

**Texas Commission on Environmental Quality
Dry Cleaner Advisory Committee Meeting Minutes
November 13, 2009**

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
Rick Sims, Industry Representative

Texas Commission on Environmental Quality (TCEQ) Employees in Attendance:

Cari-Michel La Caille - Enforcement Division
Bill Shafford - Remediation Division
Linda Brookins - Remediation Division
Brent Wade - Remediation Division
Barbara Watson - Office of Legal Services
Richard Scharlach - Remediation Division
Michael Bame - Remediation Division
Don Kennedy - Permitting and Registration Support
Merrie Smith - Field Operations Division
Nathan Weiss - Small Business and Local Government Assistance
Denise Crawford - Remediation Division

Handouts:

- Agenda
- Texas Commission on Environmental Quality Dry Cleaner Program Status Report Fiscal Year 2009
- Dry Cleaner Registration Statistics
- TCEQ Letter to Dry Cleaner Remediation Program (DCRP) Applicant (Example of Postponed Letter)
- DCRP Site Prioritization List

Brent Wade, Director of the Remediation Division, began the meeting with a brief discussion on the new structural organization of the TCEQ offices that administer the DCRP. The DCRP is administered in the TCEQ Office of Compliance and Enforcement. The Dry Cleaner Registration Team is in TCEQ's Office of Permitting and Registration.

Each TCEQ employee sitting on the panel introduced themselves and identified their role or position at the agency.

Don Kennedy, Team Leader for the Dry Clean Registration Team, went over the 2009 registration status, including a breakdown of the total registrations by type (i.e. facility, drop station, property owner, etc.) and a breakdown of the total facility/drop station registrations by fee structure (i.e. participating/non-participating, etc.). Approximately

200 fewer facilities/drop stations registered in 2009 than in 2008. This is consistent with the drop in registrations noted in 2008 when compared to 2007, and is a recurring trend observed over the past several years.

Advisory Committee Member Shirley Reichstadt asked if the large number of registered drop stations with gross receipts < \$150,000 is cause for concern. Mr. Kennedy stated that this number is for 2009 only and he would check to see what the previous fiscal year numbers were.

Advisory Committee Member Rick Sims asked about the status of collections. Don Kennedy stated that collections are at 93%, and that many of the unpaid fees are for businesses that are no longer active. He added that although registration is required by August 1st, many businesses obtain their registration at a later date.

Mr. Sims then asked if we were still getting calls from people reporting issues or angry with the fees and/or registrations. Mr. Kennedy replied that we have not received many complaint calls.

Mr. Sims inquired about the amount budgeted for clean up in 2010. Michael Bame, Program Manager for the Dry Cleaner Remediation Program, stated that the Fiscal Year (FY) 2010 budget for clean up is \$6.5 million.

Linda Brookins, Assistant Director for the Remediation Division, explained that the total amount appropriated for the Dry Cleaner Program in Fiscal Year 2010 is \$ 7.2 million -- \$6.5 million for contracts and \$1.8 for administrative expenses. Ms. Brookins then stated that the total amount appropriated in Fiscal Year 2009 was \$8.9 million -- \$7.1 for contracts and \$1.8 for administrative expenses. Ms. Brookins also added that the Dry Cleaner Program collected approximately \$5.8 million in 2009.

The Advisory Committee inquired about the reserve fund balance and the Dry Cleaner Program's sunset in 2021.

Ms. Brookins pointed out that expenditures already exceed collections, and so it is unique and fortunate that the Legislature is allowing the fund balance to be drawn down by appropriating an amount annually that exceeds annual revenue.

Mr. Sims then asked if there is still \$12 million in the fund reserve. Ms. Brookins responded that the unreserved total fund balance, minus encumbrances, is \$18.1 million. Ms. Brookins then stated that the TCEQ is watching the fund reserve very closely, e.g., to be able to assess whether or not we need to request a larger appropriation.

Dr. Charles Riggs, Chairman of the Advisory Committee, asked about the identification and inspection of businesses that were not maintaining their registration requirements. Chairman Riggs asked if an inspection is triggered when a business registered in 2009 but not in 2010? He then asked who are the businesses not maintaining registrations from one year to the next?

Cari-Michel La Caille of the Enforcement Division explained that businesses issued administrative orders by enforcement are automatically monitored for continued compliance.

Merrie Smith of the Field Operations Division responded that an inspection is not automatically triggered, but the agency can notify the Regional Offices in this situation so that investigators are aware.

Ms. Brookins added that the field investigations have been expanded to include this issue in order to help identify businesses that are not in compliance for potential inspections.

Ms. Smith went over new legislation (House Bill 3547, Regular Session, 81st Texas Legislature) authorizing TCEQ to order dry cleaning facilities or drop stations to cease operation if not in compliance within 30 days after being issued a Notice of Violation for not registering. She went on to discuss the FY2009 Compliance Investigations.

Shirley French Reichstadt asked how registration numbers this year compare to those for last year. Don Kennedy responded that the numbers for FY2010 are very similar to the FY2009 numbers.

Cari-Michel J. La Caille discussed the FY2009 enforcement actions, the number of administrative orders, types of violations, and fees collected

Michael Bame presented an overview of the DCRP statistics for FY2009, including number of applications received, sites ranked and prioritized, closed, and the corrective action status of sites of the program. In Fiscal Year 2009, the TCEQ received a total 33 applications for ranking. As of August 31, 2009, the TCEQ DCRP has received a total of 195 applications for ranking. Of the 195 applications, 172 were ranked and prioritized by August 31, 2009.

The TCEQ completed clean ups a nine sites in Fiscal Year 2009. To date the TCEQ has closed a total of 17 sites. Mr. Bame said a list of the closed sites is included in the Status Report in Attachment 2.

Mr. Bame stated the use of perchloroethylene (perc) is prohibited at sites participating in the DCRP. Following the commencement of corrective action at a site, the TCEQ will file a written notice in the real property records of the county in which the site is located to notify future property owners that perc may no longer be used at the site. He said an example of a deed notice and site survey are included in Attachment 3 of the Status Report.

Mr. Bame then discussed postponement of work at sites in Fiscal Year 2010. The TCEQ prioritized all DCRP sites for Fiscal Year 2010. Based on the results, and the amount appropriated for remediation expenditures under the DCRP for FY 2010, work at 44 sites

was postponed. The applicants for each of the 44 sites received a letter informing them that work at their site was postponed. A copy of the postponed letter is in the handouts.

The committee asked if the closed sites were all perc facilities and the approximate cost to clean up a site. Mr. Bame responded that 16 of the 17 closed sites were perc facilities, 1 was non-perc (hydrocarbon) contamination. The non-perc site cost \$90,000 to reach closure. The average cost to clean up the 17 closed sites was \$41,000. These sites, for the most part, had a lesser degree of contamination than the typical active DCRP site.

Shirley Reichstadt asked if sites that had received 'postponed' letters had called in inquiring about it. Michael responded that there had been a few inquiries.

Dr. Riggs asked what are the options once a site is postponed – can we free up money to address those sites? Michael Bame answered that sites are prioritized twice per year, and an applicant can choose to submit new information to be considered when the next prioritization occurs. He further explained that we have the reserve fund that might allow us to address some emergency situation.

Dr. Riggs asked if changes in funding are limited to every two years, since the legislature meets every two years. Linda Brookins answered yes – but we could request additional funding in an extraordinary situation.

Dr. Riggs inquired about the sites that have closed – it appeared that all but one had met Remedy Standard A – Residential closure requirements (of 30 Texas Administrative Code Chapter 350, the Texas Risk Reduction Program). Did the program expect this to be typical for future closures, and were the number of future closures expected to be lower. Michael Bame responded that the first sites to reach closure were those with the least amounts of contamination, making Remedy Standard A more attainable for those sites than may be the case for the sites that are currently being addressed. The number of site closures each fiscal year is a Legislative Budget Board (LBB) requirement – the number for Fiscal Year 2010 is 10.

Dr. Riggs asked if the LBBs were in statute. Linda Brookins responded that they are not. The LBBs are performance-based criteria that TCEQ is tasked with meeting for appropriations / budget allocations. We must explain and report to the LBB if we do not meet our requirements.

Dr. Riggs inquired if we have a clear picture of what works best in terms of cleaning up the sites – if we know what specific technologies are most effective. He also wanted to know if we think the sites are getting cleaned up economically, and more efficiently than in a reimbursement-type program. Richard Scharlach responded that yes, we do know what types of technologies work best to clean up dry cleaner solvent releases, such as In-Situ Chemical Oxidation, and that we have enough knowledge in the Remediation Division to know what works best in terms of clean-up. He also stated that as a member of the State Coalition of the Remediation of Dry Cleaners (SCRD), we learn from other states with similar programs, as well. Michael responded that yes, he thinks that the sites

are getting cleaned up more efficiently than if they were in a reimbursement-type program.

Dr. Riggs asked how Texas compared to other states in the SCRDR in terms of programmatic success. Richard responded that we are comparable to the other states.

Dr. Riggs asked if we have a cut-off for applying to the program as some of the other states do. Michael responded that we do not. However, property owner applicants are required to back-pay registration fees, so the later they come into the program, the more expensive it is. He further stated that this may become a deterrent since the majority of applicants are property owners.

Shirley Reichstadt commented that she is pleased to see that we are deed recording sites that close and that we now have the ability to shut down businesses that did not register.

Nathan Weiss gave a presentation on Small Business and Local Government Assistance. He also informed the committee that Clarence Gray, an important advocate and promoter for their outreach, would be retiring soon. The committee asked if he would be replaced, and Nathan replied that his position would be posted.

The floor was opened for general questions.

Allan Johnson asked the following questions to the TCEQ staff:

Question: How many perc conversion have there been?

Answer: We do not have the ability to track that information. We can only track registrations.

Question: Are we concerned that our revenues have decreased each year although our budget allocations remain steady or unchanging? Also, does the TCEQ get to request from Appropriations an amount they have determined to be appropriate to clean up the sites?

Answer: The TCEQ submits a request to the legislature for the amount we think we will need.

Question: Are we getting enough money - the amount we are requesting?

Answer: Yes. It is also noteworthy that the Legislature is appropriating an amount annually that exceeds annual revenue.

Question: Facilities are putting a lot of money into registrations and solvent fees. Is there an equal amount going out in clean-ups?

Answer: Yes, we are spending more than we are collecting.

Question: What is an ineligible site?

Answer: A site/facility that does not meet the definition of "facility" per statute, for example, a coin operated facility. A site with no evidence that a dry cleaner facility ever existed on the property is another example of an ineligible site.

Meeting adjourned.

