

March 4, 2016

Dr. Bryan Shaw, Chairman  
Mr. Toby Baker, Commissioner  
Mr. Jon Niermann, Commissioner  
Texas Commission on Environmental Quality  
Mail Code 100  
P.O. Box 13087  
Austin, TX 78711-3087

Mr. Chairman and Commissioners:

In compliance with bylaws of the TCEQ Tax Relief for Pollution Control Property Advisory Committee, attached are copies of the 2015 Annual Report of the Committee. The original report has been submitted to Shelley Naik.

We genuinely appreciate the perspectives and significant work of Committee members and TCEQ staff during 2015. Although differences remain in such a diverse group of 13 members, we continue a commitment to productive discussion of various issues in this program and adhere to our statutory requirement to "advise the commission regarding the implementation of" Tax Code §11.31.

Please feel free to contact me at (832) 765-1419 or other Committee members regarding issues within the purview of our Committee.

Respectfully submitted,



Bob Adair  
Chairman, Tax Relief for Pollution Control Property Advisory Committee  
Texas Commission on Environmental Quality

- c: Richard Hyde, Executive Director, TCEQ  
Shelley Naik, Stationary Source Programs, Chief Engineer's Office, TCEQ  
Ron Hatlett, Stationary Source Programs, Chief Engineer's Office, TCEQ  
Don Redmond, Office of Legal Services, TCEQ  
Members of TCEQ Tax Relief for Pollution Control Property Advisory Committee

# **2015 Annual Report**

**Texas Commission on Environmental Quality  
Tax Relief for Pollution Control Property Advisory Committee**

**March 4, 2016**

This report is submitted in compliance with Article 6.2 of the TCEQ Tax Relief for Pollution Control Property Advisory Committee (Committee) bylaws, which states: "Unless otherwise directed, the Committee shall report to the Commissioners a minimum of once per year. The report must be sufficient to allow the Commissioners to properly evaluate the Committee's work, usefulness, and the costs related to the Committee's existence."

### **About Tax Relief for Pollution Control Property**

Proposition 2 on the November 2, 1993 state ballot approved adding the following §1-l to the Texas Constitution, Article VIII:

**PROPERTY USED FOR CONTROL OF AIR, WATER, OR LAND POLLUTION;  
EXEMPTION FROM AD VALOREM TAXATION.**

- (a) The legislature by general law may exempt from ad valorem taxation all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution.
- (b) This section applies to real and personal property used as a facility, device, or method for the control of air, water, or land pollution that would otherwise be taxable for the first time on or after January 1, 1994.
- (c) This section does not authorize the exemption from ad valorem taxation of real or personal property that was subject to a tax abatement agreement executed before January 1, 1994.

The 73rd Legislature (1993) added Texas Tax Code §11.31, Pollution Control Property, and Texas Tax Code §26.045, Rollback Relief for Pollution Control Requirements, to implement the new constitutional provision. The commission adopted Title 30, Texas Administrative Code, Chapter 277 on September 30, 1994 to establish the procedures for obtaining a tax exemption under Proposition 2. In 1998, Chapter 277 was moved to Chapter 17 to be consistent with the commission's policy of placing general or multimedia rules within 30 TAC Chapters 1-100.

The primary subsections in Tax Code §11.31 regarding eligibility for tax exemption are:

- (a) A person is entitled to an exemption from taxation of all or part of real and personal property that the person owns and that is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. A person is not entitled to an exemption from taxation under this section solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution. Property used for residential purposes, or for recreational, park, or scenic uses as defined by Section 23.81, is ineligible for an exemption under this section.
- (b) In this section, "facility, device, or method for the control of air, water, or land pollution" means land that is acquired after January 1, 1994, or any structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property, that is used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution. This section does not apply to a motor vehicle.

The primary subsections in Tax Code §11.31 regarding authority for the TCEQ Tax Relief for Pollution Control Property rules are:

(g) The commission shall adopt rules to implement this section. Rules adopted under this section must:

- (1) establish specific standards for considering applications for determinations;
- (2) be sufficiently specific to ensure that determinations are equal and uniform; and
- (3) allow for determinations that distinguish the proportion of property that is used to control, monitor, prevent, or reduce pollution from the proportion of property that is used to produce goods or services.

(g-1) The standards and methods for making a determination under this section that are established in the rules adopted under Subsection (g) apply uniformly to all applications for determinations under this section, including applications relating to facilities, devices, or methods for the control of air, water, or land pollution included on a list adopted by the Texas Commission on Environmental Quality under Subsection (k).

Note: This subsection was added by House Bills 3206 and 3544 of the 81<sup>st</sup> Texas Legislature (2009).

#### **Purpose of TCEQ Tax Relief for Pollution Control Property Advisory Committee**

House Bills 3206 and 3544, 81<sup>st</sup> Legislature, 2009, added the following subsection (n) to Tax Code §11.31:

The Texas Commission on Environmental Quality shall establish a permanent advisory committee consisting of representatives of industry, appraisal districts, taxing units, and environmental groups, as well as members who are not representatives of any of those entities but have substantial technical expertise in pollution control technology and environmental engineering, to ***advise the commission regarding the implementation of this section***. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee. (emphasis added)

Consistent with the Committee's purpose, all meeting agendas, discussion and advice focuses on the following question:

Which rules, guidelines, forms, instructions, practice, website, or other provisions should be added, deleted, or revised to facilitate and ensure compliance with the implementation of Tax Code §11.31?

## **Committee Organization**

Highlights of the Committee bylaws are:

1. Purpose – Advise the TCEQ Commissioners on matters relating to property tax exemptions for pollution control property.<sup>1</sup>
2. Number of Members – May not exceed 13.<sup>2</sup>
3. Terms – Commission appoints or re-appoints members to staggered four-year terms.<sup>3</sup>
4. Attendance – Members automatically vacate position if they miss three consecutive regularly scheduled meetings or more than half of all of the regularly scheduled meetings in a one-year period.<sup>4</sup>
5. Presiding Officer – Annual elections or at the request of a majority of the members of the Committee. May be re-appointed.<sup>5</sup>
6. Meetings – Quarterly or at the call of the Presiding Officer or the Commissioners.<sup>6</sup>
7. Public Participation – Committee meetings will be open to the public. The Presiding Officer shall ensure an opportunity for public participation at every Committee meeting.<sup>7</sup>
8. Voting – If there is no consensus among all members of the Committee, minority members are encouraged to submit minority reports.<sup>8</sup>
9. Reports to the Commission – Unless otherwise directed, the Committee shall report to the Commissioners a minimum of once per year. The report must be sufficient to allow the Commissioners to properly evaluate the Committee's work, usefulness, and the costs related to the Committee's existence.<sup>9</sup>

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References below are to bylaws of the TCEQ Tax Relief for Pollution Control Property Advisory Committee, revised April 27, 2012.

<sup>1</sup> Article 1, Section 1

<sup>2</sup> Article 2, Section 1

<sup>3</sup> Article 2, Section 2

<sup>4</sup> Article 2, Section 4

<sup>5</sup> Article 3, Section 2

<sup>6</sup> Article 4, Section 1

<sup>7</sup> Article 4, Section 3

<sup>8</sup> Article 5, Section 4

<sup>9</sup> Article 6, Section 2

## **Members of 2015 TCEQ Tax Relief for Pollution Control Property Advisory Committee**

On January 27, 2010, the TCEQ Commissioners approved the nomination of six members for two-year terms and seven members for four-year terms. House Bill 2280 of the 82<sup>nd</sup> Legislature (2011) added the following underlined language to Tax Code §11.31(n):

The Texas Commission on Environmental Quality shall establish a permanent advisory committee consisting of representatives of industry, appraisal districts, taxing units, and environmental groups, as well as members who are not representatives of any of those entities but have substantial technical expertise in pollution control technology and environmental engineering, to advise the commission regarding the implementation of this section. At least one member of the advisory committee must be a representative of a school district or junior college district in which property is located that is or previously was subject to an exemption under this section. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

On December 9, 2015, the TCEQ Commissioners approved the re-nomination of six members. The term for each member is four years. Years beside each name indicate the year their term is scheduled to expire (all in January).

### Representing Industry

- Bob Adair (2018), with Phillips 66 Company (Chair, 2010-2015, re-elected for 2016)  
Representing the Texas Oil and Gas Association
- Robert Castor (2018), with NXP Semiconductors
- Paul Coon (2020), with Luminant Power  
Representing the Association of Electric Companies of Texas
- Greg Maxim (2020), with Cummings Westlake
- Michael Nasi (2020), with Jackson, Walker  
Representing the Clean Coal Technology Foundation
- Michael Ford (2018), with E.I. Du Pont de Nemours & Company  
Representing the Texas Chemical Council

### Representing Appraisal Districts

- Roland Bieber (2018), Chief Appraiser for Jefferson County Appraisal District  
Representing the Texas Association of Appraisal Districts
- Wayne Frazell (2018), with Pritchard & Abbott, Inc.

### Representing Taxing Units

- Lloyd Graham (2020), Superintendent, La Porte Independent School District  
Representing school districts
- Don Lee (2020), with the Texas Conference of Urban Counties
- Bennett Sandlin (2018), with the Texas Municipal League

### Representing the Environmental Group

- Dr. Cyrus Reed (2020), with the Sierra Club

### Independent Technical Expert

- Charles Allred (2018)

## **Primary 2015 Actions Taken by Committee**

Each Committee meeting generally lasts two hours or longer and includes discussion of various issues published on an agenda at least seven days prior the public Committee meetings. Although Committee members and TCEQ staff comprise most of the discussion, ample opportunity is provided for the public to educate the Committee on specific issues, express concerns, rebut positions of members or speakers and otherwise advise the Committee. Public testimony has included applicants to the Prop 2 program, business associations, appraisal districts, school districts and other interested parties. In compliance with Committee bylaws to meet at least once per quarter, the Committee met in 2015 in the agenda room of TCEQ on March 6, April 24, August 31 and November 17. Each meeting notice was posted on TCEQ's website at <http://www.tceq.texas.gov/airquality/taxrelief>, with email notices sent to the public as they chose to be on the distribution list.

Items discussed and/or decided in 2015 included:

1. Reviewed and approved the Committee's 2014 annual report.<sup>10</sup>
2. TCEQ Legal staff updated the Committee on Prop 2 related legislation.<sup>10,11,12</sup>
3. Reviewed a proposed resolution suggesting: 1) the commission clarify by rule or guidance that it interprets "wholly or partly to meet or exceed rules or regulations" to include equipment a) used to assist in achieving a goal or general standard such as water conservation, pollution prevention, or recycling; b) used to meet an environmental standard that does not apply to the applicant's facility due to the timing of the equipment installation relative to rule adoption or the equipment is used to maintain emission rates below a threshold that would trigger the rule requirements cited in the application; c) used to comply with a proposed rule yet to be adopted, but which rule will apply to the applicant's operations upon rule adoption (and at which time a positive use determination for an otherwise qualifying applicant would be made effective); and d) installed to meet or exceed an adopted rule that is subsequently repealed or voided by a judicial action; and 2) the commission should clarify by rule or guidance that item §11.31(k)(16), equipment used for carbon capture utilization and storage (CCUS), now has an adequate environmental rule in place. The Committee received input from TCEQ staff and the audience, including representatives of Capitol Appraisal Group, Harris County Appraisal District, Jefferson County Appraisal District, Wise County Appraisal District and Thompson & Horton.<sup>10</sup>
4. Discussed "meet or exceed" in Texas Tax Code §11.31(b). More specifically, the Committee discussed concerns about the possibility that pollution control equipment acquired to comply with adopted rules may not be eligible if those rules were subsequently invalidated before a property tax exemption was granted. After much discussion, a motion to table was passed with no opposition so that the language could be further refined and a rationale written.<sup>12</sup>
5. Discussed clarification of the eligibility of pollution control equipment that is installed before a rule or regulation is finalized or to avoid regulation because of the use of the property. No action was taken.<sup>12</sup>

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<sup>10</sup> March 6, 2015 meeting minutes of the Committee

<sup>11</sup> April 24, 2015 meeting minutes of the Committee

<sup>12</sup> August 31, 2015 meeting minutes of the Committee

6. The Committee requested TCEQ staff (and they complied) to update the Committee on the status of applications for tax relief for heat recovery steam generators (HRSG) pending final resolution and their possible implications on rules discussions by the Committee. TCEQ Legal staff explained there were 12 lawsuits assigned to five judges. Legal briefs have been filed regarding two applications from one applicant and a hearing on the merits of the suit would occur on December 16.<sup>13</sup>
7. The Committee was advised the three-year review of the Tier I Table and Expedited Review List would occur in 2016. Rulemaking would be required only to implement changes.<sup>12,13</sup>
8. In compliance with Article 3 of the Committee bylaws, an annual election was held for Committee Presiding Officer. Bob Adair was re-elected for 2016.<sup>13</sup>

The Committee provided the following advice in 2015:<sup>14</sup>

The Advisory Committee advises that carbon capture utilization and storage (“CCUS”) equipment installed at an existing power plant now has an adequate environmental rule in place to provide a basis for eligibility of CCUS equipment for a positive use determination, if other program requirements are met.

The following rationale was included with the above advice:

Under the proposed recommendation, an applicant who installs carbon dioxide capture equipment at an existing power plant should be considered to have installed the equipment to meet or exceed an environmental rule. The fact that the EPA has not mandated facility- or source-specific emissions limits or technology does not detract from the fact that carbon dioxide is regulated by EPA as a pollutant under the Federal Clean Air Act, is subject to Best Available Control Technology (BACT) reviews by both EPA and TCEQ and, thus, satisfies the Constitutional and Tax Code environmental rule prerequisite.

It should be noted that this recommendation and clarification is not intended to specify that property used in the situation described herein would automatically receive a positive use determination. This clarification would only ensure that the property would be considered to comply with the threshold requirement that the equipment is used “wholly or partly to meet or exceed” an environmental rule, as required under the Texas Constitution and Texas Tax Code.

### **Usefulness of Committee**

In addition to the Committee’s primary purpose to “advise the commission regarding the implementation” of Tax Code §11.31, the Committee receives public input from the public and perspectives from industry, government and independent representatives on the Committee.

As TCEQ Chairman Bryan Shaw addressed item 5 in the December 9, 2015 agenda regarding re-appointment of six Committee members, he expressed the following opinion of the Committee:

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<sup>13</sup> November 17, 2015 meeting minutes of the Committee

<sup>14</sup> Approved by Committee in April 24, 2015 public meeting and submitted to TCEQ Commissioners and staff on April 28, 2015



"It's my understanding that this group has been serving well and functioning very effectively in their task .... Reappointing this very effective group of folks seems like an appropriate method to move forward."

### **Cost of Committee**

- Compensation to Committee Members – None. All members serve without compensation other than from their employers.
- Travel – All members were allowed travel cost reimbursement, however some members chose not to seek reimbursement. Total 2015 requested travel reimbursement was \$550.82.
- TCEQ Advisory Committee Time – Four public meetings at TCEQ's office in Austin (with travel for most members) and many additional hours reviewing issues, hearing perspectives from a variety of interested parties, and considering formal and informal advice regarding proposed rules and procedures.
- TCEQ Staff Time – 231 estimated hours included planning, preparing, and drafting materials for four Committee meetings and related research as the Committee requested.
- TCEQ Facilities – No additional costs were incurred for meeting rooms or other facilities.

Additional information on Tax Relief for Pollution Control Property and the Advisory Committee is available at [www.tceq.state.tx.us/implementation/air/taxrelief](http://www.tceq.state.tx.us/implementation/air/taxrelief). This report was approved by the Committee during a public meeting on February 29, 2016 and submitted to TCEQ on March 4, 2016.

Respectfully,



Bob Adair  
Chairman, Tax Relief for Pollution Control Property Advisory Committee  
Texas Commission on Environmental Quality