

TCEQ Chief Engineer's Office  
Tax Relief for Pollution Control Property Advisory Committee  
August 4, 2010  
10:00A.M. – 1:00P.M.  
Conference Call

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 10:02 A. M. with twelve members present. Mr. Robert Castor 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**

Mr. Mike Nasi requested reconsideration of the [proposal](#) to create item M-23 on the Tier I List and to modify item B-12 by replacing the "V" with "100%." Mr. Nasi provided members with suggested language by email. Mr. Joe Thomas, TCEQ staff, suggested that since this was a conference call the proposal be read for the record. The suggested language is "if such byproducts or co-products are either disposed as solid waste or would be disposed as solid waste if not beneficially reused." Mr. Nasi explained that this proposal limits byproducts and co-products to solid wastes. Mr. Cyrus Reed asked if existing coal-fired facilities had filed applications for this type of property. Mr. Ron Hatlett, TCEQ staff, stated that the agency has received such applications and has issued 100% determinations. Mr. Minor Hibbs, TCEQ staff, expressed a concern that by adding item M-23 at 100% and changing B-12 to 100% we would be treating these co-products and byproducts differently than we treat co-products and byproducts produced by other types of equipment. Mr. Reed suggested that the 100% apply only when the produced item is disposed of and that a partial determination be calculated if the item is reused or sold. A question was raised about potential unintended consequences. Mr. John Kennedy, Texas Taxpayers and Research Association, expressed concern that reducing the value of a use determination based on the value of a co-product or byproduct is contrary to the law. He stated that the test for determining eligibility is the use of the equipment not if the equipment produced income. After further discussion a motion to adopt the Mr. Nasi's proposal was made. Mr. Coons, Mr. Maxim, Mr. Nasi, Mr. Nichols, and Mr. Frazell voted in favor of the motion. Mr. Bieber, Mr. Arnold, Mr. Lee, Mr. Sandlin, and Mr. Reed voted against the motion. Under recognized parliamentary procedures, the chairman may vote when his vote would change the result. Mr. Adair voted in favor of the motion. The motion was approved.

**II. Rules..... Various**

**A. Interest rate calculation in the denominator of proposed Figure: 30 TAC §17.17(c)(2)**

Mr. Adair opened the discussion on the interest rate used to calculate the net present value of marketable product. Mr. Greg Maxim explained that there is no correlation between prime rate and a facilities actual discount or capitalization (cap) rate. Mr. John Nichols suggested that the partial determination formula should be both simple to administer and supported by facts. Various comments were made about using either each facility's actual cap rate or the industry's cap rate. Mr. Kennedy stated that use of the prime rate grossly inflates the value of the marketable product. Various members discussed the limited availability of industry specific cap rates. Mr. Don Lee suggested that a set cap rate should be established in the rule with an exception that allows an applicant to propose a different cap rate and the agency to accept the proposed rate if it can be independently verified. Mr. Adair stated that discount rates vary from 8% to 20% depending upon the industry and the risks involved. A motion was made to modify the interest rate language in 30 TAC §17.17(c)(2) to establish a flat rate of 10%. The motion was passed by all.

- B. Other proposed Chapter 17 rules published in the July 16<sup>th</sup> Texas Register and on the TCEQ Web site**  
No discussion.

**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. No action was taken.

**C. Future Meetings**

The committee agreed to meet sometime during the fourth quarter of this year. Meeting information will be provided on TCEQ's Web page.

**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 12:54 P. M. The motion passed.

**VII. Action Items**

Mr. Adair will prepare a document capturing the committee's rule recommendations for filing with the agency as comments to the rule proposal. On August 5, 2010, Mr. Adair circulated the proposed recommendations to the committee by email. Mr. Reed and Mr. Lee provided suggested modifications to better reflect the views of the committee members who voted against the proposal to add item M-23 to the Tier I list and to convert the 'V' listed for item B-12 to 100%. Mr. Adair revised the [recommendations](#) to reflect these suggested changes. The committee approved the recommendation unanimously by email. Mr. Adair filed the rule comments with the TCEQ.

**Next Meeting Date**  
To Be Determined