

Texas Commission on Environmental Quality (TCEQ)
Chief Engineer's Office
Tax Relief for Pollution Control Property Advisory Committee
February 11, 2011
10:00A.M. – 3:00P.M.
TCEQ, Austin Campus,
Building E, Room 201S

Minutes

I. Opening Remarks..... Bob Adair, Chair

A. Call to order and recognition of committee members for the record

Mr. Bob Adair called the meeting to order at 10:01 a. m. with ten members present. Mr. Don Lee arrived later. Mr. Eddie Arnold and Mr. John Nichols were unable to attend.

B. Public comments policy discussion

Mr. Adair re-stated the public comment policy. No action was taken.

C. General comments from committee members and staff

No comments.

II. Review Advisory Committee's draft 2010 annual report Bob Adair

Mr. Adair opened a discussion on the [committee's annual report](#). He explained the differences between this version and the draft versions are as follows:

- The document was restructured for readability.
- The amounts for staff time and travels dollars were updated.
- A section titled "Usefulness of Committee" was added.

A motion to adopt the report and forward the report to the commission was made, seconded and passed.

III. Consider TCEQ staff's request for advice Various

A. Draft application and instructions

Mr. Adair opened the discussion by pointing out that in addition to the draft application form and instructions distributed to the committee on December 6, 2010, TCEQ had recently posted a revised application form to the Web site. Mr. Chance Goodin, TCEQ, explained that in response to the recent rule amendments a new application form was necessary. Discussion was heard on both the new on-line application and the draft application form and instructions. For clarity purposes, this discussion will be separated based on the version of application being discussed.

[Draft Form and Instructions](#)

Mr. Goodin stated that the goal is to have the application and instructions ready by August 2011 when updates to the database are complete. Mr. Paul Coon stated that in the Rule Citation section, located on page 4 of 5 of the draft instructions, the word "requiring" should be replaced with "being met or exceeded." Mr. Coon pointed out that the two links to rule citations do not contain all possible citations. Several members suggested that the language be clarified to signify that there are other appropriate rules or that the links should be removed. Mr. Robert Castor stated that in the Requirements for Submission section, located on page 2 of 5 of the draft instructions, the explanation in response to the "How much equipment can be included on a single application?" needs additional clarification. Mr. Adair stated that in the same section the response to the "When does equipment become eligible for a positive use determination?" question appears to discourage early filing of applications. Mr. Tim Reidy, TCEQ, explained that under agency policy staff cannot issue a positive use determination until there has been a capital expenditure related to the project. Mr. Wayne Frazell

suggested that this information be moved to page 1 of 5 and include it in the “When to Submit” section. Mr. Coon asked about the level of detail required for the “Property Information” section. A specific concern was raised about listing the estimated equipment cost. The cost can be listed at the major component level or broken down to the individual component level. Mr. Adair explained that the italicized section on page 3 of 5 that reads “Please note if the property is appraised by more than one appraisal district a separate application must be filed for each appraisal district,” is no longer necessary since, by law, property is appraised by only one appraisal district.

Mr. Bernardo Garcia, Harris County Appraisal District, distributed a [list](#) of five items the appraisal district would like to see on applications. Staff will be evaluating Item 1 of the list. Items 2 through 4 were discussed by the committee and determined to be appraisal district issues that would be better addressed on Form 50-248 maintained by the Texas Comptroller’s Office. Item 5 related to ownership status. Several members suggested that the question of ownership be added to the form and that by signing the form the applicant swears that the property is owned and operated by the entity asking for the determination.

[On-line Application Form](#)

The committee had several questions about the online application form, specifically, Section 1, Question 1, “Is the property subject to any lease, lease-to-own agreement, or environmental incentive grant?” Mr. Mike Nasi asked why the lease questions were being asked. Mr. Reidy explained that there had been a case where a positive determination was issued in error due to the applicant not owning the property. Mr. Cyrus Reed asked about the environmental incentive grant part of the question. Mr. Goodin explained that this question concerned grants awarded under the Texas Emissions Reduction Program. Mr. Nasi expressed concern that the wording of Question 2 appeared exclusionary. Mr. Goodin explained that the intent was to combine property and equipment to show that either one is eligible. Mr. Adair brought the discussion to an end by stating that the form would be part of the discussion to be had at another meeting.

B. Equipment and Categories List issues

A [handout](#) detailing issues that was previously presented at the December 6, 2010, committee meeting was distributed. The first issue relates to equipment used for recycling and waste minimization. The second issue relates to appropriate citations for equipment installed as a best management practice.

Mr. Lee stated that the first issue is a two-part issue with the first part being eligibility and the second part being whether the equipment should be considered Tier I property. Mr. Reidy explained that in order to qualify for a positive use determination, property must have been installed in order to meet or exceed the requirements of an adopted rule or regulation. Waste minimization regulations establish reporting requirements that require the establishment of goals. Mr. Nasi asked if equipment installed in order to meet goals established as part of a required plan were eligible for a positive use determination. Mr. Reidy explained that under current program guidelines, equipment installed to meet a goal that is not enforceable, is not eligible for a positive determination. A suggestion was made that meeting goals is voluntary compliance and should be considered to be exceeding the requirements of a rule. Mr. Reidy explained that in order to exceed the requirements of a regulation you must be required to meet the regulation. Mr. Nasi suggested that staff develop additional examples illustrating a range of situations where equipment is and is not eligible. Mr. Reed suggested that Mr. Nasi develop and provide examples of cases where he believes meeting a goal should be considered meeting or exceeding an adopted environmental rule or regulation. During discussion of the second part of this issue, there was general agreement that a Tier III application should be required for property installed for waste minimization or recycling in order to properly account for all costs and cost savings.

A discussion of the proper citations to use for best management practices (BMP) was held. Mr. Reidy explained that in order to qualify for certain permits or authorizations an applicant must file a notice with the TCEQ. To operate under the standard storm water permit a company must file a Notice of Intent (NOI) with the agency and they must adopt a Storm Water Pollution Prevention Plan (SWP3).

The SWP3 must list BMPs that will be implemented. The proper citation for a storm water project would be to cite a storm water regulation, such as 40 Code of Federal Regulations 122.26, and provide a copy of the approved Notice of Intent, and a copy of either the entire SWP3 or the pages listing the BMPs. This application review would be evaluated on a case-by-case basis.

Mr. Reidy explained that the agency is receiving applications that contain citations to general prohibition rules such as Texas Water Code, §26.121 and a statement that the equipment was installed as a BMP.

IV. Other..... Bob Adair

A. Old Business

Mr. Adair requested an update on the Encore Wire appeal. Mr. Reidy explained that the application was for a baler at a wire manufacturing facility. The application provided rule citations to various reporting rules and listed the equipment as a BMP for storm water. Staff determined that none of the cited rules were appropriate and issued a negative determination. The commission upheld the negative determination. Mr. Maxim asked if meeting a waste minimization goal was acceptable. (See committee discussion under item III. B.)

B. New Business

Mr. Adair opened the discussion on new business. No action was taken.

C. Future Meetings

The next meeting was tentatively scheduled for April.

D. Public Comments

Mr. Adair opened the discussion for public comment. No comments were received.

V. Adjourn

A motion to adjourn was made at 12:16 p. m. The motion passed.

VI. Action Items

- Committee members will evaluate the draft application form, draft instructions and the current application form for discussion at the next meeting.

Next Meeting Date

To be determined.