

TCEQ, Chief Engineer's Office
Tax Relief for Pollution Control Property Advisory Committee
July 30, 2010
10:00A.M. – 3:00P.M.
TCEQ, Austin Campus,
Building F, Room 2210

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 10:00 A. M. with twelve members present. Mr. Mike Nasi 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

No comments were provided and no action was taken.

II. Rules..... Various

A. Calculation of partial use determination

Mr. Adair opened the discussion. The first item discussed was Mr. Adair's [email](#) suggesting that the words "environmental benefit" be included in 30 Texas Administrative Code (TAC) §17.2(7). After discussion it was decided that the additional words were not necessary.

Mr. Adair opened discussion on the use of the phrase "such as" in 30 TAC §17.10(d)(3). There was discussion on whether the requirement to provide a process flow diagram would place an unnecessary burden on the applicant. Mr. Joe Thomas, TCEQ staff, explained that this information is useful for all tier levels of applications and in some cases the process flow diagrams are not needed. The issue of confidentiality was raised. Mr. Timothy Reidy, TCEQ staff, explained that TCEQ would treat this information the same way it treats all confidential information. A suggestion was made to move this part of 30 TAC §17.10(d)(3) to guidance. Mr. Reidy explained that rule language takes precedent over guidance. Mr. Cyrus Reed made a motion to add ", if deemed by TCEQ to be relevant and essential to the use determination," after "such as." The motion passed by all.

Mr. Adair opened discussion on adding the ability to electronically file appeals to 30 TAC §17.25(b). Mr. Ron Hatlett, TCEQ staff, explained that the TCEQ's Chief Clerk's Office is in the process of adopting electronic filing and this mechanism will be handled in the future. No action was taken.

Mr. Reed asked staff to explain the current refund policy with regard to someone over paying the application fee. Mr. Chance Goodin, TCEQ staff, explained that over payments are refunded. Mr. Reed suggested that a policy should be located in Chapter 17. No action taken.

Mr. Wayne Frazell asked for discussion on 30 TAC §17.10(c). The first sentence of this section currently reads:

If the applicant desires to apply for a use determination for a specific tax year, the application must be postmarked no later than January 31 of the following year.

Mr. Frazell explained that the use of "following year" implies that the exemption is retroactive. Mr. Don Lee made a motion to change the word "following" to "same tax." The motion passed by all.

On May 21, 2010, the Committee approved a recommendation to the TCEQ to integrate proposed revisions to Part B of the Equipment and Categories List. Mr. Adair submitted this recommendation to TCEQ. The recommendation was not included in the rule proposal published in the Texas Register. Mr. Nasi, who was unable to attend the meeting, submitted a written [motion](#) via email requesting the TCEQ to reconsider the previous motion. TCEQ staff explained that this recommendation was left out of the rule because staff did not agree with everything in this proposal and there was not sufficient time to do a full review. A motion was made to modify the motion under discussion by removing item M-23 and changing the 100% for item B-12 to “V” for variable. The motion passed by a ten to one margin.

The Committee acknowledged: (1) a Committee member or other interested group or individual may submit separate comments before the end of the public comments period; and (2) the Committee may later reconsider a proposal to add M-23 to Tier I (and B-12 to 100%) if additional information is presented to support such advice.

B. Other proposed Chapter 17 rules published in the July 16th Texas Register and on the TCEQ Web site

Mr. Adair opened this discussion and presented an alternative partial determination [calculation](#). A document prepared by Mr. Robert Castor was presented. This [document](#) compared four draft alternative calculations, including Mr. Adair’s. Each alternative used the same example data. Mr. Frazell commented that the Mr. Adair’s proposed calculation yielded a very similar result as the Cost Analysis Procedure (CAP) in the rule proposal. He suggested keeping the CAP calculation as proposed. Several Committee members gave examples where the proposed rule may not calculate a logical result. Mr. John Kennedy, Texas Taxpayers and Research Association, expressed concerns that proposed partial use determination calculations, using income as a determining measure is contrary to the requirements located in §11.31 of the Texas Tax Code. There was general consensus that the draft alternatives needed additional analysis using real-world scenarios. There was general agreement that:

- “uniformity” does not require the use of a single formula;
- the use of prime rate as an interest rate is not appropriate; and
- the current CAP does not always provide an appropriate use determination.

The proposed changes to 30 TAC §17.2(2), the definition of Capital Cost Old, were discussed. Concerns were raised that the proposed amended definition does not accurately reflect either reproduction cost or replacement cost. Mr. Lee moved that definition of Capital Cost Old be left as it is in the current rules. The motion passed by all.

The definition of “estimated useful life”, located in footnote III of Figure 30 TAC §17.17(c)(2) was discussed. A recommendation was made to change the definition to read “ten years or one-third of the useful life.” It was suggested that this change be documented and explained in the preamble for the rule adoption package.

The discussion of 30 TAC §17.17 was tabled.

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 by conference call at 10:00 A. M. on August 4, 2010. 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 3:05 P. M. The motion passed.

VII. Action Items

Mr. Adair will prepare a document capturing the committee's rule recommendations.

Next Meeting Date

August 4, 2010

10:00 A. M.

Conference call