TCEQ Tax Relief for Pollution Control Property Advisory Committee

Recommended Adjustments to the pending Proposed Rule Regarding the TCEQ Pollution Control Property Tax Exemption Program *(Docket No. 2013-2090-RUL).*

RECOMMENDATION # 1 – Water Recycling Systems and Recycled Water Cleaning Systems should be retained on the Tier I Table.

Reason: There is not "compelling evidence to support the conclusion that the item does not render pollution control benefits" pursuant to 30 TAC 17.14(b)(2).

RECOMMENDATION # 2 – Clarify that, with regard to the Texas Constitution and Section 11.31 of the Texas Tax Code, the commission interprets the phrase "whole or partly to meet or exceed rules or regulations" to include situations (1) where an environmental rule sets a goal, target, or general standard that the property assists in achieving and (2) where an environmental rule has been duly adopted but does not apply to the facility because of the timing of the property's installation or the extent of pollution control realized as a result of the property's utilization.

Reason: The preamble to the proposed rule states that the proposed removal of items A-42 and A-43 is justified because the described properties do not meet or exceed an environmental regulation. Also, in reviewing recent technical reviews for pending applications, it appears that the staff is invoking these criteria in technical reviews for property for which the environmental regulatory basis has not been previously questioned. The requested clarification comports with longstanding TCEQ practice, is consistent with the letter and intent of Chapter 11 of the Texas Tax Code and statutory pollution prevention and conservation goals, encourages proactive environmental compliance, and avoids inequitable outcomes that arise from an interpretation that places too much emphasis on when a property is installed or modified rather than whether property would prevent or control pollution.

RECOMMENDATION # 3 – In light of the Legislature's mandate in Tax Code Section 11.31 (e-1) to more timely process applications and appeals, the Committee recommends that the definition of "marketable product" in 30 TAC §17.2(5) should be clarified and simplified as follows:

Anything produced or recovered using pollution control property that is sold or traded as a product~~, is accumulated for later use, or is used as a raw material in a manufacturing process. Marketable product includes, but is not limited to, anything recovered or produced using the pollution control property and sold, traded, accumulated for later use,~~ for use~~d~~ in a manufacturing process (including at a different facility). Marketable product does not include (a) any emission credits or emission allowances that result from installation of the pollution control property or (b) a by-product that has a net present value less than or equal to zero taking into consideration the cost of recovery of the material and the cost of production.

Reason: The definition of "marketable product" is a major factor when technical reviews or appeals are not timely completed, especially as it relates energy efficiency, recycling, and water conservation projects. Until alternative calculation(s) for Tier III replace the current CAP formula, the Advisory Committee believes that this simplified definition will avoid confusion and ensure that the mere re-use of a material or avoiding cost does not render a material as a marketable product.