

Minutes of the Advisory Committee Meeting on November 17, 2006

Dry Cleaner Advisory Committee Members Present:

Dr. Charles Riggs, Chairman
Ms. Shirley French Reichstadt
Mr. James Cripe
Mr. Norberto Garcia

TCEQ Dry Cleaner Staff Present:

Alan Batcheller
Don Kennedy
Derek Chapin
Richard Scharlach
Ata-Ru Rahman
Michael Bame
Vanessa Schiller
Merrie Smith

Alan Batcheller opened the meeting as moderator for Dorca Zaragoza-Stone. Mr. Norberto Garcia was introduced as the new member of the Advisory Committee. Dr. Riggs made opening comments concerning the Biennium Report and the advisory committee requirement to review and comment on the report. Dr. Riggs requested this meeting due to the December 1, 2006 reporting deadline.

As the first item of business, Dr. Riggs began a line by line review of the report. Dr. Riggs asked why there is no requirement to make any kind of historical record back to the previous biennium report. Specifically, one of the issues is the change in the number of registered facilities from the last biennium to the current biennium. How does the number of registrations compare historically, does a significant drop still exist or is there an increase? Mr. Kennedy replied that the numbers are fairly consistent with past fiscal years. He also added that forms were still being received but more registered in FY 2007 than in FY 2006 but fewer than FY 2004. Although there is a deadline for registration by August 1, a significant number of facilities do not meet this deadline, but do register before the end of the next fiscal year.

Dr. Riggs expressed concern that locations that were closed could leave behind an environmental issue that TCEQ would need to address through the cleanup program. Dr. Riggs asked if the agency tracked what occurred after the location closed. Mr. Kennedy replied that there are requirements in the rules that changes in status must be reported, including going out of service. At this point in the program, the agency is just beginning to track closure information.

Mr. Batcheller asked if the registration forms were entered into a database when they were received. Mr. Kennedy indicated that was correct. Mr. Batcheller stated that is searchable by a limited number of people and asked if it is available on the web. Mr. Kennedy replied that there

is access to the database on the web and also through the agency central registry. However, the registration program was using a temporary database for the technical information. The agency is currently working on a permanent, consolidated database for the dry cleaner program and is in the requirement gathering phase of this project.

Dr. Riggs asked if the number of cleaners operating in the State is at a constant number. Merrie Smith commented that TCEQ did not have enough information to answer that at this point in time. Dr. Riggs stated that it is something that TCEQ needs to identify, especially, if owners are abandoning sites and not following proper closure procedures. Derek Chapin replied that there has been talk internally about trying to estimate how many are in the universe and how really difficult it is to try and pin down the number, depending on what methodology is used.

Dr Riggs stated that one of the concerns he had was that enforcement is being done by staff that does other programs also. Dr Riggs researched other State's program and they have three inspectors dedicated to specifically to a dry cleaner program and are experts in that field. He raised the question about what is happening in other states in terms of how Texas is going to do inspections. Mr. Chapin stated that the original legislation, HB1366 which created the program, didn't appropriate any money for the program. The money would later be collected by the program was appropriated during a special session of the legislature. As a result, no additional personnel were added and that the agency is currently under an FTE cap. Dr. Riggs then stated that he didn't understand why the fifteen percent of the revenue maintained for administrative costs couldn't be used to support dedicated inspectors for the program. Mr. Kennedy stated that the agency is only allowed to have a finite number of employees and that registration staff also must work in other programs. Inspectors perform Dry cleaners inspections in addition to other job responsibilities. Mr. Chapin stated that as TCEQ has an overall FTE count, when legislation was passed, they did not bump up the cap by 10 people or 15 people. TCEQ has positions that are billing to the fund, but no new to the agency positions were associated with the Dry Cleaner Program. In other words, the agency reallocated internally to staff the program. Ms. Smith elaborated that even within programs that are fully funded by the EPA, there are no dedicated inspectors. TCEQ has RCRA investigators and Air Investigators that also perform Dry Cleaner investigations. The agency must retain the flexibility to be able to move staff around depending on priorities and resources.

Dr. Riggs commented that he sees another two million coming into the agency for primarily salary, fringe expenses, but there is a fixed number of staff who is being squeezed tighter and tighter to do a bigger and bigger job. So where does the money go? As it is coming in, it would almost look like this is funding other programs. Dr. Riggs had questions about what percent of the fund was retained for administrative costs. Mr. Chapin stated what was allowed in the first two years of the program was fifteen percent. The original legislation had the cap at fifteen percent for the first two years and then reduced to ten percent thereafter. It was then increased to 15% in subsequent legislation. Mr. Chapin stated that the agency has collected \$20 million in total revenue since the beginning of the program.

Dr. Riggs had questions about the collected revenue and the administrative portion. Mr. Chapin explained how much had been collected and how the money was allocated. He explained how the administrative costs were broken down between professional fees, services, and other

operating expenditures including corrective action costs and payments for site testing and evaluation.

Mr. Chapin explained the methodology the agency is required to use to pay for its administrative costs. The agency gets an overall bill for the entire agency, all funds all programs. For example, a bill is 30 million dollars and the methodology in terms of how that 30 million is to be paid, is looked at the appropriations bill pattern. In the appropriations bill pattern it says, out of the clean air fund TCEQ is granted 45 million dollars, out of the water fund TCEQ is granted 30 million dollars, out of waste fund TCEQ is granted 20 million, etc. Total all funds granted and calculate the percentage that each fund represents of this total. Applying the fund percentage against the total of the agency's overall funding, the result is the percentage that each individual fund pays of the agency's overall fringe costs. It is not related to the number of FTEs that are paid out of a particular fund or that are associated with that program. The dry cleaning fund comprises five percent of the agency's total funding, and the dry cleaning fund pays five percent of the agency's (administrative) fringe benefit cost.

Dr. Riggs asked if that total funding would include the 85 percent set aside for correction action. Mr. Chapin stated that there is a wrinkle here. In FY 2005, the methodology was to look at the total appropriation for the fund. After 2005 the methodology was changed to use only the 15 percent. TCEQ will use the 15 percent methodology as long as legislatively allowed. However, recently the State Auditor's Office has held recent discussions with TCEQ about the funding methodology. It is possible that the SAO may come back and say to count the entire fund appropriation. But for now, TCEQ is going to use 15 percent of the appropriations.

One committee member asks if anything unspent would have to come back in the next appropriation? Mr. Chapin stated that any funds that are not appropriated to us essentially just sit in a fund balance. It is like a savings account and if TCEQ is not appropriated the full amount, the remainder just accumulates and balances accrue. The appropriation is done, in several different ways, but for the purposes most relevant here, the appropriation will list the various funds by line item that TCEQ has; the Clean Air Fund, the Water Fund, the Waste Management, and Dry Cleaning Fund. For example, Dry Cleaning Fund Account 5093, \$7 million dollars in FY 05, \$7 million dollars in FY 06. So if there is a balance that is building up in the fund because over the years appropriation amounts are less than what is actually collected, the Texas Legislature is not obligated in anyway to award TCEQ that balance. The way the statute is worded is 15% of the revenue collected in that year not saved in the account.

Dr. Riggs poses the question: "Let's say we are approaching 2021 and the program was Sunsetted, and during that period of twenty years the fund collects \$100 million dollars. According to the statute, \$15 million should have been the total administrative costs; \$85 million should have been spent on remediation and cleanup. But the Legislature might not have appropriated the \$85 million and it could not have been spent. Then where would it go?" Mr. Chapin explains that the Legislature can "sweep" or take money out of this account and use it for something completely different. The Legislature at the end of the day is the final word and authority on the use of the funds. Ms. Reichstadt states that they must go back and tell the Dry Cleaners to continue to talk to their Legislators. Mr. Chapin commented that the Legislature likes to have control over appropriations to the agencies, because they must certify the overall

spending at the end of the Legislative Session for all State government. The Comptroller must then certify that the appropriations are balanced against estimated state revenue.

Dr. Riggs stated that they may want to send a strong message that this program needs to have two or three FTEs dedicated to enforcement/inspections in this report. Mr. Chapin stated that he does not think this should go in the report. The main reason of this meeting is to comment on parts of the report that TCEQ is required create in accordance with the statute. TCEQ certainly will consider any and all comments that have been made. The agency is prohibited from lobbying the legislature. Dr. Riggs said that he thought that this report as revised appears to meet the statute requirements, but they certainly have concerns and recommendations that they see could go forward as additional comments. Mr. Batcheller stated that other concerns in terms of enforcement or compliance initiatives are outside the scoop of this report. Mr. Bame suggested creating comments and passing them directly to the bill author, Representative Elkins or through Debra Clonts who is his Chief of Staff. The advisory committee and the TCEQ staff agreed to work together on comments that were concerns of the advisory committee for the dry cleaner program. Dr. Riggs is concerned that there is an entire industry of people that are supporting this program and want the ability to see details of what is going on in the Dry Cleaner program. He wants an annual report perhaps around October of each year so industry knows what is going on in the program.

One committee member asked about registration and enforcement. Mr. Kennedy stated TCEQ sends out a reminder to register and normally facilities wait until December to send in a registration form because that is when their certificate expires. Ms. Reichstadt asked if they were fined for sending in their registration late. Mr. Kennedy responded no. They are required to pay all the fees that would have been assessed and if their fees are paid late then they are assessed a late fee or a penalty, but at this point in time they have not been assessed a penalty for filing late.

Mr. Franklin asks how TCEQ handles new owners. Mr. Kennedy replied the rules require them to file a form when they change ownership, however this doesn't always happen. When registration comes around, if they do register, then it becomes evident from the system that this was a different person, a new owner. TCEQ staff then contact the new owner to get more information and to find out the exact date that they purchased the facility. The agency bills the owner per quarter per date actually owned.

One committee member asked about the Ninety thousand dollars worth of penalties on the financial breakdown, was it predominantly for late payment or non-compliance violations? Ms. Smith replied these are all registration violations resulting from the sweep of investigations from TCEQ field operations. This number will increase because some of the investigations had not been conducted yet. The amount at the top of the page is what has been collected to date.

Mr. Garcia asked since he was new to the advisory committee, are all dry cleaners required to register regardless of size? Mr. Kennedy replied yes, retail cleaners only; there are certain locations that may be actually doing the same function, like a uniform rental or hotels, and but they are excluded. Mr. Garcia then asked if it was based on solvent gallons used per year? Mr. Kennedy said no. Mr. Kennedy explained that there are two types of fees collected. One is a

registration fee that is based on their gross receipts and if it is greater than \$150,000, it is \$2,500.00; if it is less than that it is \$250.00. There is another category called non-participating. They have set fee of \$250.00, the second type of fee is on the delivery of solvents to a location and it is \$15.00 per gallon for perc and \$5.00 per gallon for other solvents.

Mr. Garcia asks how do people that are new to program know they are supposed to register? Mr. Kennedy replied that if the distributors are on board, when the new location gets a delivery of solvent, they will be told about the registration requirement. Dr. Riggs asked if facilities notify the comptroller when getting a new tax id, will TCEQ then be notified? Mr. Kennedy said no. Most of the distributors call TCEQ frequently and ask if clients are registered. Distributors are communicating with the facilities, because they don't want to get into trouble for making a delivery to an unregistered site.

Ms. Reichstadt mentioned that there appeared to be a reduction in perc sales and other solvent fees are down. She said that if there were smaller dry cleaners and they were paying that extra \$15.00 dollars per gallon on perc it would be quite worth their while to convert to other machines, to save that money.

Dr. Riggs asked does this program encourage switching from perc to other solvents? Mr. Bame replied the agency cannot give a preference to a type of solvent, because both are allowed by law. Mr. Bame continued that one could argue that the statute isn't trying to discourage the use of perc; it is just trying to make it safer. Perc users are going to put more money into the fund for the cleanups which are in all likelihood going to be from perc, and the law requires secondary containment.

Ms. Reichstadt asks if TCEQ cleans up a perc site and that owner continues to use perc and has another problem, is that site eligible for a second cleanup? Mr. Scharlach states there is nothing in the statute that says it can't, it is treated basically like a new site. It is very similar to the Petroleum Storage Tank program, where a site gets ranked, prioritized, and cleaned up. TCEQ issues a no further action letter and is off the books. If another totally separate release occurs, the applicant comes in and files another application and goes through the whole procedure again. Also, there is a \$5,000,000.00 cap on each site. They might have a release in the middle of cleanup, that would be rolled into the five million dollar cap. The five million is per site not per release.

Mr. Garcia asks if is perc going to be outlawed or stopped being used in a future date, if and when? No current plans for Texas. Currently, California is the only state that has that legislation now.

Dr. Riggs asks if this meeting notice went out on list server, because he did not receive an email. A staff member replied that it was posted on the website. Mr. Bame said he would look into it.

Dr. Riggs stated that he thought the statute is lacking in terms of what TCEQ ought to be monitoring particularly, registrations. Even if the numbers are the same, if it is 25% of the businesses are being closed and 25 new ones are opening at new locations that is a bigger environmental issue than what the numbers would reflect. In fact, that would be a sizeable

environmental issue. Dr. Riggs stated that he would predict that a failed business or somebody walks away is very likely leaving behind contaminated sites or machines full of solvents. His perfect model is that would send up a flag at registration, that would go to enforcement and staff is out in short order checking that site. Mr. Bame replied that as mentioned previously, the inspector's time is really, fairly strictly laid out on what their responsibilities are. This initiative was actually a very unusual thing and it was quite a commitment by the agency to the Dry Cleaner program to implement. Ms. Smith said that sites that were found to be closed from the initiative will be inspected, but in terms of being able to respond immediately to a notification that there is a closed facility, there are some regions that have the capability, but the bulk of the facilities are probably going to be in the Dallas and Houston areas which do not.

Mr. Scharlach discussed the remediation portion of the report which included a list of sites that have applied for cleanup. He then asked for any questions the advisory committee panel may have. What do the costs to date represent on the Table 1? This is the cost is essentially a snapshot in time, the plan of report is the status of all sites at the end of the biennium. It essentially represents August 31, 2006. The costs to date don't really reflect the cost of a particular phase of corrective action for a particular site, it is just as of that date how much TCEQ has spent on the site. It is a cumulative total from the beginning. These dollar amounts are the essentially the work order amounts that TCEQ has issued to contractors and thus it may or may not be a true reflection of how much was actually spent.

Dr. Riggs asks if this will match the expenditure stream when the agency moves into full scale remediation or will it fall short? Mr. Bame replied for the next couple of years, the agency will have enough funding, but eventually will probably run short and work may not occur on some sites. He added that the TCEQ is working on all known sites right now. Mr. Rahman said that TCEQ has to convince the Legislature that last year we spent this much, but next year is going to spend more because new and evolving program. Currently, there is only one site in remediation at this time. Mr. Scharlach states sometimes assessments take two to three years to assess but staff goals are to complete them within a year.

One committee member asked how the process works? TCEQ must find out the extent of the contamination, where it is, and what kind of levels. Once a determination is made either it can be closed out, or the site needs some kind of remediation or cleanup. At that point TCEQ directs a contractor to formulate a plan, or a feasibility study, or an actual remedial action plan. TCEQ will issue another work order with a cleanup contractor requiring submittal of a plan. TCEQ reviews and upon approval the contractor then implements the actual cleanup. It is important to no go into the cleanup mode before the exact extent of the problems.

Mr. Rahman asked if the question posed was, "Are we regulated by fiscal year to change the phase from assessment to remediation or is it just a continuous process?" Yes it is a continuous process. Once the agency finishes the assessment this month, it begins the start remediation the next month; cleanup doesn't have to wait for the next fiscal year.

Dr. Riggs asked if the dry cleaners fall under the TRRP (Texas Risk Reduction Program)? It is just like the Dry Cleaner Rules, but Chapter 350 Rules are used throughout the entire agency for all programs. The agency basically uses that same set of guidelines, and that is how the agency

derives cleanup standards for the Dry Cleaner rules. Basically, once the property is assessed, TCEQ can look at and compare it to the Risk Rules and then make a determination whether or not Protective Concentration Levels exist. Just as an example, the number is 25, and the Risk Rules say 10, it shows that now some kind of a cleanup must be performed and that is when a contractor would be hired to plan exactly how to clean this up and ensure that the numbers get below a risk number. Building into the TERP rules is a risk phase set for cleanup rules. In other words, an aquifer that people are using will have a stricter standard. The main risk is exposure. All this is factored into Chapter 350 Risk Reduction Rules or TRRP.

Dr. Riggs asked if we would monitor sites that did not need clean up at this time, but may in the future, based on current use. Mr. Bame replied that TCEQ is in the process of determining how long it will monitor sites and determine how often it must actually inspect. He estimated that it will probably run through at least through 2021 when the program sunsets.

Mr. Bame was asked about eligibility requirements and stated that last legislative session the five year requirement was removed. Previously, one had to be a landowner and had to own it for five years. Now this requirement is gone.

In some programs sites have taken two or three years to assess. The DCRP have almost fully assessed these sites in less than a year, which is unprecedented. Mr. Bame said that he appreciated the commenter saying that it looks like we are making headway.

Mr. Bame indicated that the content of the report had been covered. He requested any further line item comments that the committee might have in order to finalize the report for publication. Dr. Riggs requested that the committee discuss their comments concerning the Biennium Report. They did not have any corrections to the actual report.