

Meetings of this committee are not governed by the Open Meetings Act.
However, per TCEQ rules, advisory committee meetings are open to the public.

**Texas Commission on Environmental Quality
Dry Cleaners Advisory Committee Meeting Minutes
February 20, 2004**

I. CALL TO ORDER

The Dry Cleaners Advisory Committee Meeting was called to order on Friday, February 20, 2004 at approximately 1:00 p.m. in Building B, Room B201-A located at 12100 Park 35 Circle, Austin, Texas.

II. ROLL CALL

Those Advisory Committee Members present were Mr. James Cripe, Mr. Chuck Franklin, Ms. Shirley French Reichstadt, Dr. Charles Riggs, and Mr. Michael L. Trollinger. Those present representing Texas Commission on Environmental Quality were Mr. Michael Bame, Ms. Mary Alice Boehm, Mr. Jay Carsten, Mr. Derek Chapin, Mr. Don Kennedy, Mr. Michael Leckie, Ms. Shannon Minto, Ms. Mary R. Risner, and Ms. Christi Townsend. Total attendance was approximately 29 people.

III. INTRODUCTIONS AND AGENDA

Mr. Jay Carsten gave brief introductions and reviewed the following agenda.

AGENDA

- Update on Implementation of HB 1366
 - Rule Time Line
 - Registration
 - Financial
 - Pre-Contracting Activities
- Discussion of Dry Cleaner Issues Table
- Other Committee Issues

IV. UPDATE ON IMPLEMENTATION OF HB 1366

A. RULE TIME LINE

Mr. Michael Bame, TCEQ's Policy and Regulations representative, presented the Advisory Committee Members (hereafter referred to as Members) the revised schedule. Texas Commission on Environmental Quality (TCEQ) staff met with Executive Director, Ms. Margaret Hoffman, a few weeks ago to discuss conceptual ideas. TCEQ staff also briefed Mr. Brian Christian, Senior Policy Analyst, on Chairman's White's behalf, and received approval to start on the draft rules. Commissioner Larry R. Soward and Commissioner R.B. "Ralph" Marquez declined a briefing. TCEQ staff will work on draft rules, which will be presented to the Commissioners prior to releasing them to the public.

On March 16, 2004, TCEQ staff plans to brief the Executive Director on the draft rules. March 16-30, TCEQ staff plans to brief Commissioners on draft rules. Once the Executive Director and Commissioners are briefed and the TCEQ staff receives approval to move forward, the draft rules will be given to the Advisory Committee for review.

April 16, 2004 or April 19, 2004 are possible dates for the next Dry Cleaner Advisory Committee meeting. The announcement of the meeting will be posted on http://www.tnrcc.state.tx.us/permitting/remed/vcp/dc_committee.html (hereafter referred to as TCEQ website) at least two weeks prior to the meeting.

The first stakeholders meeting is scheduled for May 6, 2004, although this date could possibly change. An announcement of the meeting will be posted on the TCEQ website at least two weeks prior to the meeting.

Once TCEQ receives input from regulated community, the TCEQ staff will prepare a preamble, an impact statement, and a fiscal note impact statement.

Following the proposed rules completion, the TCEQ staff will present the rules to the Commissioners and request approval to publish the rules with the Chief Clerk in Texas Register Office. TCEQ staff are scheduled to present the rules to the Commissioners on July 21, 2004.

Once the rules are approved, the TCEQ has 30 days to respond to public comment. The 30-day comment period is scheduled to end on September 7, 2004. Members will be asked to address and respond to the public's comments. After the responses are complete, the TCEQ staff will meet with the Executive Director and Commissioners to discuss comments and responses.

On December 8, 2004, TCEQ staff will present the adoption package to the Commissioners. If the adoption package is approved then the effective date of the rules would be December 30, 2004.

B. REGISTRATION

Mr. Don Kennedy, TCEQ's Registration representative, presented an update on the status of registration. He distributed a handout to the Members, TCEQ staff, and audience that included statistical data, such as, the number of registered facilities and drop stations. A copy of this handout can be found on the TCEQ website under Billing and Revenue Update.

C. FINANCIAL

Mr. Derek Chapin, TCEQ's Financial representative, presented a financial update. The information is included in the above mentioned handout.

The TCEQ staff reminded the Members and the audience that the registration installment payments are due February 1, May 1, and August 1 and the solvent fee payments from distributors are due December 20, March 20, June 20, and September 20.

D. PRE-CONTRACTING ACTIVITIES

Mr. Michael Leckie, TCEQ Remediation representative, announced that the Request for Information (RFI) will be posted next week on the state's Market Place website (http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=52096).

The TCEQ staff anticipates that the Request for Proposal (RFP) for procurement of contractors for the Dry Cleaner Remediation Program will be posted on the state's Market Place website in May.

Mr. Leckie updated the Members on the Registered Dry Cleaning Facilities Database and the status of the new listserve on the TCEQ website. The listserve will notify those on the list of upcoming meetings and updates to the website.

Mr. Leckie also informed the Members that the TCEQ staff has started preliminary work on the ranking form. Using sites from the VCP, the TCEQ staff will test the ranking form for possible problems. Once completed, the ranking form will be given to Members for review.

The Members expressed their willingness to be involved in the Prioritization and Ranking scoring system.

V. DISCUSSION OF DRY CLEANER ISSUES TABLE

Before the committee discussed the Dry Cleaner Issues Table, they addressed the following questions: what operations are covered by HB 1366 and does the committee have any suggested revisions to the Prioritization and Ranking draft document?

To answer the first question, what operations are covered by HB 1366, they first discussed and voted on the acceptance of a definition of 'retail.' The majority of the Members agree that the definition of the word 'retail' is 'business activities involved in the sale of goods and services to consumers for their personal (non business), family, or household use.'

The Members also voted on which of the following businesses should be participating dry cleaning facilities:

(1) Tuxedo or formal wear rental business that dry cleans the rental items.

The Members are split.

(2) In-house dry cleaning of employee uniforms.

The Members are in agreement that they should be not participating.

(3) Hotel dry cleaning that accepts cleaning from hotel guests and the public.

The Members are in agreement that they should be participating.

(4) Hotel dry cleaning that accepts cleaning from hotel guests only and bills through the hotel registration.

The Members are split.

(5) Uniform rental business that use dry cleaning solvents.

The majority of the Members are in agreement that they should be not participating.

(6) Tuxedo or formal wear rental business that sends out the rental items.

The Members are in agreement that they should be not participating.

The majority of the Members are in agreement that no changes are necessary to the Prioritization and Ranking document. One abstained in order to hear comments from the other Committee members.

Copies of the Dry Cleaner Issues Table were distributed to the audience. A copy of the handout can be found on the TCEQ website under Issue Table.

Issue #1: The statute does not specify whether vehicles owned by dry cleaners that are used for the drop-off and pick-up of garments should pay the drop station registration fee.

The Members are in agreement. They oppose a registration fee on drop stations and mobile drop stations.

Issue #2: Should certain businesses that perform dry cleaning activities as ancillary activities be exempt from registration fees and fund benefits? (e.g., hotels, tuxedo rental, linen supply and uniform supply businesses).

This was discussed in detail. Please refer to the discussion above.

Issue #3: Contradictory sections of statute make it unclear whether former dry cleaning facilities are eligible for fund benefits when requested by property owners.

The Member are in agreement. The majority thinks former facilities should be included in the fund.

Issue #4: Whether businesses with gross receipts <\$200,000 should be exempted from the performance standards.

Members agree that no business should be exempted from storage, waste, and water discharge requirements. The Members recommended that the TCEQ come up with an application for an extension to installing performance standards beyond 1/1/06 based on financial hardship. Although the TCEQ staff was interested in this idea, Ms. Mary Risner, TCEQ's Legal representative, stated that by statute the deadline could not be extended. In the absence of an extension, however, the majority of Members agreed that no business should be exempt from the secondary containment requirements.

#5 Issue: There are no specific requirements for record keeping by dry cleaners or solvent suppliers in the statute.

The Members agree that most records are part of normal business records.

VI. OTHER COMMITTEE ISSUES

A. ROLE AND MISSION OF THE ADVISORY COMMITTEE

The Members expressed concern about their role and mission as an Advisory Committee.

The TCEQ staff explained that one of their roles as an Advisory Committee is to assist with writing rules. The Members feel that they could offer the most assistance by giving input before draft rules goes to the Commissioners. The TCEQ staff explained that they are following normal procedure, and the Advisory Committee will have opportunity to provide input after the Commissioners' review.

B. MEETINGS

A Member asked how they bring issues they are concerned about to the forefront. TCEQ staff explained that issues could be discussed in the Committee meetings.

The Members were concerned about not being able to meet privately, as they feel this hampers their ability to be advisors. A Member asked how the TCEQ's Rules Committee meetings are different from the Advisory Committee meetings (in terms of public notice)? TCEQ staff explained that the Rules Team is considered staff which is the same as the Commission.

There are three types of meetings: those with TCEQ, without TCEQ, and stakeholder meetings. Members are invited to attend stakeholder meetings.

The Members were concerned about a meeting location. The TCEQ staff explained that they don't have to meet in Austin as long as they announce the meeting on the web or public notice 10 working days prior to the actual meeting.

The Members agreed that Austin would be a good place to meet due to its central location. TCEQ staff offered to provide space for the meeting(s).

C. GROSS ANNUAL RECEIPTS

It is the TCEQ interpretation that gross annual receipts includes all activities at the facility. Members explained that there might be a misunderstanding. Industry is interpreting gross annual receipts as moneys used for dry cleaning purposes. Both TCEQ staff and Members agree the definition of gross annual receipt needs to be clarified in rule.

D. GOLDEN TRIANGLE SMALL BUSINESS ADVISORY COMMITTEE

The Dry Cleaning Advisory Committee Members received a letter from Ms. Candace Broucher, Chair of the Golden Triangle Small Business Advisory Committee, dated February 12, 2004. This letter was distributed to the TCEQ staff and the audience and a copy can be found on the TCEQ website.

The Golden Triangle Small Business Advisory Committee posed several questions and concerns about the Dry Cleaner Fund. The Members inquired if it was their role to respond to the letter. The TCEQ staff volunteered to write a response and copy the Members.

E. PERC INFORMATION

In the first meeting, someone distributed a document stating that perc is not a carcinogen. TCEQ staff met with Ms. Alison Jenkins, Senior Toxicologist, to discuss the matter.

TCEQ staff distributed ATSDR ToxFAQs for PERC (<http://www.atsdr.cdc.gov/tfacts18.html>) and information found on the EPA NCEA homepage (<http://cfpub.epa.gov/ncea/>). There is a link to both of these site on the TCEQ website.

The EPA and a peer review committee are working on a document to addresses issues with perc.

March 1, 2004 is the end of comment period on the draft paper.

F. ENFORCEMENT PROCESS REVIEW

Ms. Townsend, TCEQ's Small Business representative, encouraged the Members, the TCEQ staff, and the audience to fill out the Enforcement Questionnaire. She handed out information about the TCEQ Enforcement Process Review and a copy of the Enforcement Questionnaire.

More information on the TCEQ Enforcement Process Review can be found on the internet at: http://www.tceq.state.tx.us/comm_exec/enf_rev/.

The Enforcement Questionnaire can be found on the internet at: <http://www2.tceq.state.tx.us/enfs/index.cfm>.

VII. NEXT MEETING

The next meeting is tentatively set for Friday, April 16, 2004.

The February minutes will be reviewed by TCEQ staff and e-mailed to the Members for review and comments before they are posted on the TCEQ website.

VIII. PUBLIC COMMENTS

Floor open to public comments.

Allan Johnson, Peerless Cleaners

Mr. Allan Johnson from Peerless Cleaners commented on where the rules are headed. He suggested that the rules should be more fair and equitable. He commended Don Kennedy on the registration information. It is his belief that the 661 facilities registered as having less than \$100,000 in gross receipts is not realistic. He recommended that TCEQ staff needs to be dedicated to identifying those not appropriately registered. He stated that there appears to be 165 facilities "gap" somewhere in the numbers between non-participating and non-perc using registrants. He also stated that the most critical objective is to get everyone registered and paying proper fees.

Chet Whatley, Durrin's, Inc.

Mr. Chet Whatley from Durrin's, Inc., presented three issues pertaining to HB1366: 1) retail issue, 2) separation of dry cleaning and laundry in gross annual receipts, and 3) timing of rule making. Mr. Whatley commented that the purpose of TCEQ is environmental protection and that all dry cleaners should pay no matter what type of machine. He remarked that laundry receipts can be easily broken out. He also cautioned the TCEQ and Rule Making Committee that the rules will ready next January 1 and that the Legislative session will begin January 15. He advised the committee to think about how we should revise the rule.

Darrell Sawyer, Carl's Cleaners, Inc.

Mr. Darrell Sawyer from Carl's Cleaners disagrees with the \$1000 registration fee for drop stations. If mobile drop stations are exempt then it would create more unfair competition. He explained that

someone can pick-up and drop-off garments with their truck and they don't have to pay the registration fee, but because he has a drop station, he has to pay \$1000. He also asked what difference there is between hotels and drop stations picking up from office buildings.

Gary Lewis, Attorney

Mr. Gary Lewis, an attorney, expressed that the focus should be on the perc user not the end user. He also addressed the November 14, 2003 letter from Rep. Elkins to the TCEQ's Executive Director, Ms. Margaret Hoffman. He quoted the following from page 2, "I hope we all remember the legislative intent of the bill overall - to clean up the environmental contamination caused by the dry cleaning industry." He emphasized that it was the intent to cover the whole dry cleaning industry not just retailers.

Gerald Stavely, Gerald Stavely's Martinizing

Mr. Gerald Stavely explained that dry cleaning facilities could convert their machine from a perc machine to a hydrocarbon machine. He has installed a nitrogen unit for \$2000 per store.

Mr. Franklin asked if they safe? Mr. Stavely didn't know of any serious problems.

Cindy Scarbrough, Accountant

Ms. Cindy Scarbrough represents a client currently in VCP who is trying to make a good business decision. What are her chances of getting on cleanup list? Her client has already spent \$35K and the contaminant is contained and is not spreading. She asked if the cost already spent will be covered by fund.

Mr. Leckie replied that there is a \$5K deductible, but there is no guarantees that the site would be ranked high. Mr. Carsten volunteered to talk to her about the Dry Cleaning Fund and the requirements for VCP.