

Dry Cleaner Advisory Committee

Meeting Minutes
November 4, 2011

Opening:

The regular meeting of the Texas Commission on Environmental Quality Dry Cleaner Advisory Committee was called to order at 10:00 a.m. on November 4, 2011 in Austin, Texas, by Michael Bame.

Present:

Advisory members in attendance were Dr. Charles Riggs, Mr. James Cripe, Ms. Shirley French Reichstadt, Mr. Norberto Garcia, and Mr. Rick Sims. Texas Commission on Environmental Quality employees in attendance were Beth Seaton, Jonathan Walling, Michael Bame, Richard Scharlach, Don Kennedy, Martha Glasgow, Barbara Watson, Laressa Wong, Merrie Smith, Mandi Thomas, Wendy Hutchinson, Kristine Elliott and David Cullen.

A. Handouts

The handouts included the meeting agenda and the Dry Cleaner Environmental Response Program Status Report for Fiscal Year 2011 (Status Report).

B. Introductions

All committee members were introduced. Beth Seaton was introduced as the new Remediation Division Director.

C. Request by members of public to address the Committee

Committee members allowed a request from a member of the public to address the Committee at this time. Paul Gosselink introduced himself as the lawyer representing the Pilgrim's Cleaners site in Leon Valley, part of the Bandera Road Federal Superfund Site. Mr. Gosselink also introduced Phil Bullock, who is a geologist with AMEC Geomatrix, Inc. Mr. Gosselink and Mr. Bullock presented information to the Committee regarding the Bandera Road site, and discussion ensued between the Committee, TCEQ staff, Mr. Gosselink, and Mr. Bullock regarding the site.

D. Usual Business

The regularly scheduled agenda commenced beginning with the Status Report. Martha Glasgow of the Registration and Reporting Section (Registration) was introduced. Martha summarized the registration data collected for 2011. The registrations for the fiscal year included 1419 facility registrations. Of those, 928 facilities reported gross

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receipts over \$150,000.00, and 491 facilities reported gross receipts under \$150,000.00. Drop station registrations numbered 1384, with 440 drop stations reporting gross receipts over \$150,000.00, and 944 drop stations reporting gross receipts under \$150,000.00. Registration received 183 property owner registrations and 23 solvent distributor registrations. Ms. Glasgow referenced the chart included in the Status Report, where the above numbers are broken down further. She also referenced the handout showing data for all fiscal years. She stated that due to the ongoing nature of registration, the numbers change every day, therefore current numbers will be slightly different than those in the report. She discussed a new initiative to identify unregistered dry cleaners in the state. The initiative, which began in September 2011, involved contacting the Texas Comptroller of Public Accounts' office and requesting a list of the dry cleaners registered with them under the appropriate NAICS [North American Industry Classification System] code. The TCEQ cross-referenced the data from the Comptroller's office with its own database and sent letters to 964 owners (representing 1272 sites) who were not registered with the TCEQ. The TCEQ has received 120 responses, and phone calls to the section have doubled since sending the letters. Additionally, Registration contacted owners who have not been registered since 2007 (the year 2007 was chosen because the last similar initiative occurred just prior to 2007), and has received 163 responses from those owners. Registration staff also combed through the yellow pages of 16 region cities and sent 138 additional letters to unregistered dry cleaners listed there. Ms. Glasgow stated that Registration is trying and working hard to get responses.

Shirley Reichstadt asked if the numbers of people reported as using perchloroethylene (perc) included only people currently using perc or also those who have used perc at one time. Ms. Glasgow stated that the number reflects current perc users.

Ms. Reichstadt asked if the 29 exempt people on the list were people who really weren't dry cleaners and Ms. Glasgow responded that yes, the 29 locations were facilities exempt from the regulations for one reason or another.

Chairman Riggs stated that the response rate seemed "pretty low" and was only 15%, to which Ms. Glasgow responded that the project is ongoing, had only begun one-and-a-half weeks ago, and that the responses have been constant at about 25 letters a day. Ms. Glasgow stated that registrations are higher this fiscal year than previous years.

Shirley Reichstadt commended Registration on their efforts.

Chairman Riggs asked what the next step in the initiative would be once responses ceased coming in. Ms. Glasgow explained that they may begin phone calls to people who have not yet responded and use that to update the database with registrations.

Norberto Garcia asked if they have made onsite visits to facilities who have not registered. Ms. Glasgow replied that Registration does not make site visits. Merrie Smith of the Field Operations Support Division (Field Operations) stated that they have regional investigators that go out and look at dry cleaner facilities, however, they were

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not given full time employees (FTEs) to investigate dry cleaners. Therefore most investigations of dry cleaners that they do conduct are on a complaint basis.

Mr. Bame gave accolades to Registration's proactive initiative and then introduced the next order of business, which was to discuss the Dry Cleaning Facility Release Fund (Fund), Fund 5093. He stated that in fiscal year 2011, a little over 5 million dollars was brought into the Fund; \$3 million from registration fees, \$1.5 million from solvent sales, and \$570,000 from deductibles, penalties and interest. He explained further that, since the inception of the program, the Fund has collected approximately \$49 million. The current Fund balance as of October 25, 2011 was approximately \$17.5 million. This amount, he said, does not include open encumbrances or what has yet to be paid out, which is approximately \$2 million, therefore the Fund amount after payment of corrective actions is approximately \$15 million.

Rick Sims asked if there was a minimum amount necessary to remain in the Fund while it was in effect. Mr. Bame responded, "No".

Mr. Bame asked for questions.

Shirley Reichstadt asked if solvent fees were coming in on time, to which Martha responded, "Yes, they are".

Norberto Garcia asked if the solvent fee is assessed to the owner if it goes above a certain number of gallons, to which Ms. Reichstadt responded that it was per gallon. Rick Simms interjected that depending on the solvent it is either \$3.00 or \$20.00 per gallon.

Mr. Bame then introduced Merrie Smith again to discuss compliance and enforcement. Merrie stated that in the 2011 fiscal year the Enforcement Division processed eight administrative orders against dry cleaning facilities, resulting in a total of \$47,660 in penalties. After deferred penalties there was \$38,470.00 payable. Field Operations conducted 21 total investigations. Of those, 14 were onsite investigations, with a majority conducted in the Harlingen region. These investigations were conducted in the Harlingen region because they had a half-time FTE devoted to dry cleaner investigations. The results of the investigations showed that facilities in Harlingen had largely come into compliance.

Mr. Bame introduced corrective action as the next topic of discussion. He reported that in fiscal year 2011, 14 applications to the Dry Cleaner Remediation Program (DCRP) were received. Since its inception, a total of 209 sites have been accepted into the program. Of those 209 sites, 17 are in the pre-assessment phase, 107 are in the assessment phase, and 43 are in the remediation phase. He stated that to date, 42 sites have been closed. He brought attention to the DCRP Prioritization list as a reference for these data. He stated that in fiscal year 2011, the program had 109 active and 60 postponed sites. So far for fiscal year 2012, the program has 68 active sites and 99 postponed sites. Funding reduction has led to a decrease in active sites.

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Rick Sims asked if the program knew of the average cost to clean up a site. Richard Scharlach commented that for the 42 closures, the average invoiced cost is about \$68,000 per site, which is conservative because that amount does not include the cost for the required site survey.

Rick Sims stated that the original estimate when the program began was \$350,000 to \$500,000 to close a site. Mr. Scharlach responded that the sites we have closed are the 'easy closures'. Mr. Bame commented that costs will range depending on the amount of contamination. Sites with a quarter-acre plume would cost significantly more than \$108,000. After 10-15 years, the average may increase. He stated further that some of the sites coming to the program were formerly in the Voluntary Cleanup Program (VCP) where they might have spent, for example, \$200,000 of their own dollars on assessment work before coming into the DCRP.

Rick Sims inquired as to whether there were new technologies that could decrease the cost of cleanup. Mr. Scharlach responded that we are working more and more sites and seeing some success, possibly reflecting better and smarter application of existing technologies rather than new technologies.

Rick Sims asked about the sunset clause and if the Fund was up for renewal at the time of sunset.

Barbara Watson answered that the statute states that after the sunset of the Fund, the program can spend the money remaining in the Fund to do a certain amount of work, but that the legislature may or may not make a change before the sunset date. Right now the law states that the Fund will sunset in 2021.

Chairman Riggs asked if the Status Report goes on the website and asked that wording be developed to explain why there is \$17 million in the Fund but that the program had postponed sites due to funding limitations. Mr. Bame stated that a section could be added to explain what amount was appropriated per year. Chairman Riggs asked about the appropriations bill and if the agency has control over the amount of appropriations. Discussions regarding the Status Report explanation continued and it was decided that the second sentence of the "Active/Postponed and Closed DCRP Sites" Section of the Status Report would state, "In FY 2010, the DCRP postponed corrective action on lower priority sites based on legislative appropriated funding." Chairman Riggs asked if the Legislature was prevented from sweeping the DCRP funds into another general category. Barbara Watson stated that she wasn't aware of language that would prevent that. Ms. Reichstadt commented that this money is in the general fund, and Mr. Bame concurred. There was some discussion of general versus dedicated funds, and the legislative history regarding the Fund.

Rick Sims asked what the administrative cost was of running the program, to which Mr. Bame responded that it was approximately \$350,000 per year. Chairman Riggs asked if the 15% allowed for administrative costs is 15% percent of what is collected or the appropriated amount. The agreed response was that it is 15% of what is collected.

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Laressa Wong then provided an update for the Small Business and Environmental Assistance Division (SBEA). Ms. Wong stated that in fiscal year 2012, outreach would be focused on the dry cleaner registration reminder cards, which they send out to facilities that have registered the previous year but have not yet registered for the current year. Those will be sent out in the next few weeks. They will send out 455 postcards. Last fiscal year they sent out 548. This year they fielded 74 calls from dry cleaners in the state, published a schedule for fees in the quarterly newsletter, *The Advocate*, and also conducted 17 site visits through the compliance assistance program. The compliance assistance program is a free program through which a dry cleaner can have a contractor, contracted through the SBEA, come out and do a free site visit that is confidential and separate from TCEQ's enforcement/investigation side. SBEA will continue to do compliance assistance visits this year, and will also publish fee due-dates in *The Advocate* again this year.

Mr. Bame asked if any members of the public would like to address the Advisory Committee. None came forward.

Adjournment:

Meeting was adjourned at 11:10 by Michael Bame.

Minutes submitted by: Kristine Elliott

Approved by: Michael Bame