

Minutes

Opening Remarks – Bob Adair, Chair

1. Call to order and recognition of committee members for the record
Mr. Bob Adair called the meeting to order at 10:01 a. m. with ten members present. Mr. Don Lee and Mr. Cyrus Reed arrived later. Mr. Bennett Sandlin was unable to attend.
2. Public comments policy discussion
Mr. Adair re-stated the public comment policy. No action was taken.
3. General comments from committee members and staff
Mr. Adair called for a motion to adopt the February 11, 2011, minutes. The motion was made, seconded and adopted.

Consider TCEQ staff's request for advice (continued from 2/11 meeting) – Bob Adair, Chair

1. Equipment and Categories List (ECL)
Mr. Adair requested TCEQ staff to brief the committee regarding the ECL issues. Mr. Chance Goodin, TCEQ, summarized previous committee meetings held December 6, 2010, and February 11, 2011, and the documents that were provided at those meetings. (See the December 6, 2010 Minutes for the "Equipment and Categories List Issues" document and the February 11, 2011, Minutes for the "handout" document (which is a staff analysis of the issues)). Mr. Adair and Mr. Mike Nasi expressed concerns that installing property to meet a Best Management Practice does not meet the requirement of "meeting or exceeding" an adopted environmental rule. Mr. Nasi pointed out that the items on the documents seemed to be pollution prevention and Best Management Practice related equipment. He stated that this equipment and citations such as Texas Water Code (TWC) 26.121 and 30 Texas Administrative Code (TAC) 335.4 that contain general prohibitions against discharging wastes, were some of the Tax Relief program's more difficult issues. It was stated that equipment installed in response to a rule requiring a plan, such as a Pollution Prevention Plan, a Waste Minimization Plan, a Storm Water Pollution Prevention Plan, a Spill Prevention, Control and Countermeasure Plan, or a Risk Management Plan should be eligible for a positive determination without regards to the enforceability of the plan.

There was general discussion that if equipment provided pollution control and was installed to meet an adopted environmental rule, then it is eligible for a positive determination. It was suggested that the items on the list be re-worded to better describe what and when they are eligible for a positive determination. Mr. Lee suggested that the use determination letter should explain the purpose of the piece of property and that the chief appraiser should verify that the property was used for that purpose. Mr. Roland Bieber stated that chief appraisers are required to accept the TCEQ's finding of use or file an appeal, and that the appraisers do not verify the use of the equipment.

It was suggested that committee members review the Tier I Table and bring additional examples of items that may need to be amended to the next meeting. Mr. Adair pointed out that the list was reviewed in 2010 and a complete review did not need to be completed until 2013.

2. Draft Application and Instructions

Mr. Adair opened the floor to discuss the version currently located on the TCEQ Web site. Mr. Goodin stated that the Draft Application and Instructions are not on the TCEQ Web site and asked for clarification on which version of the application was being discussed. Mr. Adair stated the online version. Mr. Goodin explained that in response to the discussion during the February 11 meeting and a subsequent meeting held with certain committee members, the environmental incentive grant language has been removed from the current online application and this version is available on the TCEQ Web site. Mr. Wayne Frazell asked if TCEQ has a planned publication date for the Draft Application and Instructions. Mr. Goodin stated a date has not been set.

Mr. Adair suggested that the three items under section 1 on the current online application be changed to read as follows:

1. Is the property owned to meet or exceed and adopted environmental law?
2. Did it first become taxable after January 1, 1994?
3. Does it conform to all requirements contained in 30 TAC §17?

Mr. Lee asked if the first requirement is ownership. Mr. Bieber explained that it is possible to be responsible for property taxes even if you do not own the property. Mr. Nasi agreed that a person could be responsible for taxes under a lease agreement and that the first question might need to be:

“Do you own the property or are you responsible for the taxes on the property?”

Mr. Goodin explained that a recent appeal dealt with certain lease issues. He also stated that certain members of the committee (and others) had met with staff about the ownership issues on the current application and at that meeting they agreed to provide some suggested language to the TCEQ for review. This language had not been received. Mr. Adair explained that the appeal involved an operator applying for

an exemption for property owned by a bank. Mr. Lee stated that the statute says “property that a person owns.” Mr. Greg Maxim asked for a definition of ownership. Mr. Nasi suggested that committee members develop language and present it at the next advisory committee meeting. Mr. Adair closed the discussion.

Discussion on TCEQ Regulatory Guidance 461: Property Tax Exemptions for Pollution Control Property (March 2011 Draft) – Bob Adair, Chair

The following items were discussed:

- Wherever the document uses the words “comply with” that the words “meet or exceed” should be substituted.
- On Page 5, under “Length of Use Determination,” second bullet “in” should be changed to “to.”
- On Page 5, under “Length of Use Determination,” a statement should be added explaining that a new application must be filed if there is a change of ownership.
- “CAP” must be defined before it is used the first time on Page 8.
- The word “process” should be substituted for “CAP” throughout the document.
- Page 10, bottom of the page, add “to prevent, monitor, control, or reduce air, water or land pollution,” between “equipment” and “after.”
- Page 11, add an item 9 explaining that the determination can be appealed.
- Page 11, last paragraph, “specific subsection of the regulation,” should this be more general?
- Page 12, “Timing Deadlines,” reword so that it doesn’t prevent someone from receiving a positive determination if they miss the January 31 filing deadline.
- Page 12, reword the “Eligible Property Must Have Capital Expenditures Incurred” section to show that a taxable expenditure must occur before a final determination will be issued.
- Page 14, “Use Determination,” since the applicant has processing deadlines that must be met, should the agency establish processing deadlines?

Committee members and staff are to review these issues and be ready to comment at the next meeting.

Legislative Update (SB1070/HB2280, other) – Ron Hatlett

Mr. Ron Hatlett, TCEQ staff, presented this item. He stated the TCEQ has monitored several bills that could potentially impact the Tax Relief program; all but two are pending in committees. The bills in committee are House Bill (HB) 1308, HB 2434, HB 3201, and Senate Bill (SB) 1051 which require periodic review of tax preferences, HB 2279 adds a representative from a Chapter 41 school district to the advisory committee, and HB 2815 extends §11.31 to include certain energy storage devices. HB 2280 and companion SB 1071 adds a representative from a school district or a junior college district to the advisory committee. On May 12, 2011, HB 2280 was voted out of the Senate Natural Resources committee. SB 1071 is in the House Ways and Means

Committee. Mr. Lee explained that clarification was provided by the author during testimony on the bills. The intention is not to expand the size of the committee; rather the new member is expected to replace one of the taxing entity representatives whose terms expire in January of 2012. Mr. Eddie Arnold volunteered to step down for this new position. No action was taken.

Other – Bob Adair, Chair

1. Old Business

Mr. Adair opened the discussion on new business. No action was taken.

2. New Business

Mr. Adair opened the discussion on new business. No action was taken.

3. Future Meetings

The next meeting was tentatively scheduled for the third quarter.

4. Public Comments

Mr. Adair opened the discussion for public comment. No comments were received.

Adjourn

A motion to adjourn was made at 12:13 p.m. The motion passed.

Action Items

- Committee members are to review the Tier I Table for examples of items that do not always qualify for a positive use determination.
- Committee members are to define ownership and provide specific language for possible revision to the current application form.
- Committee members will further evaluate the guidance document and make necessary comments.
- TCEQ staff will review comments already made to the guidance document and make necessary changes.

Next Meeting Date

To be determined.