

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

### **Recommended Adjustments to the TCEQ Pollution Control Property Tax Exemption Program**

#### **Recommendation:**

- 1) The commission should clarify that the commission interprets the phrase “whole or partly to meet or exceed rules or regulations” in the Texas Constitution and Section 11.31 of the Texas Tax Code, to include the following situations:
  - a) An environmental rule sets a goal, target, or general standard that the property assists in achieving (e.g., water conservation, pollution prevention, or recycling goals);
  - b) 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 (e.g., staying under emission or operational thresholds);
  - c) An environmental rule has been formally proposed at the time an application is filed that, if finalized, would constitute an environmental rule that otherwise meets the eligibility criteria of the program, but (to be constitutional) the commission should qualify the positive use determination as being effective upon the formal adoption of the final rule.
- 2) The commission should also clarify that, with regard to §11.31(k)(16), due to the U.S. Supreme Court decision in *UARG v. EPA* (keeping in place the GHG BACT for “anyway sources”) carbon capture utilization and storage (CCUS) equipment 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.
- 3) Finally, the commission should clarify that otherwise eligible equipment should not lose their eligibility because the adopted environmental rule that the equipment meets or exceeds has is withdrawn or impacted by judicial action after the installation of the equipment in question.

#### **Rationale:**

Many important environmental rules state general targets or goals that are facilitated by the installation of equipment but do not specify the method of compliance. Also, rules can be “exceeded” not only by achieving greater pollution reduction than is required by the rule, but also by proactively complying with or exceeding the requirements of an adopted rule that the facility will have to comply with in the future or would have to comply with but for the installation of the equipment in question (e.g., a company installs air pollution control equipment in order to lower emissions to avoid triggering permitting thresholds). Similarly, if the timing of the property’s installation or the method of its use prevents it from being subject to a duly adopted rule, that should also be considered “exceeding” an environmental rule or regulation. Just because such equipment is not specifically “required” to comply with a particular rule, the installation does not fail the statutory and constitutional test because an adopted environmental rule’s requirements are exceeded through preemptive action. The remainder of the recommendations are warranted due to the ever-changing environmental regulatory framework where the regulated community makes equipment installation decisions when the compliance target is moving and often coming on too fast to await formal adoption of the rule, or is later changed/invalidated after the installation. These complexities should not undermine eligibility.