

PST Rules Advisory Group Meeting  
11/29/05

Attendees:

Diane Barnes, TCEQ - PSTR Section  
Don Kennedy, TCEQ PST/Dry Cleaner Registration Section  
Cullen McMorrow TCEQ Litigation Division (Rule Counsel)  
Fred Meyers, Mgr., TCEQ - PSTR Section (Program Lead)  
Anton Rozsypal, TCEQ - PSTR Section (Rule Project Manager)  
Tim Wood, TCEQ State-Lead Section

Bryan Chambers, Chambers Pump Service  
Cal Chapman, Chapman Engineering  
John Coll, Daniel B. Stephens & Associates  
John Dupont, DHL Analytical  
Scott Fisher, Texas Petroleum Marketers & Convenience Store Association (TPCA)  
Ron Fulenchek, 7-11 Inc.  
Joe McFadden, Meridian Alliance Group (via teleconference)  
Larence D. McMillen, Grimes & Associates (via teleconference)  
Chris Newton, Texas Petroleum Marketers & Convenience Store Association (TPCA)  
Dovie Payne, Texas Association of Storage Tank Professionals (TASTP)  
Barbara Roeling, Daniel B. Stephens & Associates  
Bill Thompson, Grissom & Thompson  
Joe Woodard, Texas Association of Storage Tank Professionals (TASTP)

----- Meeting Minutes -----

Anton Rozsypal - Welcomed attendees; pointed out location of handouts (consisting of Meeting Agenda -- Rule Proposal Summary -- Amended Subchapters A, D, and H -- Copies of SB485, HB1987 and SB1863 Article 5); asked all to introduce themselves for the benefit of those in the room and especially for two who had joined the meeting via teleconference; and introduced Fred Meyers, Manager PSTR Section.

Fred Meyers - Formally welcomed attendees and made opening presentation.

Anton Rozsypal - Called the group's attention to the Rule Proposal Summary and corresponding rule chapter copies and went through each proposed change in order of occurrence.

Re: Subchapter A:

The group had no suggested revisions to proposed language changes, but two commenters requested that language in §334.5 be further modified to provide additional clarification regarding statutory removal of liability for common carriers who deliver fuel to USTs. Staff responded that such changes would be incorporated and asked that the commenters provide examples of suggested changes in writing. (Note that language in federal law (HR-6), will likely

restore common carrier liability, effective August 8, 2007.)

Re: Subchapter D:

One commenter asked (with respect to proposed changes at §334.84 regarding sites which eligible owners/operators request to be placed in the agency's state-lead program) whether the amount spent for cleanup at the site prior to transfer into state-lead applies to the 1 million dollar maximum. Staff said that it does, but that the maximum is \$1 million per "occurrence" and that the agency has some flexibility in determining the number of "occurrences". Staff also pointed out that proposed rule language regarding state-lead entry was kept as close to statutory language as possible.

One commenter requested that an agency response deadline be placed in the rule with regard to state-lead entry requests. The commenter suggested 30 days from date of receipt. Staff responded that this request would be considered for inclusion.

One commenter asked if there were any current guidelines regarding the availability of the initial form for state-lead entry. Staff indicated that they were not aware of any current guidelines.

Two commenters asked if there would be further rule or guidance language stating the specific criteria the agency would use in determining which sites would be allowed to move into the state-lead program. Staff responded that the language of the statute was clear on this matter, summarized that language and pointed out that it was reflected in the current rule proposal language (§334.84). If further written guidance is considered necessary, however, it can be provided.

Staff mentioned that language could later be placed in Subchapter D, referencing the addition of a variance procedure in 30TAC Chapter 350 (TRRP) rules, but that the inclusion of such a variance procedure in Chapter 350 was not at this point, definite.

Re: Subchapter H:

One commenter said that the proposed language allowing the agency to consider non-preapproved corrective action work for reimbursement is less clear than he would like but does not object to it. Staff responded that it reflected statutory language.

One commenter asked about reimbursement claims for non-preapproved work filed with the agency after January 2005. Staff indicated that they are being held. Another commenter indicated that at this point there shouldn't be any of those left.

Several commenters requested that language in §334.306 with reference to "payment bonds" be changed to allow the agency some flexibility in this area. They suggested replacing the term "payment bond" with the phrase "payment bond or other mechanism acceptable to the executive director". Staff said they could not promise such a change, but indicated that they were open to considering this request and would seek input from upper management. Commenters further maintained that if such flexibility could not be provided, changes to the Reimbursable Cost

Specifications should be made to allow for the additional cost of obtaining payment bonds.

Anton Rozsypal - asked the group if they could also provide their comments in writing in hard copy or Email by December 12, 2005. No one objected to the December 12 final date for written comment. The group was given Anton's Email and postal addresses, thanked for taking the time to attend and comment, and the meeting was adjourned.