

# **2016 Annual Report**

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

April 3, 2017

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 §1-1 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 focus 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 2016 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.

The term for each member is four years. Years indicate expiration of their term (December 31).

### Representing Industry

- Bob Adair (2017), with Phillips 66 Company (Chair, 2010-2016, re-elected for 2017)  
Representing the Texas Oil and Gas Association
- Robert Castor<sup>10</sup> (2017), with NXP Semiconductors
- Paul Coon (2019)  
Representing the Association of Electric Companies of Texas
- Greg Maxim (2019), with Cummings Westlake
- Michael Nasi (2019), with Jackson, Walker  
Representing the Clean Coal Technology Foundation
- Michael Ford (2017), with E.I. Du Pont de Nemours & Company  
Representing the Texas Chemical Council

### Representing Appraisal Districts

- Roland Bieber (2017), Representing the Texas Association of Appraisal Districts
- Wayne Frazell (2017), with Pritchard & Abbott, Inc.

### Representing Taxing Units

- Lloyd Graham (2019), Superintendent, La Porte Independent School District  
Representing school districts
- Don Lee (2019), with the Texas Conference of Urban Counties
- Bennett Sandlin (2017), with the Texas Municipal League

### Representing the Environmental Group

- Dr. Cyrus Reed (2019), with the Sierra Club

### Independent Technical Expert

- Charles Allred (2017)

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<sup>10</sup> Resigned October 5, 2016 due to an employment change. TCEQ solicited nominations to complete his term, with a public application period. On February 15, 2017, Commissioners approved the appointment of Tim Jones, with Samsung Austin Semiconductor, nominated by the Texas Association of Manufacturers.

## **Primary 2016 Actions Taken by Committee**

Each Committee meeting generally lasts less than two hours 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 2016 in the agenda room of TCEQ on February 29 and December 12 and via conference call on June 13 and September 12. Each meeting notice was posted on TCEQ's website at <http://www.tceq.texas.gov/airquality/taxrelief> and TCEQ's Email List Service.

Items discussed and/or decided in 2016 included:

1. Reviewed and approved the Committee's 2015 annual report.<sup>11</sup>
2. The Committee requested TCEQ staff 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 and/or Air Quality Division staff provided verbal updates in Committee meetings.<sup>11,12,14,15</sup>
3. Regarding the requirement to review the Tier I Table and Expedited Review List at least every three years,<sup>13</sup> the Committee was advised that TCEQ staff prefer advice from the Committee no later than August 2016 to allow 12-18 months of the rulemaking process. Rulemaking would be required only to implement changes. The Committee voted, without opposition, to advise Commissioners approve no change in the Tax Relief for Pollution Control Property rules.<sup>11,12</sup>
4. An applicant asked if the Tier I application process has been changed so that process flow diagrams are now a standard part of the application process. Air Quality Division staff responded that TCEQ staff may request a process flow diagram for any application regardless of Tier level if additional information is needed to process the application. Committee members added to the discussion.<sup>12</sup>
5. TCEQ staff provided a brief summary of the Tax Relief for Pollution Control Property program's 2015 annual report. During 2015, the program processed 1,087 applications, of which 82% received positive use determinations, less than 1% received negative use determinations, and 17% were withdrawn or returned. Seven appeals were processed in 2016 as of September 2016.<sup>14</sup>
6. TCEQ staff informed the Committee that a new application form, instructions, and guidance document were developed. Also, in order to meet TCEQ data standards, all Core Data collected by TCEQ programs must be collected and entered in to the TCEQ Central Registry System using the Core Data Form. Core Data includes company and facility names, addresses, and general information and contact information.<sup>14,15</sup>
7. In compliance with Article 3 of the Committee bylaws, an annual election was held for Committee Presiding Officer. Bob Adair was re-elected for 2017.<sup>15</sup>

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<sup>11</sup> February 29, 2016 meeting minutes of the Committee

<sup>12</sup> June 13, 2016 meeting minutes of the Committee

<sup>13</sup> Texas Tax Code §11.31(l) and Texas Administrative Code §17.14(b)

<sup>14</sup> September 12, 2016 meeting minutes of the Committee

<sup>15</sup> December 12, 2016 meeting minutes of the Committee

The Committee provided the following advice to Commissioners in 2016:<sup>12,14,16</sup>

The TCEQ Tax Relief for Pollution Control Property Advisory Committee solicited Committee and public input regarding the following provisions mandating review at least once every three years.

- Texas Tax Code §11.31(l) states, “The Texas Commission on Environmental Quality by rule shall update the list adopted under Subsection (k) at least once every three years. An item may be removed from the list if the commission finds compelling evidence to support the conclusion that the item does not provide pollution control benefits.”
- Texas Administrative Code Title 30, Part 1, Chapter 17, Rule §17.14(b) states, “The commission shall review and update the Tier I Table at least once every three years.”

The above referenced review was included on the Committee’s 2016 meeting agendas for February 29 and June 13. As no recommended revisions were received from inside or outside of the Committee, on June 13 the Committee approved a motion without opposition to advise the Commission to make **no change in the Prop 2 rules**.

### 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.

TCEQ Chairman Bryan Shaw expressed the following opinion of the Committee:

“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.”<sup>17</sup>

“Thank you for your efforts in continuing to make sure that we have this very important advisory panel in place.”<sup>18</sup>

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<sup>16</sup> September 13, 2016 letter from Committee Chairman Adair to Commissioners Shaw, Baker and Niermann

<sup>17</sup> December 9, 2015 public meeting regarding reappointment of six Committee members

<sup>18</sup> February 15, 2017 Commissioners’ Agenda meeting, Item 3, which the Commissioners voted to “Adopt the proposed Resolution appointment Mr. Timothy Jones to the Tax Relief for Pollution Control Property Advisory Committee as a representative from industry to complete the remaining term of Mr. Robert Castor set to expire on December 31, 2017.”

## 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 2016 requested travel reimbursement was \$711.51.
- TCEQ Advisory Committee Time – Two public meetings at TCEQ’s office in Austin (with travel for most members), two public conference call meetings 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 – 116 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 March 31, 2017 and submitted to TCEQ Commissioners and Executive Director on April 4, 2016.

Respectfully,



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