

Texas Commission on Environmental Quality (TCEQ)
Office of Air
Tax Relief for Pollution Control Property Advisory Committee Meeting
July 26, 2012
10:01 AM to 11:32 AM
TCEQ, Austin Campus, Building E, Room 201S

Minutes

Opening Remarks

1. Call to order and recognition of committee members for the record.
2. Mr. Bob Adair called the meeting to order at 10:01 AM with eleven members present. Mr. Bennett Sandlin and Mr. Roland Bieber did not attend.
3. General comments from committee members and staff. No comments were received.
4. Public comments policy discussion. Mr. Adair re-stated the public comment policy. No action was taken.

TCEQ staff presentation on fees collected and program costs

Mr. Ron Hatlett, TCEQ staff, discussed fee revenue versus program costs for the last two fiscal years. For fiscal years 2010 and 2011, the agency spent respectively \$27,000 and \$10,000 more in salaries than fees received. The projection for fiscal year 2012 is that fees will exceed salary expense by \$12,000. During the last two years, the agency received approximately 600 applications per year. The number of Tier III applications increased and number of Tier I applications decreased after the last rule change which introduced the marketable product factor. The number of Tier II has been stable over the last two years. The number of withdrawn applications has increased since the last rule change. The application fees fund salaries and a small amount of travel expense for staff. The advisory group travel funding comes from a general air fund.

Tier III partial determinations overview

Mr. Hatlett provided an excerpt from the guidance document and an [example of a Tier III calculation](#). He explained the purpose of the Tier III calculation is to determine the percentage of the equipment's value that is truly used for pollution control when the equipment provides a production benefit as well as pollution control. The components of the Tier III cost analysis procedure (CAP) equation and rationale behind the components were discussed.

Mr. Adair stated the committee had worked on the CAP extensively in 2010. Discussion ensued concerning when an environmental rule is exceeded as opposed to being met and what the drivers are for a Tier III. The principal driver for a Tier III is the benefit derived from the equipment; i.e., does the equipment purely provide for

pollution control or does it generate, re-use, or recycle material. Committee members then questioned whether applying the mechanics of the CAP sometimes results in missing the concept of what is intended by Texas Tax Code §11.31.

Mr. Adair initiated discussion of the appropriateness of requiring a Tier III application in situations where marketable product value logically will never exceed the production cost for the marketable product. The discussion covered how often the net present value (NPV) of marketable product on a Tier III application is less than or equal to \$0; the impact of NPV less than or equal to \$0 on the Tier level and use determination percentage; and the purpose of the additional fee amount for a Tier III application.

Members of the committee discussed the agenda item entitled, "Consideration of provision not to require Tier III calculation for property that the 'marketable product' value will logically never exceed the production cost." Discussion covered who (TCEQ or the applicant) would make the determination that a Tier III application is not required. Discussion also included whether there were equipment items that generate or collect marketable product for which TCEQ has significant historical data supporting NPV of marketable product less than or equal to \$0 and possibly putting these items on the Tier I list.

Discussion continued about how many applicants who are possibly eligible elect not to pursue a use determination when told they have to file a Tier III application. Factors likely considered by applicants are as follows: the costs of equipment items, values on the tax rolls, possible tax savings from use determination, effort of completing a Tier III application, and the Tier III fee. The staff review time and fee structure for all tiers were discussed. The committee discussed further the possibility of developing a second type of Tier I application that would have marketable product but a CAP calculation (supported by historical data) of at least 100% - these items would be added to the Tier I list at 100%. TCEQ staff provided the example of a scrubber collecting marketable product to explain why the suggestion of a second type of Tier I application is not feasible. Different facilities could use the scrubber to collect different materials with different marketable product values. Marketable product values and production costs are provided by the applicants to the TCEQ and can vary among companies even for the same marketable product. Marketable product values can fluctuate over time and geographical regions.

The committee members discussed extensively whether the use determination should be based strictly on use of the equipment without consideration of NPV of any marketable product, and leaving consideration of the NPV of any marketable product to the chief appraiser as part of the valuation process. Those representing industry, appraisal districts, school districts, taxing units, environmental groups, and agency staff participated in this discussion; consequently, all perspectives were considered.

Applications for equipment used in recycling that diverts material from landfills and applications without marketable products but with pollution control benefits and increased efficiency were discussed.

A formal recommendation or decision was not reached during these discussions.

Action Items

Consider existing Tier III formulas and propose alternative formulas for Tier III.

Next Meeting Date

To be determined.