came back and said they weren't going to cut us.

Michael Bame - Right, they were doing a 5% cut last time and they actually did not. There is a plan from the budget area, Governor Perry has requested 10% or 5% each FY and they always do everything on the biennium, so for 2012/2013, it'd be 5%, and 5%. And to answer your question Chairman Riggs, if we had been appropriated more money we'd have spent more money.

Chairman Riggs - And that's why we have all these sites postponed, right?

Michael Bame - That's correct. As far as administrative costs for two years to run the program, they totaled 1.44 million making a grand total of what we dispersed from the fund 14 million. Any questions as far as what we've spent?

Chairman Riggs- The administrative costs - refresh my memory – by statute is a percentage of not the fund balance, but of the new revenue, correct?

Michael Bame - That's correct. Its 15% what we're appropriated.

Chairman Riggs – What we're appropriated?

Michael Bame - Right.

Chairman Riggs – I was thinking it was the new revenue.

Michael Bame - I don't think it's the new revenue...

Barbara Watson – Here's the wording it [the statute] says, the commission may annually spend the amount of money not to exceed 15 % of the amount of money credited into the fund for the fiscal year as the expenditures.

Michael Bame - Is that credited meaning what we are appropriated?

Barbara Watson - You might have to ask Cedric.

Michael Bame - Cedric, do you think you could respond to that? When the statute says we're allowed to spend 15% what we're credited, does that mean what we're appropriated, or what was brought into the fund?

Cedric Grice– It's how much is appropriated.

Michael Bame - It's what is appropriated, ok.

Michael Bame - The next section is the extent of corrective action and ranking of dry cleaning sites in FY09: we had 155 active, no postponed sites, For FY09, we had no sites postponed, because we had no sites in remediation, and cleanup costs are going to be higher expenditures than assessing sites, so in that year we did assessments on all sites, and we had enough money to work on all sites. It was a different case in FY10, we had a better idea what was out there, what kind of work we had to do, we knew better what sites needed more wells, and as you are aware we rank and prioritized twice a year. In FY10 we looked at our appropriated budget of 6.5 million and had ranked and prioritized 162 sites at the beginning of that fiscal year. We have our Project Managers prepare budgets for each site and some sites we find new information and we can then reprioritize sites, for example: find out there is a water well and now it's ranked higher. We have the Project Managers draft a budget for each site and make a first draft cut where the 6.5 million dollar mark lands and we draw a line, anything above the line is an active site, and sites below are postponed. So in FY10 we had 162 sites and we postponed 44 for corrective action. We wrote letters to each applicant saying postponed, not kicked out. They still need to remain registered to remain in fund. When a site is postponed, the statute requires if the status of a site changes, we notify them and we send them a letter, I signed every letter, there are 44 letters, and for the sites that are postponed, our rules allow us to approve leaving the program. We only had a few calls in FY10 as to what the letter meant. Richard, myself and a few of my staff gave explanations, and they were satisfied. They were worried they were going to be kicked out and that's not the case. We started this fiscal year [FY 2011] with 169 sites and we postponed 59 sites. And there were some sites that were postponed in FY10, became active again, and some became postponed. It's in the report, page 4 starts their current status, active or what phase, active or postponed, so this year there were 59 postponed. We didn't send out 59 letters because some remained postponed. If they were active and were postponed, we did send letter.

And by end of FY10 we had closed 27 sites to date and the closure list is in your packet.

Barbara Watson- In the Supplemental Report.

Michael Bame - In the Supplemental Report, there is a list for your convenience, Table 2; those are the 27 sites I am referring to. Any questions so far?

Chairman Riggs – This portion doesn't invite much input because it's required by statute.

Michael Bame - As you are aware, the author, Representative Elkins put this in the statute. They only wanted so much information, but Representative Elkins asked to stick to what was in the statute as far as that report, it fulfills the requirements of Texas Health and Safety Code, Section 374.056 and fulfills what they are requesting. Any questions and can we final this report?

Chairman Riggs –Should there be a sign off page?

Michael Bame - No we post this as part of the minutes, we just need your concurrence. Just let us know if you have any questions or if you approve of the report.

Chairman Riggs – Any opposition to approving report?

Committee - All unanimous approval.

Michael Bame - Unanimous, ok.

Michael Bame - The 82nd report is finalized and we'll send it to our folks to get a final version printed, and send to the legislature due on or before December 1. I can get an electronic copy and send it to you all or I can ask the printing shop how many hard copies you may need, or will electronic suffice?

Chairman Riggs – Will it be on the website, too?

Michael Bame - Yes it will.

Chairman Riggs – Will that be Dec. 1, also?

Michael Bame - Whenever it gets finalized and becomes official and the legislature receives it. Then we can post it on our site.

Chairman Riggs - I'd just a soon have it electronically.

Michael Bame - So anyway, we're done with that report, thank you for reviewing it. And I hope Representative Elkins, etc., have all the info they need, if they have any questions we'll contact you individually by email and let you know if we have questions or comments from the legislature or governor's office.

Michael Bame - Next discussion – FY 10 Supplemental Report: every two years we do the biennial report and last year we provided the committee an annual report, and this year's is similar to the annual report. This is not an official [Texas Commission on Environmental Quality] TCEQ publication.

Chairman Riggs – This will go on the website on the same day?

Michael Bame - Yes, I'll post it the same time we post the minutes of this meeting. We will post all minutes and Supplemental Report, and 82nd report at the same time.

Michael Bame - The supplemental report is based on what the committee has requested in the past and we followed suit with the methodology of past reports, things you wanted were a tally of registrations; I'll let Don take that over, Don:

Don Kennedy– This is basic, this is a breakdown of registration types and totals from the beginning of the program; as I'd mentioned it shows a consistent decline of about 200 sites over 3 or 4 years, this year's totals are in the legislative report also.

Chairman Riggs – From an enforcement standpoint, is there a follow up to ensure the 200 we lost actually went out of business?

Tim Haase– That does occur especially if we worked a previous enforcement action and if there's a need to go out and verify whether or not they are doing business.

Chairman Riggs – So these are legitimate closings?

Tim Haase– I'd suspect so.

Don Kennedy- We would agree. I think over the last several years it's just related to the economy.

Michael Bame - Is it getting any better?

Shirley Reichstatd- It's flat.

Michael Bame - And we touched on the Dry Cleaner Release Fund itself, this is as of 8/31/10, Cedric gave us these numbers of actual revenue brought in till the end FY10 and the program collected 43 million, plus and as far as 8/31/10, the unreserved total fund balance was approximately 17.8 million. Any questions on the fund itself?

No questions, okay. Regarding new dry cleaning legislation; FY10 was not a legislative year, and so this was not applicable. The new session begins January 2011 and we've already begun working on the agency's sunset review. The legislative session is coming up and so as far as dry cleaning, I haven't heard of any legislation. Have you heard anything as far as industry goes?

Shirley Reichstatd – No.

Michael Bame - Ok, the next section is about compliance actions and I'll let Merrie discuss this:

Merrie Smith - We did include compliance investigations that we conducted in FY2010, and I'll remind you, the ongoing problem in the compliance investigation end of this is that while we get funding for some [full time employees] FTE's in other parts of the program which are also important, we didn't receive an fte toward investigators, so we have to pull them from other areas to pick up investigations as they can. As a result of that, we did only conduct 14 investigations in FY2010 – which did result in 5 notices of violation and 1 notice of enforcement and those are from ongoing registration problems and this is a small sampling of the 200 players, but we did see some repeat players continue not to register. But it's not always case, the tool to shut down is a powerful hammer; you have 30 days to get this done, but it will be continuing effort to go back and make sure they are compliant with their registration.

Chairman Riggs - If they aren't registering they shouldn't be able to buy solvent, so are they getting solvent by other means that may also be a violation?

Merrie Smith– We have them show us their solvent receipts and they say receipts aren't available. So we have to look at it through the other end, and some audits identify sales to facilities that aren't registered. That information is passed on from auditors to our investigators and they will follow up. So we want to look at not only the dry cleaner but the distributors as well.

Norberto Garcia – Is there any penalty for not registering?

Merrie Smith– There is. It's specified in the statute.

Tim Haase– We do run administrative actions that result in enforcement orders, they can be agreed orders and we have found that some do not comply with them as well and we have to seek other actions mainly through the Attorney General's Office.

Chairman Riggs - Is that the difference between a notice of violation and a notice of enforcement?

Merrie Smith- That is the level of egregiousness of the violation. It can get a higher level in two ways. One is when a violation can have a major environmental impact, a major impact to the public, "you should have known this and done something about it". That would result in a notice of enforcement. We will seek a penalty immediately to get this issue resolved. A notice of violation (NOV) is issued for a lesser environmental impact, a lesser violation of severity, these will result in a notice of violation. We expect you to comply and if you don't, we have the authority to shut you down in 30 days. Now also, somebody who's issued an NOV, if the terms of the NOV are not performed, we can up the ante and pursue a notice of enforcement and pursue an enforcement case.

Shirley Reichstatd- Now has anyone been shut down?

Merrie Smith- No, but we've come close. This legislation was only effective Sept. 1, 2009, so only a little over a year. That's part of the discussion we've had with dry cleaners that we find out are unregistered...that this could be coming.

Michael Bame— We also look at the registration for facility owners, land owners, preceding land owners that are allowed to come into the programs. We always check that applicants are registered. If a dry cleaner applicant is a land owner and not registered, we can put a lien on their property for the amount we spent. If we spent 100k, we'll place a lien, and the statute says we will, not we may. We work with Don's staff to make sure all applicants are registered because we really don't want to put a lien on someone's property, but that's how the statute does read. So we're trying to make sure everyone remains compliant.

Michael Bame— In the next section, I'll let Tim discuss enforcement actions.

Tim Haase – FY10, we issued 9 administrative orders, the difference in the number of investigations and the amount that resulted in a notice of violation or a notice of enforcement, is due to a lag time. From one year to next, the amount of investigations doesn't add up to the number of orders. In FY10, we assessed penalties of over \$30,000, with \$3,000 in deferrals. Differed penalties are a settlement incentive to offer partial deferral as long as they correct their situation. And we do have to withdraw, and demand that a deferred penalty be paid if they do not comply.

Michael Bame— Can you explain contesting...contesting a case, what that is?

Tim Haase - That's our process required by statute to proceed with an enforcement action, to file a petition that explains the allegations and sets the track to an administrative hearing where the state will put on evidence and the respondent has a chance for a defense and then a judge brings back a recommendation for approval. We try to get settlements at the lower levels, agreed orders are more preferable.

Michael Bame - The next section regards corrective actions in fiscal year 2010. We actually received in FY10 17 applications which is a drop from previous years. And that brought the total to 212 apps and in the handouts there is a list of all 212 sites. Your question Chairman Riggs, you had emailed, was "can you report of the 212 sites, if the solvent is perc or something else?" I'll make a clarification; there is no DCRP No. 9, the 212 list goes to 212, so if you do all the math, it's actually 211 so pretend DCRP No. disappeared.

Chairman Riggs- The applications are in order, so the last 17 are new ones?

Michael Bame - As far as the 211, we have 210 perc sites and one other, petroleum.

Chairman Riggs— So the exception is the one petroleum?

Michael Bame - Yes, chlorinated solvent is almost all we clean up and if you look at the active sites, and ineligible or withdrawn, the total is 15 sites that have applied or the site was ineligible...there are a few coin operated facilities that tried to come in which are not eligible. We've had 2 or 3 applications rejected they weren't eligible, and we have 4 applications in review currently.

Chairman Riggs- Is any of this on the website so someone could search this information?

Michael Bame - Not on the website, it was made for this meeting. But we have our priority list on the website with all the information.

Chairman Riggs - The fact that they're all perc except one makes it unnecessary, right? We could just make a statement if we needed to? One particular case, now closed as I understood from knowing the person, it's a site that never used chlorinated solvents, but found them there, we don't have any idea where that came from do we?

Michael Bame - I don't know.

Richard Scharlach- One thing that happens is that the applicant can note that they never used perc, but that may not be the full history of site.

Chairman Riggs - But the reason for cleanup is that perc was found at the location and the lesson is we have all these cleaners out there who've opted out because they never used chlorinated solvents and we may regret that decision...

Michael Bame - That's a possibility especially if no assessment has been conducted at the property.... if they did that based solely on their own knowledge.

Chairman Riggs - They could fall like one I just sited, they thought they could opt out and found out they shouldn't have.

Michael Bame - If they do a real estate transaction and they are required to do some type of assessment, it'll be assessed and at that time they'll find out what's there and they could've known that before.

Chairman Riggs - And the assessment is chlorinated solvents, it's not perc specific, it could be dry spot or trichloroethane or somethingAs long as it's chlorinated, you're going to pick it up as a chlorinated solvent, so it could be several different compounds.

Richard Scharlach- Typically what we see, and the reason I don't say perc at every site, is at some of these older sites we've already got degradation and see TCE or DCE instead of the original product.

Chairman Riggs- It doesn't matter; any chlorinated solvent is going to put it in the formation.

Michael Bame - As the chemical ages, it breaks down into other chemicals, they are called daughter products.

Michael Bame— And during the FY we've had 17 closures and for fy11 we are looking at closing 10 more sites. The requirement for the legislative LBB performance measure is to close 10 sites at a minimum. We looked to our staff at beginning of the FY for potential closeable sites, and that way we make sure we meet our requirement of closing 10 more sites.

Chairman Riggs— You are going to avoid postponing those, right?

Michael Bame - Absolutely. If we have sites close to closure, we try to keep those on the list. If they require some minimal work and we do have some sites like that, and for FY10 we have new sites where we assessing for the first time, and when we receive applications, we have bare bones data and we're not sure what's there, it could be a small or tremendous amount of contamination. We have some highly contaminated sites, but not horrible ones that jumped up on the prioritization list. Some in FY10 with smaller amounts of contamination and in FY11 we'll try to close them. We kept them on the list to close them, our main priority is to work sites that pose the greatest risk but we're not going to close a site just to close it, whatever contamination is left in place and doesn't pose a risk, that's what we are looking for. We won't close a site until it poses no risk. So even if we don't meet legislative requirements, we won't close sites just to close them.

Chairman Riggs- Once closed, no more monitoring or expenditure will occur?

Michael Bame- None [for TRRP Standard A Closures]. We send a letter stating that no further action is required on the site and they don't have to pay fees. We coordinate with Don Kennedy and make sure they know it's closed, especially the land owners. But facility owners have to keep paying registration fees if it's still an operating facility, however a preceding or current land owner gets to stop paying fees. We coordinate with Don Kennedy's staff, cc them on the letter and I review all closures, so they are on the up and up. We've had no complaints as far as getting a bill after a site is closed.

Chairman Riggs - Not to hold you to it, but what's your best estimate, could we close all sites before the legislative sunset?

Michael Bame - We had to do a report this year, called the Government Accountability Standards Board's Report. It basically shows the liability each program has. We gave them a number for sites currently in house and based cleanup numbers from a report that stated that the average cost to clean up a dry cleaning site was about \$250,000, and it added up to about 35 million for all sites in house. If we continue to bring in 5 or 6 million dollars per year, we could clean these sites up. Then you get into sites with water well impacts where we could spend 1.5-2 million per site. I don't think that we have enough mone but we will do what it takes to protect human health. I hope we have enough, but I doubt it. Richard? Barbara?

Richard Scharlach— There are a lot of unknowns, it's hard to answer that.

Chairman Riggs – We anticipate a declining revenue string, do we not?

Michael Bame - The trends report that over the biennium, we brought in 10 million and spent 14 million. We're already at the point where expenditures are more than we brought in.

Shirley Reichstat— Is there an evolution in technology that can cut the cost for remediation...are they still coming up with new ways to effectively do cleanups?

Richard Scharlach— I think they're getting better. There is no magic bullet. I think a lot is specific to the location: what works best in areas, we have a presumptive remedy screening document. It matches a specific type of site with a remedy and it's a living document. As we learn what works and what doesn't we can adjust that document with the hope that it will make remedial efforts more efficient. But there will still be tough expensive sites out there.

Michael Bame - As far as the supplemental report, we put how much we spent in the biennium report, table 1, it provides corrective action costs, a total of \$12,904,447 and the number is referenced in the 82 Legislative Report, so those numbers match.

Chairman Riggs— There an asterisk on the column heading but I don't find where the asterisk is.

Michael Bame - The asterisk indicates there are obligated costs not actual costs incurred. It is the same number, it is the obligated cost, not what we actually paid. On this document, before we post it, we'll put that statement in the document. It's still draft and we'll put it in.

Chairman Riggs— This keeps coming to mind, we had expenditures for the last biennium. It would be interesting to see a cumulative expenditure per site. Is that a recoverable number? Because I think near the end, you could then generate our total cost per site.

Michael Bame - We can do that for you.

Richard Scharlach— We're actually working on that.

Chairman Riggs— I think that's information people paying into the fund would like to see.

Michael Bame - We can do that for you and the public also.

Chairman Riggs— Now this goes to the website, is this a searchable format? Can you reorder it by priority ranking or is it a pdf document?

Michael Bame - We don't want people messing with the document, it is a pdf document. Richard's made numerous tables, he's got them by priority. The priority table is posted every 6 months that is based on the prioritization of sites. It's based on priority itself not numerical order.

Richard Scharlach— Generally, some tables on the website that are in pdf format could also be put as excel spreadsheets.

Chairman Riggs— Do you track hits for this information or how many people come looking for this information?

Michael Bame - I'll have to talk to our web people.

Chairman Riggs— One more question; is it safe to assume the higher the priority, the more expensive cleanup will be?

Michael Bame - No, it is site specific. You can have a higher priority site, for example, we find a site with a water well on site, not impacted but its threatened, in the prioritization scheme we want to protect the well. We assess and find out all it has is some shallow soil contamination, it ranks #1. But if we remove soils with a backhoe, remove the threat, not much money will be spent, so it is site specific.

Michael Bame - We have already answered whether the 212 sites use solvent or perc.

Chairman Riggs- Well actually not what they used, but what contamination you found. They may be registered as a non perc using site but you found perc/chlorinated solvents, and it now changes category on the list. So if someone was a non perc user trying to seek comfort from the list, it's misleading. So maybe it's best not to post it that way.

Michael Bame - Next discussion, we'd like to have Laressa from small business. Laressa will talk about the small business update and a new compliance reference guide.

Laressa Wong- Thank you. I've been working with Nathan on the dry cleaner project focusing outreach on helping dry cleaners comply with environmental regulations. One of our biggest accomplishments in the last year was we did develop a new compliance guide for dry cleaners. It is a basic overview of environmental regulations on the state and federal level for dry cleaners. We go over the dry cleaner remediation program, registering, performance standards, their water and waste rules. And basically provide a synopsis of what a dry cleaner needs to do, it's not very detailed because we didn't want to overwhelm the dry cleaners that would be reading this document. We included our 1-800 number so they can call and get free confidential assistance from our small business program. They can call us and we can further explain what the requirements are; what's a specific rule, whether it be air or waste, or a dry cleaner specific rule. I brought a copy for you guys, its light reading, only 10 pages. Another success is sending out to dry cleaners that haven't registered yet. Dry cleaner registration sends a reminder to them in August that they are supposed to register and then the dry cleaner registration group, provides a list to small business in November of

who has still not registered. We developed a post card and last year we included that we have shut down authority, for those that are operating and not registered. We continued to have that language in the card and this year we are anticipating just fewer than 600 postcards will go out before thanksgiving or right after. A little idea of how effective the post card is, in FY08 we sent 671 and in December and January after the postcard was sent, 416 had registered. On the postcard we include our 1-800 number so if they thought they registered they can call to see if they submitted form or call and get the form for registration. For this year, the biggest outreach is going to be in Dallas/Ft. Worth area. There are going to be some air related rules for petroleum dry cleaners. The DFW area was on a plan to come into attainment with ozone standards, and they did not meet that goal last summer, so we have rules in the Texas administrative code that if an area of nonattainment does not meet its attainment goals, there are contingency rules, and this contingency rule requires that petroleum dry cleaners in four counties, Dallas, Tarrant, Denton and Collin counties, to do inspections of their machines to see if they are leaking solvent and the constituent of concern is volatile organic compounds which is in the petroleum solvent. If a dry cleaner does find a leak, they have 3 working days to fix it. If they don't have the part, they have 3 working days to get parts, and 3 working days to fix machine. We have a checklist to use to document system maintenance, so if inspections are already done, they can use the form and it can be given to investigator to show they are doing weekly inspections. We contacted registration last year to get an idea of how many petroleum dry cleaners are in those 4 counties, there were 41. Before we do our outreach, we'll check for the most current list. We'll send out a letter explaining our current rules with our 1-800 number. And Nathan and I will call those dry cleaners and follow up to ask if they have any questions.

Shirley Reichstatd – Excuse me, did you say 41 in 4 counties?

Laressa Wong - 41 *petroleum* dry cleaners in those 4 counties.

Shirley Reichstatd - I think there are a lot more.

Chairman Riggs- Are they just the petroleum ones? Or all?

Laressa Wong – Just petroleum ones.

Chairman Riggs - That 41 comes from registration which means if the number is low, we have a large pool of unregistered cleaners.

Don Kennedy– That could be a possibility.

Laressa Wong – Could they be registered as “other” maybe?

Don Kennedy – That could be how they filled out the form.

Chairman Riggs– If using just petrol or all hydrocarbons, green earth would have a hydrocarbon component to air emissions so is this just petroleum?

Laressa Wong – The rules say just petroleum.

Chairman Riggs– From an air quality standpoint, whether synthetic or petrol, it's the same issue.

Michael Bame- Maybe send them their list and we can get a list of non-compliant facilities. Laressa, can you send that to me?

Chairman Riggs - Now if its only the DFW four counties, Houston doesn't fall into those areas.

Laressa Wong – Houston does not fall into that implementation plan because they haven't not met their goal. If Houston was to not meet then they'd trigger the rule. We're looking at Houston, El Paso, and Beaumont areas as well. The rules only specify the Dallas/Ft. Worth areas. We are also working with the Southwest Dry Cleaners Association and the Korean Dry Cleaners Association about these rules and how it will impact them.

Chairman Riggs– A lot will opt out, but you have the opt out list as well?

Michael Bame- We'll send you the lists and we'll coordinate with Martha and Don and send you the list. And we'll figure out if it's a low number.

Chairman Riggs– If it's as simple as a yellow pages check for those four counties for those dry cleaners, we'd have more than 41.

Don Kennedy– It'd be hard to filter out drop stations from that...just by the location.

Laressa Wong – The Comptroller's office can find dry cleaners registered in those counties to find facilities registered as "other".

Shirley Reichstatd– So you suspect that a lot of petroleum users may have checked 'other' instead of saying "petroleum"?

Don Kennedy - Some who use trade names don't know it is actually petroleum.

Laressa Wong – I wouldn't want to confuse others if there is a large number.

Chairman Riggs– About an overview of rules, how does a dry cleaner or new person learn of the existence of that document?

Laressa Wong – We try to outreach with documents every year about site visit programs. If a facility was getting a quarterly newsletter, the Advocate, it'd inform them of the new document. And at the trade show, we informed them of the new document.

Chairman Riggs– Also on website?

Laressa Wong – Also on the website, we have a dry cleaning link off our home page.

Chairman Riggs– So if they are doing any due diligence, they should find it.

Laressa Wong – We're always trying to let them know they may be subject to regulation so businesses can call and see if they are regulated.

Chairman Riggs– So that 10 page document will also include the DFW program?

Laressa Wong – Yes, sir. That rule for dry cleaners in the DFW area will be effective in May 2011, so we are looking to do outreach in early spring so its fresh in their minds when the rule goes into effect. I'll make sure I submit the list with the 41 dry cleaners to Don's group.

Chairman Riggs– Is that triggered by state statute? Or is that federal?

Laressa Wong – That's in the Texas Administrative Code, Chapter 115 rules, Subchapter F and I also did include a copy of the rules on the table.

Michael Bame– Chapter 115 are the air rules, we have water rules, waste rules and the 115 chapter are the air rules.

Michael Bame - Thank you, any other questions?

Michael Bame - One last discussion, this pertains to the email I sent last week about the Dry Cleaning and Laundry Institute, also known as the DLI; as you are aware a presentation was given at the Rocky Mountain Fabricare Association meeting in Colorado and it was a comparison of the 13 states that belong to the State Coalition of Remediation of Dry Cleaners (SCRD). Texas is a member of SCRDR. In that critique, there was a slide show unfavorable to our program. A slide stated that there was no working relationship between the industry and government agencies. We had thought we had an open and cooperative relationship with industry. Come to find out, it was a board member of the DLI who presented it, not the DLI itself. It was based on 5 year old slides, misinformation, and I'm glad because of emails from advisory group, you said that you felt we have a good relationship.

Chairman Riggs– I have to say that Jim and I discussed, I didn't confer with Norberto or Shirley, but it's my personal thoughts.

Shirley Reichstatd– But I agree.

Michael Bame– Our biggest concern is misinformation put out to the Rocky Mountain Fabricare Association. Luckily we are a member of the SCRDR and in a meeting in Florida in two weeks Richard will be attending and he will provide updated info to all 13 states as far as working with the regulated community. You've always given positive feedback and we appreciate your feedback. I was worried something had happened and

then Chairman Riggs responded that he also had concerns. We were happy to find out that the Advisory Committee thinks Texas is an excellent program.

Shirley Reichstadt – We award a prize, a highly prized cap to someone like that. It's called the "DA" award. This presenter may be a candidate for the "DA" award.

Chairman Riggs– As I understood from the Colorado meeting that Colorado isn't one of the 13 states, correct?

Michael Bame– Colorado is trying, but they don't have a fund yet. They are trying to ascertain how other state's funds work.

Chairman Riggs– My thought is that presenting at SCR D is one thing, but can you contact Colorado and provide guidance. They are looking for a model and as this evolves, it could be a good model, we've evolved a lot and there was a lot of contentious behavior between members of industry and we had confrontational moments in meetings even with TCEQ staff...but it's evolved to a positive program. As evidenced by this report, you have no revisions to report. And Colorado may see fracturing of industry early on, but some of our strongest supporters were our strongest opponents.

Michael Bame– We know our counterparts in Colorado, we have phone numbers for them.

Chairman Riggs– Everything we have is public, so they could easily take parts they like best and model it.

Richard Scharlach– It's possible.

Michael Bame– He will have a positive presentation about successes, about the advisory committee, and how open we've been over 7 years.

Chairman Riggs– The last 4 have been positive and with rules to iron out, it took a while to do that. I think anybody would express the same things, in fact the legislation had to be re-written.

Michael Bame– Again we appreciate all you do for us. We appreciate all the work and efforts you do to make the program successful. That's all of the agenda. That last one came up last minute.

Chairman Riggs- Good timing; we had an issue to dispense with. The CEO of DLI would look into the issue to explain how it happened; it wasn't an apology but it was close.

Michael Bame– I responded back to him and expressed appreciation of his comments. Anything else to discuss?

Chairman Riggs– Any public comments?

David Donahue with Ecology and Environment – To follow up with something Dr. Riggs said early on about whether the TCEQ could notify the budget board about a request to maintain full funding, and in light of their inability to do so, would the advisory group consider a letter to the budget board saying there's very little impact to the general fund, so cutting it the normal 5% wouldn't have that impact and maintaining full funding would allow more sites to be worked?

Chairman Riggs– Sounds doable. In TCEQ's budget, is this is a specified line in the budget; in the LBB

Michael Bame– Yes. Fund 5093, in the appropriations bill. Look under fund 5093 and it pertains to the Dry Cleaner Release Fund.

Chairman Riggs– I know staff is limited to doing things, but what is the most effective method? I'm looking at the attorney.

Barbara Watson – As far as the appropriate method to contact LBB?

Chairman Riggs– Whatever would be effective. The truth is the fund is self supporting, but has to be appropriated back to be spent, so we're not changing the tax burden on public, the big concern is not a tax burden on public...that's also true with the whole agency...the agency is self supportive?

Michael Bame– Yes. We only use 3% of general revenue, 97% is self funded.

Chairman Riggs– So apparently the LBB doesn't look at that as criteria, right?

Barbara Watson – I don't know how appropriations work, someone else in the agency may know more. We can find out who is best to talk to about basic appropriations questions...because I'm not that person.

Jonathan Walling – Appropriations and Planning.

Chairman Riggs - Good suggestion, we'd have to figure out the best method.

Michael Bame– Mike Hoke is our liaison between the governor's office, the agency and Representative Elkins, the bill's sponsor. So if issues arise, it goes back to bill's sponsor. So you can contact Mike Hoke.

Shirley Reichstadt – Or do we go directly to Representative Elkins?

Michael Bame– That is your call. He was the bill's sponsor, so he'd have the most knowledge.

Chairman Riggs– There is a big disconnect between how a business operates and how a state operates. A business would see it as 17.8 million dollars in the fund. But we know

we really don't because it's got to be appropriated back. But 17.8 million could sure go further towards closing and sun setting this program.

Michael Bame— We agree. Additional funding would cause us to have less postponed sites.

Chairman Riggs - Could we ask this way: how much of a cleanup budget could you handle in the next appropriation cycle? What would it take dollar wise to get them off the postponed list?

Michael Bame— We did budgets for all sites; We'd need 10 million and no sites would be postponed. That's annual.

Chairman Riggs— That would exceed our balance, so if we asked for more than the balance, then we are a burden to tax payers and we couldn't sell that I don't think.

Michael Bame— I seriously doubt that'd be a sellable item.

Chairman Riggs- I'm not sure we could sell the...the people who contribute the money think that there is 17.8 million in our bank account somewhere that they should be able to tap into because that's how they'd run their business.

Michael Bame— Right. And you have to understand that our hands are tied as to what the legislature allows for appropriations to spend on the programs. We all have appropriated amounts we can't exceed. It's the budget for all agencies. We can't exceed, period. In the appropriation, and I have the big book that they print after the session...it's the budget for all state agencies and it's the appropriations budget and they'll actually have every program for every state agency and we're not allowed to exceed that. And we're not allowed to ask for more.

Chairman Riggs— We have all these postponed sites, if we could get them into remediation and active, we'd also have a better idea if the revenue string is going to be sufficient to support the clean up. We're in a positive mode because we're limited on the spending.

Michael Bame— If the trend stays there won't be a surplus, we're ok for a few years, if they keep appropriating, and I don't know how much will be appropriated in 2012. The session that starts in January, that's what they're working on, the budget for all the state agencies. It could be increased, decreased, or the stay same. We'll know more after the session and then we'll have how much we are appropriated.

Chairman Riggs— The fee structure is set by statute and we can't change that. The only change would be if there was a pool of unregistered businesses? That'd be the only way to increase revenue.

Michael Bame— Exactly right. They are unregistered and buying solvent illegally.

Chairman Riggs– We have no FTE's for that kind of action....politics.

Michael Bame- Anything else? Its 12:10; The advisory committee meeting is adjourned.
Thank you very much.