

TCEQ, Chief Engineer's Office
Tax Relief for Pollution Control Property Advisory Committee
June 4, 2010
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 introduction of committee meeting for the record

Mr. Bob Adair called the meeting to order at 10:05 A. M. with twelve members present. Mr. John Nichols was absent.

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 were provided and no action was taken.

II. Rules Various

A. Change in ownership

Mr. Adair opened the discussion. There are two types of ownership changes. The first type involves one company buying another. The second type involves a company with a positive use determination entering into a financial agreement, such as a lease, with a bank or other investment group. The issue is whether these changes should require the filing of a new application, the issuance of a new use determination, and the filing of a new exemption request with the appraisal district or whether there can be a procedure requiring only a notification of the name change. Mr. Wayne Frazell asked what would happen if the property listed on the determination was no longer valid for a positive determination. The example mentioned was cooling towers. Mr. Don Lee stated that under Chapter 11 of the Texas Tax Code, when there is an ownership change, the property must re-qualify for the exemption. Mr. Bernardo Garcia, Harris County Appraisal District, provided a variation of the financial type of ownership change where the agreement does not contain an equitable ownership clause. He stated that in this case, there appears to be a separation between the owner of the property and the operator and that a negative determination should issued. Mr. Greg Maxim asked if the outcome would be different if the lease contained a clause transferring the property back to the original owner upon conclusion of the lease. Mr. Lee suggested that issues related to ownership are statutory issues that cannot be modified by rule. Mr. Mike Nasi stated that these appear to be procedural issues and may require legislation to modify. Input was requested from TCEQ staff. Mr. Timothy Reidy, TCEQ staff, explained that since an ownership issue was raised in a recent appeal, staff will defer comment until the appeal is finalized. Mr. Ron Hatlett, TCEQ staff, explained that issues related to ownership are rare and there is no way for TCEQ staff to know if a facility or piece of property has changed ownership unless the applicant contacts the agency. No action was taken.

B. Calculation of partial use determination

Mr. Adair opened this discussion. Mr. Frazell provided a [handout](#) and stated that after processing several examples he believes that the Cost Analysis Procedure is the most appropriate method. A suggestion was made that in order to cover all possible situations the rule may need to contain several equations. Mr. Cyrus Reed provided emission [data](#) for electrical generating units. He stated that using this data in the emissions based formula generates a 70% determination, while using the same data in the cost-based formula generates around a 33% determination. In addition, since there are several types of emissions, which reductions would be used to calculate the partial percentage? Mr. Nasi pointed out that while the current program is effective for handling add-on controls, it is not as effective when dealing with engineered controls. Mr. Reed suggested that members look at the [sample](#) Heat Recovery Steam Generator applications supplied by staff. He stated that one of the applications based the proposed determination on avoided costs and how that might be an appropriate approach.

Mr. Bennett Sandlin explained that if an emissions reduction formula was used to calculate a partial percentage and that percentage was then applied to the total value of the facility, eventually the entire facility would be exempted. Mr. John Kenedy, Texas Taxpayers and Research Association, stated that the TCEQ’s responsibility was to determine if a piece of property qualified as pollution control property and not to make judgment calls on the merit of the property.

Mr. Robert Castor provided a [handout](#) containing two partial determination examples using Mr. Reed’s data. The examples calculated the emission factor based on reductions of all listed emissions. Suggestions were made that only reductions of criteria air pollutants be included in the calculation and that emission data be stated on a per million BTU basis.

Mr. Adair asked what the committee could do or needed to do in order to influence the current rule proposal. After several minutes of discussion, it was clear that the committee was not ready to reach a consensus on how to appropriately calculate partial use determinations. Two motions were addressed and a [document](#) was prepared. The first motion states that the uniformity requirement of House Bill 3206 does not require the adoption of only one partial use determination formula. The motion passed. The second motion recommends that during the public comment period, the commission invite comments on alternative methodologies for calculating partial determination to supplement or replace the cost analysis procedure as proposed in the rule proposal. The motion passed.

C. Discussion of TCEQ Rule Concepts for the June 30th Commission agenda

Mr. Minor Hibbs, TCEQ Staff, provided a brief overview of the proposed amendments to 30 Texas Administrative Code §17 including:

- Modify the Cost Analysis Procedure to ensure uniformity in partial determinations.
- Eliminate Tier IV and require application for items listed in Texas Tax Code §11.31 (k) to be processed as Tier III applications. These applications would still received the accelerated processing required by §11.31(m).
- Rename Part A of the Equipment and Categories List as the Tier I list.
- Eliminate Part B of the ECL and list the 11.31(k) categories in §17.17.
- Move the Decision Flowcharts to guidance.
- Change the administrative review timeframe from three days to “as soon as practicable”.
- Implement the committee’s resolution on the benefit at the site issue.
- Clarify the applications can be filed only for individual items or for integrated units of pollution control property.
- Clarify what information must be provided in the application form.
- Provide information about other committee resolutions in rule proposal preamble and request comments on the issues.

No action was taken.

D. Other

Mr. Adair opened the discussion. No action was taken.

III. Other Bob Adair

A. Old Business

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

B. New Business

Mr. Adair opened the discussion on new business. The May 21, 2010, [minutes](#) were reviewed. A motion to approve the minutes was made and adopted.

A discussion was held on the timeline for the rule proposal. Mr. Eddie Arnold requested that staff provide a link to the rule proposal as soon as practicable.

C. Future Meetings

The committee will use email to determine the next meeting date.

D. Public Comments

Mr. Adair opened the meeting for public comment. No additional comment was received.

V. Adjourn

A motion to adjourn was made at 2:31 P. M. The motion passed.

VII. Action Items

- Committee to establish next meeting date
- Once the rule proposal becomes available on the TCEQ Web page, staff will email the link to members.

Next Meeting Date

TBA

TCEQ Austin Headquarters

12100 Park 35 Circle

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