

# **Tax Relief for Pollution Control Property**

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***2010 Annual Report***

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## ***Program Background***

In 1993, the citizens of Texas voted to adopt a tax measure called Proposition 2 (Prop 2). Prop 2 was implemented when Article 8, § 1-l was added to the Texas Constitution. The amendment allowed the legislature to “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.”<sup>1</sup>

The Texas Legislature codified the constitutional amendment as Texas Tax Code (TTC), §11.31. The statute established a two-step process to obtain a tax exemption for pollution control property. First, a person seeking a tax exemption must obtain a positive use determination from the Executive Director of the Texas Commission on Environmental Quality (TCEQ) that the property is used wholly or partly for pollution control.<sup>2</sup> Second, once a person obtains a positive use determination, the person then applies to the appraisal district where the property is located to receive the actual tax exemption. This second step removes the property from the tax roll.<sup>3</sup> The TCEQ adopted rules as required by the legislation to establish the procedures and mechanisms for obtaining a use determination. The TCEQ’s rules governing the program are contained in Chapter 17 of Title 30 of the Texas Administrative Code (30 TAC).

In 2001, House Bill (HB) 3121, 77th Texas Legislature, amended TTC, §11.31 requiring the TCEQ to adopt specific standards for evaluating applications and to provide a formal appeals procedure. To implement the changes, 30 TAC Chapter 17 was amended by TCEQ in 2002. The amended rules established a standard method to determine how much of a piece of property is pollution control versus production when the property serves both functions. This method was called the Cost Analysis Procedure or CAP and was required to be used for all equipment that is both pollution control and production equipment.<sup>4</sup>

In 2007, the 80th Texas Legislature passed HB 3732, which amended TTC, §11.31 by adding three new subsections, i.e., (k), (l), and (m). The new TTC, §11.31(k) required the TCEQ to adopt a nonexclusive list of property that included 18 property categories. The new TTC, §11.31(l) required that the property list be reviewed at a minimum interval of once every three years and establishes a standard for removing property from the list. The new TTC, §11.31(m) established a 30-day review period for applications that contain property listed on the nonexclusive list. To implement these legislative changes, 30 TAC Chapter 17 was amended by the TCEQ, effective on February 7, 2008. The specific equipment added to TTC, §11.31 was primarily energy production-related equipment such as heat recovery steam generators and enhanced steam turbine systems. Due to the unconventional nature of the equipment from a pollution control aspect, TCEQ rules

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<sup>1</sup> TEXAS CONSTITUTION, Article 8, §1-l(a), (November 2, 1993).

<sup>2</sup> TTC, §11.31(c) & (d).

<sup>3</sup> TTC, §11.31(i).

<sup>4</sup> TTC, §11.31(g).

allowed for applicants to provide their own calculations for determining a partial use percentage rather than using the CAP.

In 2009, HB 3206 and HB 3544, 81st Texas Legislature, amended TTC, §11.31 to require the use of the same uniform review standards and methods for all applications, including those containing property listed on the non-exclusive list of pollution control equipment contained in TTC, §11.31(k). The bills also require the establishment of a permanent advisory committee charged with providing advice to the TCEQ on implementing TTC, §11.31. On January 27, 2010, the commission created the permanent advisory committee. The commission approved revised rules on November 18, 2010, to address HB 3206 and HB 3544.

Staff is aware that appraisal districts and taxing entities are concerned that exemptions for high value properties may cause significant reductions in property tax revenues. Staff is also aware that districts struggle with finalizing their budgets given uncertainty of these potential tax exemptions. Understanding these potential impacts, we have instituted a multi level review process to ensure that appropriate use determinations are issued as soon as practicable.

## ***General Program Information***

In order to qualify as pollution control property, the property must have been used, constructed, acquired, or installed after January 1, 1994, wholly or partly to meet or exceed an adopted federal, state, or local environmental law, rule, or regulation. Property includes both real and personal property and can consist of devices, equipment, methods or land that are used to prevent, monitor, control or reduce air, water or land pollution. If the TCEQ determines that property qualifies as pollution control property, a positive use determination will be sent to the applicant and the appropriate appraisal authority.

There are several categories of property that are excluded from eligibility for a positive use determination:

- motor vehicles, except for dedicated service motor vehicles used solely for pollution control;
- residential property and property used for recreational, park, or scenic uses;
- property subject to a tax agreement before January 1, 1994;
- property used to manufacture or produce a product or provide a service that prevents, monitors, controls, or reduces air, water, or land pollution; and
- property where the environmental benefit associated with the property is derived from the use or characteristics of the good or service produced by the property.

The TCEQ has established three tier levels for processing applications, i.e., Tier 1, Tier 2, and Tier 3. The levels are based on the anticipated processing time related to the application. The tier levels are defined as follows:

- Tier I is for eligible property that is listed on the Tier I Table specified in 30 TAC §17.14(a). The Tier I Table enumerates specific property that the TCEQ has determined is used for pollution control at a standard use percentage as listed in the table. Commonly, property listed on the Tier I Table is used wholly for pollution control. Tier I applications require a \$150 fee.
- Tier II is for eligible property that an applicant believes is used 100% for pollution control but it is not listed on the Tier I Table. A Tier II application may include eligible property on the Expedited Review List specified in 30 TAC §17.17(b) only if such property is used 100% for pollution control. Tier II applications require a \$1,000 fee.
- Tier III is for property that has both a pollution control and a production benefit. This type of equipment is eligible for a partial use determination. Partial percentages are calculated using the Cost Analysis Procedure. This calculation is designed to determine the portion of the property that is for pollution control. The application fee is \$2,500.

## ***Program Activities in 2010***

As a result of HB 3206 and HB 3544, 81st Texas Legislature, the TCEQ established a permanent advisory committee on January 27, 2010, charged with providing the commission with advice on implementing the Tax Relief Program for Pollution Control Equipment. The advisory committee was instrumental in assisting the TCEQ in developing revisions to the agency's rules regarding Tax Relief for Property Used for Environmental Protection under 30 TAC Chapter 17. The purpose of the rulemaking was to implement the legislative requirements contained in HB 3206 and HB 3544, and to make certain other changes to clarify issues in the program and allow for uniform processing of applications. The commission approved the revised rules on November 18, 2010.

Both HB 3206 and HB 3544 required that the standards and methods used to make determinations be applied uniformly to all applications, including property listed under TTC, §11.31(k). Property listed in TTC, §11.31(k) was previously included in TCEQ rules as Tier IV property and Tier IV applications were processed differently than applications under other tiers. Specifically, Tier IV applications did not have an assigned use percentage and applicants were required to provide a use percentage as part of the application. As a result of the legislation, the Tier IV category of applications was eliminated and applications for properties under TTC, §11.31(k) list are now filed as Tier I, Tier II, or Tier III applications, as appropriate.

The revised rules also included the following major changes:

- Replacement of the term “environmental benefit at the site” with a definition of “environmental benefit” and an exclusion from eligibility for property that meets one of the following criteria:

- if the property is used, constructed, acquired, or installed wholly to produce a good or provide a service;
  - if the property is not wholly or partly used, constructed, acquired, or installed to meet or exceed a law, rule, or regulation adopted by any environmental protection agency of the United States, Texas, or a political subdivision of Texas for the prevention, monitoring, control, or reduction of air, water, or land pollution; or
  - if the environmental benefit is derived from the use or characteristics of the good or service produced or provided.
- Removal of certain property from the Tier I Table with designated partial use percentages where there is no documentation that such a partial percentage can be applied uniformly.
  - Removal of certain property from the Tier I Table that recovers or produces a “marketable” product and requires a Tier III application to account for the value of the product.
  - For Tier III applications, modification of the formula used to determine a partial use percentage by replacing the term “by-product” with “marketable” product. The new factor for marketable product differs from the existing factor for by-product in that marketable product covers more than just waste materials that are recovered and that direct costs of production, rather than just storage and transportation, are subtracted from the product value.
  - Addition of new items to the Tier I Table that are used wholly for pollution control.
  - A requirement that separate applications be submitted for pieces of pollution control property that are not an integrated unit.
  - A requirement that applicants provide the specific section of an environmental rule, law, or regulation that requires use, installation, construction, or acquisition of the property.
  - A provision to allow the general counsel of the TCEQ to remand appeals on an application back to the executive director without formal action by the commission when the action is requested by the executive director or the public interest counsel.

The appointed Tax Relief for Pollution Control Program Advisory Committee was instrumental in their assistance to the rulemaking effort. The committee met nine times during 2010 to discuss and provide recommendations to the commission on the new rule packages.

## ***Program Statistics***

### **Number of Applications**

The first Tax Relief application was received on November 21, 1994. As of December 31, 2010, a total of 14,849 applications had been received. Table 1: *Total Number of Applications Filed Since Program Inception* (November 1994 – December 2010) shows the total number of applications received since the inception of the program, categorized by Tier level and by approval status. While this report covers Calendar Year 2010 activities Calendar Year 2009 information is provided for comparison purposes.

**Table 1. Total Number of Applications Filed Since Program Inception (November 1994 – December 2010)**

| <b>Status</b> | <b>Tier I</b> | <b>Tier II</b> | <b>Tier III</b> | <b>Tier IV<sup>5</sup></b> | <b>Total</b>  |
|---------------|---------------|----------------|-----------------|----------------------------|---------------|
| Approved      | 13,230        | 383            | 200             | 31                         | 13,844        |
| Denied        | 186           | 13             | 15              | 8                          | 222           |
| Withdrawn     | 588           | 28             | 15              | 5                          | 636           |
| Under Review  | 90            | 15             | 5               | 0                          | 110           |
| On Hold       | 0             | 2              | 0               | 35                         | 37            |
| <b>Total</b>  | <b>14,094</b> | <b>441</b>     | <b>235</b>      | <b>79</b>                  | <b>14,849</b> |

Table 2: *Number of Applications Received During 2010* shows the number of applications received during calendar year 2010, categorized by Tier level and by approval status. A total of 944 applications were received by the TCEQ during 2010 and of those, 67% were approved, 29% were withdrawn, and 4% were denied. Seventeen applications are still under review.

**Table 2. Number of Applications Received During 2010**

| <b>Status</b> | <b>Tier I</b> | <b>Tier II</b> | <b>Tier III</b> | <b>Tier IV<sup>5</sup></b> | <b>Total</b> |
|---------------|---------------|----------------|-----------------|----------------------------|--------------|
| Approved      | 571           | 7              | 5               | 2                          | 585          |
| Denied        | 13            | 2              | 1               | 1                          | 17           |
| Withdrawn     | 227           | 2              | 0               | 1                          | 230          |
| Under Review  | 90            | 15             | 4               | 0                          | 109          |
| On Hold       | 0             | 0              | 0               | 3                          | 3            |
| <b>Total</b>  | <b>901</b>    | <b>26</b>      | <b>10</b>       | <b>7</b>                   | <b>944</b>   |

<sup>5</sup> \*Tier IV level was created February 7, 2008, and was combined with the Tier III level effective December 13, 2010.

Table 3: *Number of Applications Received During 2009* shows the number of applications received during calendar year 2009, categorized by Tier level and by approval status. The TCEQ received 1,132 applications during 2009 and of those, 84% were approved, 10% were withdrawn, and 5% were denied. A greater number of Tier 1 applications were received in 2009 compared to 2010.

**Table 3. Number of Applications Received During 2009**

| Status       | Tier I       | Tier II   | Tier III | Tier IV <sup>5</sup> | Total        |
|--------------|--------------|-----------|----------|----------------------|--------------|
| Approved     | 926          | 20        | 3        | 3                    | 952          |
| Denied       | 51           | 2         | 0        | 3                    | 56           |
| Withdrawn    | 102          | 5         | 4        | 2                    | 113          |
| Under Review | 0            | 0         | 0        | 0                    | 0            |
| On Hold      | 0            | 0         | 0        | 11                   | 11           |
| <b>Total</b> | <b>1,079</b> | <b>27</b> | <b>7</b> | <b>19</b>            | <b>1,132</b> |

## Fees Received

**Table 4. Application Fees Collected by Tier Level for Years 2010 and 2009**

| Calendar Year | Tier I    | Tier II  | Tier III | Tier IV <sup>5</sup> | Tier Total |
|---------------|-----------|----------|----------|----------------------|------------|
| 2009          | \$161,850 | \$27,000 | \$17,500 | \$9,500              | \$215,850  |
| 2010          | \$135,150 | \$26,000 | \$25,000 | \$3,500              | \$189,650  |

The estimated fees received during 2010 and 2009 were \$189,650 and \$215,850 respectively. Table 4: *Application Fees Collected by Tier Level for Years 2010 and 2009* shows fee collections by tier level for years 2010 and 2009. The decrease in total fees between 2009 and 2010 is attributable to a decrease in the number of Tier I and Tier IV applications received. Fees received are used by the TCEQ to administer the Tax Relief for Pollution Control Property program. The TCEQ is authorized to recover its costs to operate the program.

## Total Tier III and IV Applications

Because of their complexity, Tier III and Tier IV applications require the most review time. Table 5: *Number of Tier IV Applications Received by Year* shows that a total of 60 Tier IV applications were received by the TCEQ during the three years that the category existed.

**Table 5. Number of Tier IV Applications Received by Year**

| Calendar Year | Number of Applications | Estimated Dollar Value of Projects |
|---------------|------------------------|------------------------------------|
|---------------|------------------------|------------------------------------|

| Calendar Year | Number of Applications | Estimated Dollar Value of Projects |
|---------------|------------------------|------------------------------------|
| 2008          | 53                     | \$2,792,204,237                    |
| 2009          | 19                     | \$575,948,114                      |
| 2010          | 7                      | \$291,688,663                      |
| <b>Total</b>  | <b>60</b>              | <b>\$3,083,892,900</b>             |

Table 6: *Total Tier III Applications Received Each Calendar Year* shows that the number of Tier III applications processed by the TCEQ each year has varied from as few as one to as many as 42. Due to recent rule changes, particularly the removal of partial use determinations from the Tier I Table<sup>6</sup> and the elimination of the Tier IV category, an increase in the number of Tier III applications received is anticipated.

**Table 6. Total Tier III Applications Received Each Calendar Year**

| Calendar Year | Number of Applications | Estimated Dollar Value of Projects |
|---------------|------------------------|------------------------------------|
| 1994          | 10                     | \$119,281,203                      |
| 1995          | 42                     | \$243,277,607                      |
| 1996          | 27                     | \$237,640,204                      |
| 1997          | 32                     | \$185,440,379                      |
| 1998          | 12                     | \$192,263,569                      |
| 1999          | 12                     | \$258,992,370                      |
| 2000          | 22                     | \$777,291,784                      |
| 2001          | 12                     | \$332,414,314                      |
| 2002          | 13                     | \$265,667,023                      |
| 2003          | 10                     | \$57,371,097                       |
| 2004          | 5                      | \$67,154,491                       |
| 2005          | 1                      | \$22,765,000                       |
| 2006          | 4                      | \$138,094,437                      |
| 2007          | 11                     | \$64,352,866                       |
| 2008          | 5                      | \$75,293,379                       |
| 2009          | 7                      | \$125,717,478                      |
| 2010          | 10                     | \$333,305,478                      |
| <b>Total</b>  | <b>235</b>             | <b>\$3,496,322,679</b>             |

## Applications Filed by County for 2010

<sup>6</sup> The Tier I Table was previously known as the Predetermined Equipment List and the Equipment and Categories List.

**Table 7: Tax Relief Applications Received for Calendar Year 2010 Grouped by Texas County** shows the distribution of all Tier I-IV applications received during Calendar Year 2010 among Texas counties by the total number of applications received and the total listed dollar values. **Table 8: Tax Relief Applications Received for Calendar Year 2009 Grouped by Texas County** shows the same information for Calendar Year 2009. Over 50% of the applications received during 2010 were from counties located in the Dallas-Fort Worth and Houston-Galveston-Brazoria ozone nonattainment areas. These applications also represent 24% of the total listed dollar value. Over 58% of the applications containing 61% of the listed dollar value were from counties located in TCEQ Regions 5 (Tyler), 10 (Beaumont), 12 (Houston), and 14 (Corpus Christi).

Applications have been received from 226 of Texas' 254 counties. Applications have not been received from the following counties: Archer, Bailey, Bandera, Baylor, Brewster, Briscoe, Collingsworth, Crosby, Dickens, Foard, Hartley, Jeff Davis, King, Kinney, Kimble, Knox, LaSalle, Lynn, Menard, Mills, Motley, Oldham, Presidio, Real, San Augustine, San Saba, Swisher, and Throckmorton Counties. These counties are primarily located in the Panhandle and West Texas.

**Table 7. Tax Relief Applications Received for Calendar Year 2010 Grouped by Texas County**

| <b>County Name</b> | <b>Number of Applications</b> | <b>Total Estimated Dollar Value</b> |
|--------------------|-------------------------------|-------------------------------------|
| Andrews            | 5                             | \$3,490,700                         |
| Angelina           | 4                             | \$1,886,646                         |
| Atascosa           | 7                             | \$3,832,346                         |
| Bastrop            | 1                             | \$70,201                            |
| Bell               | 2                             | \$367,850                           |
| Bexar              | 5                             | \$4,942,272                         |
| Bosque             | 1                             | \$211,354                           |
| Bowie              | 1                             | \$30,000                            |
| Brazoria           | 43                            | \$14,430,742                        |
| Brazos             | 1                             | \$53,444                            |
| Brooks             | 1                             | \$680,530                           |
| Burnet             | 3                             | \$1,134,766                         |
| Calhoun            | 9                             | \$4,579,511                         |
| Cass               | 1                             | \$8,660,967                         |
| Chambers           | 15                            | \$31,812,628                        |
| Collin             | 4                             | \$556,635                           |
| Comal              | 4                             | \$21,042,930                        |
| Comanche           | 3                             | \$112,560                           |
| Crockett           | 3                             | \$1,695,855                         |
| Dallas             | 54                            | \$8,234,135                         |
| Denton             | 8                             | \$4,152,251                         |
| DeWitt             | 3                             | \$10,669,082                        |
| Duval              | 1                             | \$85,000                            |
| Eastland           | 1                             | \$29,836                            |

| <b>County Name</b> | <b>Number of Applications</b> | <b>Total Estimated Dollar Value</b> |
|--------------------|-------------------------------|-------------------------------------|
| Ector              | 4                             | \$1,186,761                         |
| El Paso            | 22                            | \$254,777,804                       |
| Ellis              | 23                            | \$22,366,268                        |
| Falls              | 1                             | \$139,474                           |
| Fannin             | 1                             | \$18,064,667                        |
| Fort Bend          | 9                             | \$2,871,324                         |
| Franklin           | 1                             | \$2,371,388                         |
| Freestone          | 5                             | \$2,645,180                         |
| Frio               | 1                             | \$15,632,969                        |
| Galveston          | 20                            | \$104,769,113                       |
| Goliad             | 2                             | \$5,491,817                         |
| Gray               | 1                             | \$5,040,000                         |
| Grayson            | 2                             | \$2,070,479                         |
| Gregg              | 2                             | \$52,705                            |
| Guadalupe          | 4                             | \$3,117,465                         |
| Hardin             | 4                             | \$6,976,789                         |
| Harris             | 249                           | \$296,342,703                       |
| Harrison           | 27                            | \$15,300,079                        |
| Hays               | 1                             | \$377,059                           |
| Hemphill           | 5                             | \$3,491,758                         |
| Henderson          | 1                             | \$40,522                            |
| Hill               | 1                             | \$14,445                            |
| Hockley            | 1                             | \$600,190                           |
| Hopkins            | 3                             | \$73,211                            |
| Howard             | 1                             | \$27,800,000                        |
| Hunt               | 3                             | \$1,511,988                         |
| Hutchinson         | 4                             | \$3,629,401                         |
| Jefferson          | 68                            | \$696,264,231                       |
| Jim Wells          | 1                             | \$4,000,000                         |
| Johnson            | 11                            | \$33,151,790                        |
| Kaufman            | 4                             | \$258,620                           |
| La Salle           | 1                             | \$747,701                           |
| Lamar              | 3                             | \$413,915                           |
| Lamb               | 4                             | \$948,365                           |
| Lampasas           | 1                             | \$367,850                           |
| Lee                | 3                             | \$1,336,479                         |
| Liberty            | 3                             | \$4,305,869                         |
| Limestone          | 5                             | \$10,743,465                        |
| Lipscomb           | 2                             | \$1,396,280                         |
| Live Oak           | 3                             | \$759,000                           |
| Lubbock            | 2                             | \$1,157,088                         |
| Madison            | 2                             | \$3,362,800                         |
| Matagorda          | 10                            | \$46,394,192                        |
| McCulloch          | 1                             | \$843,130                           |

| <b>County Name</b> | <b>Number of Applications</b> | <b>Total Estimated Dollar Value</b> |
|--------------------|-------------------------------|-------------------------------------|
| McLennan           | 9                             | \$430,761                           |
| Medina             | 4                             | \$576,412                           |
| Midland            | 1                             | \$1,200,000                         |
| Milam              | 17                            | \$148,032,494                       |
| Montague           | 3                             | \$758,296                           |
| Montgomery         | 22                            | \$5,877,483                         |
| Morris             | 1                             | \$1,940,696                         |
| Nacogdoches        | 1                             | \$924,775                           |
| Navarro            | 2                             | \$37,269                            |
| Nolan              | 2                             | \$145,717                           |
| Nueces             | 3                             | \$38,615,669                        |
| Orange             | 8                             | \$2,245,572                         |
| Palo Pinto         | 4                             | \$711,619                           |
| Panola             | 9                             | \$6,465,416                         |
| Parker             | 5                             | \$2,380,913                         |
| Pecos              | 8                             | \$5,470,738                         |
| Potter             | 5                             | \$1,225,260                         |
| Reagan             | 1                             | \$1,200,000                         |
| Red River          | 1                             | \$22,184                            |
| Robertson          | 15                            | \$156,148,688                       |
| Rusk               | 1                             | \$74,551                            |
| San Jacinto        | 4                             | \$1,291,632                         |
| San Patricio       | 1                             | \$15,573,200                        |
| Scurry             | 3                             | \$135,230                           |
| Shelby             | 1                             | \$1,029,504                         |
| Smith              | 5                             | \$910,820                           |
| Starr              | 1                             | \$698,140                           |
| Stephens           | 3                             | \$191,026                           |
| Sutton             | 1                             | \$49,918                            |
| Tarrant            | 19                            | \$2,362,042                         |
| Taylor             | 6                             | \$643,134                           |
| Titus              | 3                             | \$163,245                           |
| Tom Green          | 1                             | \$179,400                           |
| Travis             | 12                            | \$4,852,527                         |
| Upton              | 1                             | \$11,359                            |
| Waller             | 2                             | \$168,868                           |
| Ward               | 4                             | \$1,348,000                         |
| Wharton            | 5                             | \$8,621,464                         |
| Wheeler            | 13                            | \$17,984,135                        |
| Wichita            | 8                             | \$10,223,938                        |
| Wilbarger          | 2                             | \$623,887                           |
| Willacy            | 1                             | \$698,140                           |
| Williamson         | 5                             | \$491,432                           |
| Wise               | 15                            | \$28,043,857                        |

| <b>County Name</b> | <b>Number of Applications</b> | <b>Total Estimated Dollar Value</b> |
|--------------------|-------------------------------|-------------------------------------|
| Young              | 2                             | \$179,036                           |
| Zapata             | 2                             | \$1,028,000                         |
| <b>Totals</b>      | <b>944</b>                    | <b>\$2,197,955,023</b>              |

**Table 8. Tax Relief Applications Received for Calendar Year 2009 Grouped by Texas County**

| <b>County Name</b> | <b>Number of Applications</b> | <b>Total Estimated Dollar Value</b> |
|--------------------|-------------------------------|-------------------------------------|
| Anderson           | 1                             | \$14,341,199                        |
| Andrews            | 1                             | \$424,800                           |
| Angelina           | 9                             | \$6,799,146                         |
| Atascosa           | 1                             | \$19,168                            |
| Bastrop            | 3                             | \$1,598,264                         |
| Bell               | 6                             | \$1,267,356                         |
| Bexar              | 25                            | \$25,005,272                        |
| Bosque             | 2                             | \$7,382,350                         |
| Brazoria           | 65                            | \$80,653,972                        |
| Brazos             | 1                             | \$799,985                           |
| Brooks             | 1                             | \$894,600                           |
| Burleson           | 1                             | \$1,385,684                         |
| Burnet             | 1                             | \$782,599                           |
| Calhoun            | 37                            | \$72,425,573                        |
| Camp               | 1                             | \$32,934                            |
| Chambers           | 10                            | \$33,524,859                        |
| Cherokee           | 2                             | \$143,655                           |
| Collin             | 19                            | \$1,180,491                         |
| Colorado           | 2                             | \$65,500                            |
| Comal              | 9                             | \$22,736,116                        |
| Comanche           | 1                             | \$180,537                           |
| Crockett           | 1                             | \$894,600                           |
| Dallas             | 55                            | \$14,048,943                        |
| Deaf Smith         | 9                             | \$58,222,203                        |
| Denton             | 17                            | \$21,567,921                        |
| Eastland           | 1                             | \$78,739                            |
| Ector              | 3                             | \$3,557,458                         |
| Edwards            | 1                             | \$582,000                           |
| El Paso            | 15                            | \$17,726,763                        |
| Ellis              | 13                            | \$15,864,246                        |
| Erath              | 4                             | \$1,089,388                         |
| Fannin             | 2                             | \$801,617                           |
| Fort Bend          | 10                            | \$4,351,197                         |
| Freestone          | 6                             | \$36,646,359                        |
| Galveston          | 43                            | \$499,248,992                       |
| Gray               | 1                             | \$149,459                           |

| <b>County Name</b> | <b>Number of Applications</b> | <b>Total Estimated Dollar Value</b> |
|--------------------|-------------------------------|-------------------------------------|
| Grayson            | 4                             | \$1,448,294                         |
| Gregg              | 3                             | \$179,461                           |
| Grimes             | 2                             | \$2,326,687                         |
| Guadalupe          | 1                             | \$142,039                           |
| Hale               | 1                             | \$508,962                           |
| Harris             | 257                           | \$332,995,791                       |
| Harrison           | 8                             | \$9,890,498                         |
| Hays               | 1                             | \$402,500                           |
| Hemphill           | 2                             | \$1,245,031                         |
| Henderson          | 5                             | \$637,142                           |
| Hill               | 2                             | \$1,328,204                         |
| Hockley            | 9                             | \$1,473,900                         |
| Hood               | 3                             | \$927,769                           |
| Hopkins            | 1                             | \$424,475                           |
| Howard             | 1                             | \$364,500                           |
| Hunt               | 3                             | \$117,912                           |
| Hutchinson         | 28                            | \$22,166,194                        |
| Jack               | 2                             | \$831,911                           |
| Jefferson          | 80                            | \$280,234,574                       |
| Jim Wells          | 1                             | \$487,800                           |
| Johnson            | 25                            | \$39,740,629                        |
| Kaufman            | 5                             | \$56,379                            |
| Lamar              | 2                             | \$2,885,960                         |
| Lamb               | 9                             | \$4,161,375                         |
| Lampasas           | 1                             | \$540,320                           |
| Lavaca             | 2                             | \$483,155                           |
| Liberty            | 3                             | \$661,308                           |
| Limestone          | 4                             | \$36,819,542                        |
| Lipscomb           | 1                             | \$705,800                           |
| Live Oak           | 1                             | \$12,065,000                        |
| Lubbock            | 4                             | \$1,646,059                         |
| Matagorda          | 6                             | \$3,759,196                         |
| McLennan           | 18                            | \$591,618,413                       |
| Medina             | 2                             | \$60,000                            |
| Midland            | 1                             | \$3,746,315                         |
| Milam              | 2                             | \$342,578,437                       |
| Montague           | 7                             | \$2,523,767                         |
| Montgomery         | 6                             | \$2,230,831                         |
| Moore              | 3                             | \$19,331,245                        |
| Nacogdoches        | 5                             | \$10,093,513                        |
| Navarro            | 3                             | \$286,008                           |
| Nolan              | 1                             | \$85,891                            |
| Nueces             | 1                             | \$51,945                            |
| Orange             | 11                            | \$42,172,387                        |

| <b>County Name</b> | <b>Number of Applications</b> | <b>Total Estimated Dollar Value</b> |
|--------------------|-------------------------------|-------------------------------------|
| Panola             | 13                            | \$26,946,978                        |
| Parker             | 4                             | \$1,166,080                         |
| Parmer             | 2                             | \$292,989                           |
| Pecos              | 9                             | \$5,917,563                         |
| Polk               | 1                             | \$5,400,000                         |
| Potter             | 11                            | \$6,738,459                         |
| Rockwall           | 6                             | \$180,728                           |
| Robertson          | 7                             | \$4,599,147                         |
| Rusk               | 6                             | \$26,721,791                        |
| Shelby             | 1                             | \$1,414,892                         |
| Smith              | 9                             | \$552,270                           |
| Starr              | 1                             | \$657,507                           |
| Tarrant            | 66                            | \$20,540,733                        |
| Taylor             | 7                             | \$2,365,357                         |
| Titus              | 10                            | \$65,753,133                        |
| Travis             | 25                            | \$8,772,556                         |
| Van Zandt          | 3                             | \$149,962                           |
| Victoria           | 3                             | \$16,206,547                        |
| Waller             | 5                             | \$9,150,372                         |
| Wharton            | 1                             | \$1,568,440                         |
| Wheeler            | 4                             | \$15,300,000                        |
| Wichita            | 4                             | \$8,626,280                         |
| Wilbarger          | 2                             | No dollar value listed \$0          |
| Williamson         | 7                             | \$721,877                           |
| Wise               | 8                             | \$12,320,690                        |
| Wood               | 1                             | \$20,875                            |
| <b>Totals</b>      | <b>1,132</b>                  | <b>\$2,964,996,293</b>              |

## Rules Cited

To be eligible for a positive use determination under TTC, §11.31(b), the property must have been “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.” The regulations specified in 30 TAC §17.10(d)(4) require the applicant to provide a citation to the rule being met or exceeded.

State rules are cited in the majority of applications. For example, 62% of the rules cited in applications received during 2009 were rules that have been adopted by the state of Texas. However, during 2010, only 54% of the applications cited state rules.

The majority of applications filed are for equipment used to control or prevent air pollution.

Program guidance requires rule citations to the subsection level. For grouping purposes in this report, these citations are listed only to the section level.

The five rules most frequently cited in applications granted a positive use determination during calendar year 2009 were:

- 40 CFR 112: Oil Pollution Prevention;
- 30 TAC 106: Permits By Rule;
- 30 TAC 111: Control of Air Pollution from Visible Emission sand Particulate Matter;
- Texas Water Code (TWC), §26.121: Unauthorized Discharges Prohibited; and
- 30 TAC 115: Control of Air Pollution from Volatile Organic Compounds.

The five rules most frequently cited in applications granted a positive use determination during calendar year 2010 were:

- 40 CFR 112: Oil Pollution Prevention;
- 30 TAC 106: Permits By Rule;
- 30 TAC 115: Control of Air Pollution from Volatile Organic Compounds;
- 40 CFR 60: Standards of Performance for New Stationary Sources; and
- 30 TAC 111: Control of Air Pollution from Visible Emission sand Particulate Matter.

During 2010, the program stopped accepting TWC, §26.121 as an applicable environmental regulation. In its place applicants are now citing to the appropriate permitting rule.

## **Type of Facilities**

On average, over 70% of the applications received are filed by the following five types of facilities:

- chemical manufacturing plants;
- electric generating facilities;
- natural gas processing, storage and transportation facilities;
- manufacturers of building materials (cement, aggregate, wood, etc.); and
- oil refineries.

During calendar year 2010, 22% of the applications were from chemical manufacturing plants, 18% were from electricity generating facilities, 15% were from natural gas processing, storage, and transportation facilities, 11% were from manufacturers of building materials, and 5% were from oil refineries.

During calendar year 2009, 27% of the applications were from chemical manufacturing plants, 19% were from electricity generating facilities, 9% were from natural gas

processing, storage, and transportation facilities, 15% were from manufacturers of building materials, and 5% were from oil refineries.

## Type of Equipment

**Table 9:** *Types of Equipment Listed on Received Applications and the Total Number of each Type Listed in 2010* contains a list of the types of equipment that have been included in applications received during 2010. Since more than one piece of equipment may be included on an application, the number of total pieces of equipment is higher than the number of applications.

**Table 9. Types of Equipment Listed on Received Applications and the Total Number of each Type Listed in 2010**

| Type of Equipment                                   | Total Number Listed in 2010 Applications |
|---|--|
| Carbon Absorber                                     | 93                                       |
| Cathodic Protection                                 | 12                                       |
| Compressor Related                                  | 148                                      |
| Continuous Emission Monitoring Systems              | 30                                       |
| Double-Hulled Barges                                | 81                                       |
| Drilling Rigs - MUD Recycling/Blow Out Prevention   | 31                                       |
| Dust/Particulate Collection Devices                 | 99                                       |
| Flare Systems                                       | 26                                       |
| Flue Gas Desulfurization Equipment                  | 4  |
| Hydrotreaters                                       | 2  |
| Internal Floating Roofs                             | 33                                       |
| Liners  | 11                                       |
| Monitoring Wells                                    | 4  |
| Nitrogen Oxide (NO <sub>x</sub> ) Reduction/Control | 36                                       |
| Oil/Water Separators                                | 42                                       |
| Other   | 39                                       |
| Salt Water/Wastewater Injection Well                | 10                                       |
| Scrubbers   | 7  |
| Secondary Containment                               | 123                                      |
| Selective Catalytic Reduction                       | 11                                       |
| Service Station                                     | 37                                       |
| Storm Water Controls                                | 72                                       |
| Strippers   | 9  |
| Sweepers/Water Trucks                               | 15                                       |
| Tank Overfill/Leak Detection                        | 78                                       |
| Thermal Oxidizer                                    | 13                                       |
| Vapor Control Units                                 | 13                                       |

| Type of Equipment              | Total Number Listed in 2010 Applications |
|--------------------------------|--|
| Various Controls/Monitors      | 68                                       |
| Vent Controls                  | 9  |
| VOC Reduction Systems          | 13                                       |
| Wastewater Treatment Equipment | 67                                       |
| Welded Pipe Joints             | 4  |

The majority of equipment was installed to control volatile organic compound (VOC) emissions.

## Appeals

Twelve appeals were processed during 2010. Eleven of these appeals were for negative use determinations and one appeal was for a change in ownership. Nine of the appeals were withdrawn before the agenda date, and the other two were upheld. There are six additional appeals for heat recovery steam generators (HRSG) that are on hold.

The formal appeals process was adopted in 2002 in order to implement HB 3121, 77th Texas Legislature. Section 11.31(e) of the TTC provides that either the applicant or the chief appraiser may file a written appeal with the executive director within 20 days of receiving the final use determination. The appeal is to be heard at a commission agenda and both parties may testify. The commission may affirm the use determination or remand it to the executive director for a new determination. The new determination is appealable. Prior to 2002, an internal appeals process allowed final determinations to be appealed to the Chief Engineer. Since the adoption of the appeals process, the majority of appeals have been withdrawn before the agenda date. In most cases, the appellant was satisfied once they received additional information explaining how the determination was reached. A complete list of all appeals filed since 2002 is attached as Appendix B: *Tax Relief Appeals Detail*.

Five appeals were filed by facilities owned by WCA Waste Corporation, a commercial landfill company. Two facilities are located in Fort Bend County and the other three are located in Harris County. The applications requested positive use determinations for landfill liners. As commercial facilities, items installed as part of the commercial activity are not eligible for a positive use determination. Therefore, negative use determinations were issued. The company withdrew the appeals.

Two appeals were filed for Oiltanking facilities located in Houston (Harris County) and Beaumont (Jefferson County). Identical applications were filed requesting determinations for liners installed inside of storage tanks. Negative use determinations were issued based on the liners purpose being to protect the tank from the substance stored within it.

An appeal was filed for Encore Wire Corporation for a facility located in Collin County. The application requested positive use determinations for balers installed to compact scrap material for reuse and recycling purposes. The applicant failed to cite an adopted

environmental rule requiring the installation or use of balers. The negative use determination was upheld by the commission.

Geep Texas, LLC is a commercial electronics recycler. The application requested a positive use determination for various imagers, conveyors, chutes, and belts. The equipment is used to commercially recycle electronic equipment, and there is no adopted environmental rule being met by the installation of the equipment. A negative use determination was issued. The appeal was withdrawn by the applicant.

Sandy Creek Energy Associates owns an electric generating plant located in McLennan County. The applicant requested a positive use determination for a raw water pretreatment system consisting of eleven miles of intake piping, chlorine treatment, solids contact units utilizing coagulant and coagulant aids, lime and soda ash injection for pH adjustment, storage pond, and post treatment storage tank. A negative use determination was issued because:

- the raw water pretreatment equipment is production property, necessary for the generation of electricity; and
- the applicant was unable to cite an applicable environmental regulation being met or exceeded by the installation of the raw water pretreatment system.

The commission upheld the negative use determination at the May 11, 2001, agenda.

In January 2004, Sunrise Chemical, LLC (Sunrise Chemical) sold and then leased back one of its ENB units (ENB2) to Mizuho Corporate Bank (MHCB). In February 2005, Sunrise Chemical mistakenly applied for and received a Tier I 100% positive use determination for the pollution control property associated with ENB2. That property consisted of a flare, monitoring equipment on control devices, fugitive emissions monitors, welded pipe joints, hoods and collection systems, stacks, conveyances, pumps, sumps, tanks, basins, a wastewater treatment facility, storm water containment, and potable water systems.

In December 2009, MHCB asked the executive director to revise the Tier I 100% positive use determination to reflect MHCB's ownership. On December 3, 2009, the executive director issued a revised use determination. The Harris County Appraisal District appealed the use determination on the basis that the company that owned the property did not use the property for pollution control.

On April 28, 2010, the TCEQ considered the appeal filed by Harris County Appraisal District. The commission set aside the revised positive use determination and remanded the matter to the executive director for a new use determination. A negative use determination was then issued to MHCB. MHCB then appealed the negative use determination.

MHCB owns ENB2 and the associated pollution control equipment. MHCB was not required by law to use or possess the pollution control equipment associated with ENB2. MHCB leases ENB2 and the associated pollution control equipment to Sunrise Chemical in return for lease payments. MHCB is not eligible to receive a positive use determination under TTC, §11.31(a) and 30 TAC §17.6(1) because MHCB is:

- providing a service that prevents, monitors, controls, or reduces air, water, or land pollution at Sunrise Chemical's Bayport Facility; and
- participating in the commercial trade of pollution control equipment.

In response to the first appeal, the commission remanded the positive use determination to the executive director for the issuance of a negative use determination based on ownership. When the second appeal was heard, the commission upheld the negative use determination.

The following companies own electric generating facilities and received positive use determinations for HRSGs:

- Tenaska Gateway Partners, Ltd. located in Rusk County;
- Navasota Wharton Energy Partners located in Wharton County;
- Freestone Power Generation, LP located in Freestone County;
- Brazos Valley Energy, LP located in Fort Bend County;
- Borger Energy Associates, LP located in Hutchinson County; and
- Freeport Energy Center, LP located in Brazoria County.

The positive use determinations were appealed by the appraisal districts. The appeals are currently on hold.

## **Application Processing**

During 2009 and 2010, the Tax Relief program had three days by rule in which to review an application, determine if it was administratively complete, and issue either a notice of deficiency (NOD) or an administrative complete letter. The timing was adopted into 30 TAC §17.12(2) on February 7, 2008. At that time, the administrative review was considered to be nothing more than a check to see if an answer was provided for every question on the application form. In response to staff changes and relocation of the program within the agency during the latter part of 2009, the administrative review was expanded to require a valid response for each question. This change led to an increase in the number and detail level of administrative NODs and to an increase in administrative processing time. The average administrative processing time in 2009 was three days. This time increased to 61 days during 2010.

Under 30 TAC §17.12(2)(B), the program has 60 days to complete the technical review of the application. During 2009, the average technical review took 38 days with 92% of the reviews being completed in 60 or fewer days. During 2010, the average number of days increased to 104 and the number being completed in 60 or fewer days decreased to 30%.

The reasons for the increased processing time include:

- development of new form letters, the implementation of an expanded review process, and a change in signature policy added days between the completion of the review and issuance of the determination;

- a change in review policy for applications containing a dollar value greater than \$10 million;
- change in staffing;
- staff involvement with implementing a permanent advisory committee; and
- staff involvement with rules amendment process.

Processing times for 2011 are decreasing and should be within the rule required processing timelines by the end of 2011.

## ***Appendix A***

### **Applications Received by County 1994-2010**

**Table 10. Total Number of Applications Filed by County between November 1994 and December 2010**

| <b>County</b> | <b>Number of Applications Received</b> | <b>Total Estimated Dollar Value of Projects<sup>7</sup></b> |
|---------------|--|---|
| Anderson      | 25                                     | \$54,324,741  |
| Andrews       | 15                                     | \$13,580,831  |
| Angelina      | 114                                    | \$189,417,093   |
| Aransas       | 1                                      | \$1,484,000   |
| Armstrong     | 1                                      | \$6,387   |
| Atascosa      | 17                                     | \$38,467,614  |
| Austin        | 9                                      | \$13,560,312  |
| Bastrop       | 27                                     | \$182,872,351   |
| Bee           | 4                                      | \$736,842   |
| Bell          | 91                                     | \$33,119,582  |
| Bexar         | 223                                    | \$324,783,881   |
| Borden        | 5                                      | \$2,503,819   |
| Bosque        | 13                                     | \$77,754,607  |
| Bowie         | 25                                     | \$12,990,825  |
| Brazoria      | 1087                                   | \$2,369,907,818   |
| Brazos        | 29                                     | \$13,760,340  |
| Brooks        | 19                                     | \$12,971,376  |
| Brown         | 23                                     | \$46,764,296  |
| Burleson      | 17                                     | \$5,953,327   |
| Burnet        | 16                                     | \$10,465,914  |
| Caldwell      | 3                                      | \$3,143,971   |
| Calhoun       | 143                                    | \$365,049,666   |
| Callahan      | 5                                      | \$18,600  |
| Cameron       | 25                                     | \$4,310,693   |
| Camp          | 1                                      | \$32,934  |
| Carson        | 5                                      | \$621,455   |
| Cass          | 24                                     | \$59,940,655  |
| Castro        | 3                                      | \$2,523,897   |
| Chambers      | 170                                    | \$680,064,531   |
| Cherokee      | 29                                     | \$20,867,246  |
| Childress     | 1                                      | \$15,558  |
| Clay          | 8                                      | \$358,227   |
| Cochran       | 1                                      | \$141,000   |
| Coke          | 5                                      | \$2,075,603   |
| Coleman       | 2                                      | \$30,800  |
| Collin        | 178                                    | \$75,211,048  |
| Colorado      | 11                                     | \$3,917,324   |
| Comal         | 54                                     | \$117,904,647   |
| Comanche      | 13                                     | \$742,181   |
| Concho        | 1                                      | \$92,144  |
| Cooke         | 43                                     | \$1,754,686   |

<sup>7</sup> Estimated value provided by applicants.

| <b>County</b> | <b>Number of Applications Received</b> | <b>Total Estimated Dollar Value of Projects<sup>7</sup></b> |
|---------------|--|---|
| Coryell       | 9                                      | \$131,854   |
| Cottle        | 3                                      | \$723,616   |
| Crane         | 7                                      | \$4,784,836   |
| Crockett      | 29                                     | \$26,535,771  |
| Culberson     | 6                                      | \$22,989,854  |
| Dallam        | 3                                      | \$11,880,829  |
| Dallas        | 777                                    | \$237,988,047   |
| Dawson        | 1                                      | \$103,050   |
| Deaf Smith    | 12                                     | \$59,900,892  |
| Delta         | 1                                      | \$20,400  |
| Denton        | 175                                    | \$97,055,905  |
| DeWitt        | 9                                      | \$17,367,969  |
| Dimmit        | 1                                      | \$1,346,000   |
| Donley        | 1                                      | \$13,316  |
| Duval         | 15                                     | \$9,148,948   |
| Eastland      | 19                                     | \$434,925   |
| Ector         | 157                                    | \$374,235,094   |
| Edwards       | 12                                     | \$6,035,282   |
| El Paso       | 364                                    | \$666,852,130   |
| Ellis         | 203                                    | \$650,626,337   |
| Erath         | 16                                     | \$5,398,452   |
| Falls         | 8                                      | \$1,127,571   |
| Fannin        | 16                                     | \$31,383,671  |
| Fayette       | 15                                     | \$14,980,975  |
| Fisher        | 4                                      | \$140,391   |
| Floyd         | 1                                      | \$429,800   |
| Fort Bend     | 258                                    | \$377,372,718   |
| Franklin      | 2                                      | \$25,858  |
| Freestone     | 101                                    | \$366,960,430   |
| Frio          | 3                                      | \$17,011,495  |
| Gaines        | 8                                      | \$20,609,995  |
| Galveston     | 358                                    | \$1,965,773,216   |
| Garza         | 1                                      | \$25,000  |
| Gillespie     | 1                                      | \$31,800  |
| Glasscock     | 3                                      | \$590,310   |
| Goliad        | 21                                     | \$80,715,800  |
| Gonzales      | 2                                      | \$109,937   |
| Gray          | 39                                     | \$38,493,188  |
| Grayson       | 83                                     | \$36,676,462  |
| Gregg         | 118                                    | \$40,475,725  |
| Grimes        | 28                                     | \$124,862,522   |
| Guadalupe     | 30                                     | \$290,683,934   |
| Hale          | 6                                      | \$13,965,930  |
| Hall          | 1                                      | \$10,229  |
| Hamilton      | 1                                      | \$18,771  |

| <b>County</b> | <b>Number of Applications Received</b> | <b>Total Estimated Dollar Value of Projects<sup>7</sup></b> |
|---------------|--|---|
| Hansford      | 9                                      | \$3,695,834   |
| Hardeman      | 1                                      | \$2,441   |
| Hardin        | 42                                     | \$55,501,129  |
| Harris        | 3,375                                  | \$7,196,423,595   |
| Harrison      | 183                                    | \$260,319,668   |
| Haskell       | 8                                      | \$3,115,431   |
| Hays          | 45                                     | \$166,750,979   |
| Hemphill      | 31                                     | \$22,495,635  |
| Henderson     | 53                                     | \$8,860,141   |
| Hidalgo       | 81                                     | \$210,613,735   |
| Hill          | 32                                     | \$10,290,867  |
| Hockley       | 16                                     | \$9,017,690   |
| Hood          | 32                                     | \$59,148,634  |
| Hopkins       | 21                                     | \$15,587,261  |
| Houston       | 23                                     | \$11,005,306  |
| Howard        | 19                                     | \$116,186,631   |
| Hudspeth      | 1                                      | \$1,657   |
| Hunt          | 26                                     | \$8,100,538   |
| Hutchinson    | 85                                     | \$186,370,938   |
| Irion         | 13                                     | \$3,270,406   |
| Jack          | 9                                      | \$17,409,315  |
| Jackson       | 3                                      | \$11,090,532  |
| Jasper        | 18                                     | \$70,541,226  |
| Jefferson     | 691                                    | \$2,964,558,751   |
| Jim Hogg      | 5                                      | \$2,735,320   |
| Jim Wells     | 39                                     | \$52,823,275  |
| Johnson       | 180                                    | \$220,374,634   |
| Jones         | 12                                     | \$522,733   |
| Karnes        | 4                                      | \$4,423,835   |
| Kaufman       | 69                                     | \$187,527,728   |
| Kendall       | 1                                      | \$6,272   |
| Kenedy        | 6                                      | \$2,501,300   |
| Kent          | 7                                      | \$3,226,030   |
| Kerr          | 2                                      | \$131,392   |
| King          | 1                                      | \$18,175  |
| Kleburg       | 8                                      | \$444,993   |
| La Salle      | 1                                      | \$747,701   |
| Lamar         | 26                                     | \$117,469,766   |
| Lamb          | 46                                     | \$17,735,265  |
| Lampasas      | 3                                      | \$977,405   |
| Lavaca        | 14                                     | \$7,389,527   |
| Lee           | 13                                     | \$21,267,133  |
| Leon          | 23                                     | \$45,855,515  |
| Liberty       | 38                                     | \$47,638,165  |
| Limestone     | 123                                    | \$144,003,099   |

| <b>County</b> | <b>Number of Applications Received</b> | <b>Total Estimated Dollar Value of Projects<sup>7</sup></b> |
|---------------|--|---|
| Lipscomb      | 13                                     | \$4,697,749   |
| Live Oak      | 23                                     | \$120,359,669   |
| Llano         | 2                                      | \$24,921  |
| Loving        | 16                                     | \$20,576,807  |
| Lubbock       | 47                                     | \$16,080,691  |
| Madison       | 15                                     | \$29,932,139  |
| Marion        | 19                                     | \$19,096,015  |
| Martin        | 2                                      | \$1,166,530   |
| Mason         | 1                                      | \$3,315,303   |
| Matagorda     | 68                                     | \$114,660,058   |
| Maverick      | 1                                      | \$18,175  |
| McCulloch     | 5                                      | \$2,873,342   |
| McLennan      | 101                                    | \$624,591,009   |
| McMullen      | 5                                      | \$5,025,457   |
| Medina        | 7                                      | \$908,559   |
| Midland       | 21                                     | \$16,781,213  |
| Milam         | 115                                    | \$707,352,217   |
| Mitchell      | 11                                     | \$6,041,735   |
| Montague      | 12                                     | \$3,294,099   |
| Montgomery    | 125                                    | \$101,451,510   |
| Moore         | 29                                     | \$238,003,752   |
| Morris        | 16                                     | \$3,647,294   |
| Nacogdoches   | 76                                     | \$37,109,695  |
| Navarro       | 39                                     | \$19,181,996  |
| Newton        | 3                                      | \$45,020,084  |
| Nolan         | 20                                     | \$8,453,695   |
| Nueces        | 209                                    | \$1,223,669,267   |
| Ochiltree     | 8                                      | \$31,848,038  |
| Orange        | 139                                    | \$315,691,511   |
| Palo Pinto    | 25                                     | \$6,711,376   |
| Panola        | 92                                     | \$188,173,475   |
| Parker        | 61                                     | \$56,119,673  |
| Parmer        | 5                                      | \$9,091,282   |
| Pecos         | 42                                     | \$91,563,767  |
| Polk          | 16                                     | \$21,584,876  |
| Potter        | 126                                    | \$108,869,898   |
| Rains         | 2                                      | \$194,078   |
| Randall       | 7                                      | \$602,248   |
| Reagan        | 5                                      | \$1,135,762   |
| Red River     | 10                                     | \$934,755   |
| Reeves        | 7                                      | \$29,048,060  |
| Refugio       | 4                                      | \$11,257,007  |
| Roberts       | 5                                      | \$2,247,189   |
| Robertson     | 85                                     | \$709,589,415   |
| Rockwall      | 27                                     | \$3,442,569   |

| <b>County</b> | <b>Number of Applications Received</b> | <b>Total Estimated Dollar Value of Projects<sup>7</sup></b> |
|---------------|--|---|
| Runnels       | 5                                      | \$2,483,080   |
| Rusk          | 109                                    | \$506,786,778   |
| Sabine        | 3                                      | \$1,394,385   |
| San Jacinto   | 12                                     | \$3,100,881   |
| San Patricio  | 38                                     | \$186,339,505   |
| Schleicher    | 12                                     | \$1,112,663   |
| Scurry        | 8                                      | \$6,815,648   |
| Shackelford   | 5                                      | \$1,278,966   |
| Shelby        | 47                                     | \$22,318,099  |
| Sherman       | 4                                      | \$5,883,142   |
| Smith         | 185                                    | \$141,855,585   |
| Somervell     | 13                                     | \$12,781,201  |
| Starr         | 32                                     | \$27,922,737  |
| Stephens      | 8                                      | \$260,626   |
| Sterling      | 9                                      | \$4,159,175   |
| Sutton        | 44                                     | \$19,802,712  |
| Tarrant       | 592                                    | \$407,506,399   |
| Taylor        | 48                                     | \$90,541,980  |
| Terrell       | 11                                     | \$9,521,589   |
| Terry         | 3                                      | \$79,422  |
| Titus         | 71                                     | \$276,845,131   |
| Tom Green     | 16                                     | \$35,551,618  |
| Travis        | 327                                    | \$332,632,393   |
| Trinity       | 3                                      | \$22,263,465  |
| Tyler         | 14                                     | \$15,558,724  |
| Upshur        | 10                                     | \$20,228,280  |
| Upton         | 21                                     | \$14,744,297  |
| Uvalde        | 2                                      | \$991,244   |
| Val Verde     | 6                                      | \$4,485,968   |
| Van Zandt     | 9                                      | \$572,427   |
| Victoria      | 64                                     | \$199,716,558   |
| Walker        | 6                                      | \$2,763,099   |
| Waller        | 16                                     | \$13,643,888  |
| Ward          | 9                                      | \$6,180,980   |
| Washington    | 14                                     | \$10,532,437  |
| Webb          | 41                                     | \$34,707,102  |
| Wharton       | 34                                     | \$174,697,187   |
| Wheeler       | 51                                     | \$54,031,249  |
| Wichita       | 32                                     | \$44,315,165  |
| Wilbarger     | 40                                     | \$15,520,147  |
| Willacy       | 5                                      | \$4,906,064   |
| Williamson    | 119                                    | \$18,587,101  |
| Wilson        | 1                                      | \$128,625   |
| Winkler       | 7                                      | \$7,648,217   |
| Wise          | 136                                    | \$204,877,319   |

| <b>County</b> | <b>Number of Applications Received</b> | <b>Total Estimated Dollar Value of Projects<sup>7</sup></b> |
|---------------|--|---|
| Wood          | 19                                     | \$5,870,497   |
| Yoakum        | 10                                     | \$103,988,500   |
| Young         | 14                                     | \$7,513,851   |
| Zapata        | 44                                     | \$27,002,047  |
| Zavala        | 1                                      | \$1,346,000   |
| <b>Totals</b> | <b>14,849</b>                          | <b>\$30,723,682,773<sup>8</sup></b>                         |

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<sup>8</sup> Estimated value provided by applicants.

## ***Appendix B***

### **Detail for Tax Relief Appeals filed from 2001 to 2010**

Company: Capital Aggregates Inc.

Application Number: 5531

Appeal Requested By: Company

County: Bexar

Appeal Date: August 2001

Background: The company installed a low nitrogen oxide (NO<sub>x</sub>) pre-heater/pre-calciner on a cement kiln. The applicant wanted the entire system to be declared pollution control property. A positive use determination was issued for the pollution control property associated with the pre-heater/pre-calciner and a negative use determination was issued for the pre-heater/pre-calciner itself. The applicant filed an appeal under the new appeals process. Since the application had been declared administratively complete on May 3, 2001, it could not be appealed under the new process. 30 Texas Administrative Code (TAC)§ 17.25(a)(1) applies to appeals of use determinations issued by the executive director for use determination applications that are declared administratively complete on or after September 1, 2001. A letter was sent to the applicant informing them of this fact and explaining the previous appeals process. Following the previous process, program management reviewed staff's determination. Management then issued a letter stating that the negative use determination was the correct decision. The next step in the process would be for the company to request a review by the division director.

Status: No additional correspondence has occurred with this applicant.

Company: ExxonMobil

Application Number: 5620

Appeal Requested By: Company

County: Jefferson

Appeal Date: October 2001

Background: The application was for plant modifications needed in order to produce low sulfur diesel. The applicant believed that since the United States Environmental Protection Agency (EPA) required the production of low sulfur fuel that 100% of the modifications should be pollution control. The Texas Commission on Environmental Quality (TCEQ) disagreed with this idea and instead issued a negative use determination. The determination was based on the fact the equipment was all used for production purposes.

Status: After several discussions between company representatives and agency staff, the applicant withdrew this appeal.

Company: Sabine Mining Company

Application Number: 5776

Appeal Requested By: Company

County: Harrison

Appeal Date: May 2002

Background: The company filed an application requesting a partial exemption for certain pieces of heavy construction equipment. The basis of the partial determination

was that the equipment was used both for mining purposes and for land recovery purposes. Federal law requires that when the strip mining of a section of land is completed, the company must return the land to its previous state. The applicant calculated the value of the partial use determination based on the percentage of time the equipment was used for reclamation. Since November 2001, staff has been limited to calculating partial determinations by using only the Cost Analysis Procedure (CAP). The TCEQ provided the applicant the opportunity to prepare a replacement application using the CAP. The applicant was unable to apply the CAP in a reasonable manner. Staff issued a negative use determination. The applicant appealed.

Status: The commission ruled that the correct determination had been issued.

Company: AEP-Trent Wind Farm LP

Application Number: 5861

Appeal Requested By: Company

County: Taylor

Appeal Date: August 2002

Background: This application requested a partial use determination for a wind farm. Staff issued a negative use determination based on there being no pollution control occurring at the site of the wind farm. During 1999 work group meetings, a decision was made that in order for an application to be eligible for a positive use determination that there has to be actual pollution control occurring at the plant site. The commission agreed with staff and this policy was adopted by rule in January 2002. This appeal went before the commission on October 19, 2002, and the negative use determination was upheld.

Status: The applicant filed an appeal with the District Court. The appeal was handled by the Office of the Attorney General. The Court issued a summary judgment in favor of the state. The applicant appealed to the State Court of Appeals. On September 23, 2004, the Appeals Court granted the applicant's motion dismiss the appeal.

Company: Flint Hills Resources

Application Numbers: 6488 and 6489

Appeal Requested By: Chief Appraiser of Nueces County

County: Nueces

Appeal Date: March 2003

Background: Flint Hills Resources filed two applications for a facility located in Nueces County. Application 6488 was issued a positive use determination for tank gauging systems, associated controls, and infrastructure. Application 6489 was issued a positive use determination for new potable water systems and modifications to the existing potable water systems. The Appraisal District filed an appeal covering both of the applications. The basis of the appeal was that since the company was found to have violated environmental rules and regulations, the company should not be eligible to receive any tax breaks.

Status: The Nueces County Chief Appraiser withdrew the appeal from consideration.

Company: TECHNIP-COFLEXIP  
Application Numbers: 6938 and 6939  
Appeal Requested By: Chief Appraiser of San Patricio County  
County: San Patricio  
Appeal Date: May 2003

Background: The ownership of this company changed during 2002. The new owner hired a property tax consultant to review their records. The consultant discovered that the previous owner had not filed for any exemptions. The consultant then filed applications for all of the pollution control property installed at the two facilities since January 1, 1994. These two applications included property, which, in some cases, had been on the tax rolls for several years. By issuing positive use determinations for this property it was removed from the tax rolls. The Chief Appraiser stated that it is unfair to remove property from the tax rolls once it has been placed there and taxing authorities have begun taxing the property. The statute does not address this issue. Staff interpretation is that the TCEQ can not cause any property that was taxable on or before January 1, 1994, to be removed from that tax rolls but can issue positive use determinations for property installed after that date even if the application is filed several years later.

Status: The San Patricio County Chief Appraiser withdrew the appeal from consideration.

Company: Gregory Power Partners, LP  
Application Number: 8297  
Appeal Requested By: Chief Appraiser of San Patricio County  
County: San Patricio  
Appeal Date: April 2005

Background: This application was for curbing, site, and roadway paving. The paving was installed to contain, control, and divert stormwater and waste water run-off. The appraisal district appealed the decision stating that the application did not contain enough information so they could determine the exact paving covered by the application. Staff contacted the company representative and suggested that they meet with the appraisal district and see if the issue could be resolved.

Status: On August 16, 2005, the appraisal district requested that the appeal be withdrawn from consideration at the September 14, 2005, agenda. On August 19, 2005, the General Counsel granted the request for remand and the item was removed from the agenda.

Company: XTO Energy Teague Paques  
Application Number: 8353  
Appeal Requested By: Chief Appraiser of Freestone County  
County: Freestone  
Appeal Date: May 2005

Background: This application was for a sulfur removal and disposal project at a gas plant. The applicant left three 750 kilowatt natural gas power generators out of the property description. After the use determination was issued, the company filed a

request that the generators be added to the application. A revised use determination was issued on May 17, 2005. The appraisal district's appeal includes both the generators and the other listed equipment. The appeal stated that the generators should not qualify since the equipment creates emissions and the sulfur removal and disposal equipment should not qualify since it improves the value of the product.

Status: On October 26, 2005, the commissioner's remanded the determination to the executive director. The commission determined that part of the equipment used in treating the gas was production equipment and therefore not eligible for a positive use determination. A replacement use determination was issued on April 7, 2006. The items removed were: inlet and outlet scrubbers, absorber/contactors, inlet and outlet filter coalescers.

Company: Martex Drilling Company

Application Number: 8355

Appeal Requested By: Chief Appraiser of Rusk County

County: Rusk

Appeal Date: August 2005

Background: This application was for an oil and gas drilling rig. The application listed a drilling mud recycling system and drilling rig spill response equipment as the property description. According to the appraisal district, the property description that they were provided with was more detailed than the application and might have contained items for which TCEQ did not intend to grant a positive use determination.

Status: This appeal was scheduled to be heard during the September 14, 2005, agenda. On August 11, 2005, the executive director requested a continuance until October 26, 2005. The continuance was granted. The applicant and the appraiser began negotiating on the language of the use determination. After the initial use determination was issued, the applicant filed 65 additional applications.

On September 19, 2005, the applicant and the appraisal district reached an agreement on the wording of the use determination. A replacement use determination was issued for this application and positive use determinations were issued for the 65 applications. The appeal was withdrawn.

Company: Grey Wolf Drilling

Application Numbers: 8668 - 8689

Appeal Requested By: Chief Appraiser of Jim Wells County

County: Jim Wells

Appeal Date: September 2005

Background: The appraisal district was concerned that the use determination contained equipment that did not qualify for a positive use determination.

Status: Staff contacted the Chief Appraiser to discuss the scope of the positive use determination. The Jim Wells County Chief Appraiser withdrew the appeals.

Company: Texas Lehigh Cement Co LP

Application Number: 9086

Appeal Requested By: Company

County: Hays

Appeal Date: May 2006

Background: A negative use determination was issued for four items on the application. The items were described in such a way that they appeared to be ineligible for a positive use determination.

Status: Staff contacted the company and requested additional information about the equipment. On further review, it was determined that the four items qualified as pollution control property and a new positive use determination was issued.

Company: Grey Wolf

Application Numbers: 9268, 9318, 9271, and 9277

Appeal Request By: Chief Appraisers of DeWitt, Frio, and Jim Hogg Counties

Counties: DeWitt, Frio, and Jim Hogg

Appeal Date: May 2006

Background: These applications contain mud recycling systems and spill response equipment associated with drilling rigs. A positive use determination was issued and the appraisal districts appealed the use determination.

Status: On February 21, 2007, the commission heard the appeals for a different case involving Union Drilling applications for the same type of equipment. On March 28, the Grey Wolf appeals were withdrawn by all participating counties.

Company Name: WAHA Storage

Application Number: 9352

Appeal Request By: Chief Appraiser of Reeves County

County: Reeves

Appeal Date: May 2006

Background: The application was for a salt water disposal well installed as part of the construction of a gas storage cavern. The appeal states that the wells should be considered to be commercial property and not eligible for a positive use determination.

Status: The appeal was withdrawn after additional information was supplied to the appraisal district.

Companies: Universal Compression and Midcon Compression LP

Application Numbers: 9711, 9712, 9738, 9754, 9755, 9756, 9763, 9764, 9765, 9799, 9767, 9768, 9771, 9772, 9773, 9774, 9775, 9776, 9777, 9778, 9779, 9792, 9794, 9795, 9797, 9798, 9799, 9800, 9801, 9802, 9804, 9805, 9806, 9818, 9819, 9820, 9821, 9822, 9823, 9824, 9825, 9826, 9827, 9828, 9829, 9830, 9831, 9832, 9833, 9834, 9835, 9836, 9837, 9839, 9840, 9847, 9848, 9849, 9850, 9851, 9852, 9853, 9854, 9855, 9856, 9857, 9858, 9859, 9860, 9861, 9862, 9863, 9864, 9865, 9866, 9873, 9874, 9875, 9879, 9880, 9881, 9882, 9883, 9884, 9885, 9886, 9899, 9900, 9901, 9902, 9904, 9960, 9961, and 9962

Appeal Requested By: Chief Appraisers of Houston, Bee, Cottle, Crockett, Edwards, Freestone, Gregg, Hemphill, Hood, Loving, Madison, Marion, Matagorda, Midland, Montgomery, Moore, Nacogdoches, Newton, Palo Pinto, Panola, Parker, Reeves, Refugio, Rusk, Shelby, Starr, and Wise Counties

Counties: Houston, Bee, Cottle, Crockett, Edwards, Freestone, Gregg, Hemphill, Hood, Loving, Madison, Marion, Matagorda, Midland, Montgomery, Moore, Nacogdoches, Newton, Palo Pinto, Panola, Parker, Reeves, Refugio, Rusk, Shelby, Starr, and Wise  
Appeal Date: December 2006

Background: A consultant for the appraisal districts filed the appeal. The appraisal districts were concerned about what property qualified for a positive use determination. Once they understood what had been approved, they withdrew the appeals.

Status: The appeals were withdrawn by the participating appraisal districts on January 22, 2007.

Company: Nabors Drilling

Application Numbers: 9458, 9459, 9460, 9461, 9485, 9486, 9487, 9788, 9493, 9496, 9503, 9504, 9510, 9512, 9514, 9516, 9518, 9568, 9520, 9522, 9529, 9530, 9531, 9532, 9533, 9534, 9449, 9550, 9562, 9569, 9570, 9571, 9572, 9573, and 9574

Appeal Requested By: Chief Appraisers of Crockett, Culberson, Hemphill, Hood, Jim Hogg, Lavaca, Loving, Matagorda, Montgomery, Parker, Starr, Ward, and Wise Counties  
Counties: Crockett, Culberson, Hemphill, Hood, Jim Hogg, Lavaca, Loving, Matagorda, Montgomery, Parker, Starr, Ward, and Wise

Appeal Date: June 2006

Background: These applications contain mud recycling systems and spill response equipment associated with drilling rigs. A positive use determination was issued and the appraisal districts appealed the use determination.

Status: On February 21, 2007, the commission heard the appeals for a different case involving Union Drilling applications for the same type of equipment. The commission denied the appeals and upheld the use determinations. On March 28, 2007, the Nabors appeals were withdrawn by all participating counties.

Company: Union Drilling

Application Numbers: 9452, 9443, 9447, 9448, 9449, 9441, 9442, and 9446

Appeal Request By: Chief Appraisers of Erath, Mitchell, Parker, Runnels, and Wise Counties

Counties: Erath, Mitchell, Parker, Runnels, and Wise

Appeal Date: June 2006

Background: These applications contain mud recycling systems and spill response equipment associated with drilling rigs. A positive use determination was issued and the appraisal districts appealed the use determination.

Status: On February 21, 2007, the commission heard the appeals for the Union Drilling applications. The commission denied the appeals and upheld the use determinations.

Company: Wilsonart Intl  
Application Number: 9050  
Appeal Request By: Company  
County: Bell  
Appeal Date: June 2006

Background: A negative use determination was issued for two storage buildings. The application listed the buildings as Resource Conservations and Recovery Act storage buildings, but the equipment did not fit the rules.

Status: After receiving the appeal, staff contacted the applicant and discussed the purpose and use of the buildings. It was determined that one of the buildings did not qualify for a positive determination. The other building was constructed to meet the plant's stormwater permit. A replacement use determination was issued and the appeal was withdrawn.

Company: Sequa Corp  
Application Numbers: 9160 and 9996  
Appeal Request By: Company  
County: Harris  
Appeal Date: July 2006

Background: During April 2006 application 9160 was received. The application contained a waste heat boiler and modifications made to incinerator burners. A negative use determination was issued for a waste heat boiler. The applicant appealed the negative determination on September 29, 2006. On December 27, 2006, application 9996 was received. This application requested a positive use determination for the same waste heat boiler that was listed on application 9160.

Status: After discussions with program staff the applicant withdrew the appeal and application 9996.

Company: BJ Services Company USA  
Application Number: 10292  
Appeal Requested By: Company  
County: Harris  
Appeal Date: March 2007

Background: The application contained several pieces of property. Positive use determinations were issued for all but two of the items. The applicant agreed that one of the items was not pollution control property. The company appealed the negative determination for a self-contained air recirculation system in the laboratory. The TCEQ ruled it did not qualify, because it's a heating, ventilation, and air conditioning (HVAC) system. Subsequently, one of the Pollution Prevention Engineer's conducted a Site Assistance Visit at the facility. He looked at the system and agreed that it was a HVAC system.

Status: The appeal was withdrawn by the company.

**Company:** Valero Refining Company - Texas  
**Facilities:** Houston Refinery, Corpus Christie Refinery, Port Arthur Refinery, Diamond Shamrock McKee Refinery, and Texas City Refinery  
**Application Numbers:** 10268, 10270, 10271 10279, 10280, 10281, 10282, 10283, 10284, and 10285  
**Appeal Requested By:** Company  
**Counties:** Harris, Nueces, Jefferson, Moore, and Galveston  
**Appeal Date:** May 2007  
**Background:** These ten applications were for sulfur recovery systems installed for the purpose of meeting the new low sulfur diesel and low sulfur gasoline rules. Negative determinations were issued based on there not being an environmental benefit at the site and the fact that the equipment was used for product improvement.  
**Status:** Remanded to the executive director for additional review.

**Company:** 3M Company  
**Application Number:** 10286  
**Appeal Requested By:** Company  
**County:** Brown  
**Appeal Date:** May 2007  
**Background:** The initial Tier III application did not use the Cost Analysis Procedure (CAP). The applicant subsequently used the CAP, but staff disagreed with items included in capital cost new. A positive use determination was issued for a smaller percentage than the company had requested. After the appeal was filed, the company provided additional information and the use determination percentage was increased. The applicant then withdrew the appeal.  
**Status:** The applicant withdrew the appeal after use determination was re-issued.

**Company:** Houston Pipeline Company  
**Application Numbers:** 11002 and 11004  
**Appeal Requested By:** Chief Appraisers of Rusk and Panola Counties  
**Counties:** Rusk and Panola  
**Appeal Date:** June 2007  
**Background:** The application was for cathodic protection and factory installed protective coatings of the underground gas pipeline system. After a positive use determination was issued, the counties appealed stating: "... some, if not most, of the equipment mentioned in the dialectic coatings (cathodic protection) and pig<sup>9</sup> launching/receiving equipment is part of standard production equipment associated with pipelines for many decades and does not qualify for a property tax exemption primarily because this equipment is installed for productivity and/or safety purposes, not pollution control. As we understand it, then inclusion of cathodic protection as it appears in the TCEQ Predetermined Equipment List (PEL) was originally intended for gasoline storage tanks

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<sup>9</sup> Pipeline inspection gauge

at service stations that rarely employed cathodic protection and therefore was an incentive to owners of this equipment to prevent corrosion and associated pollution.”

Status: The positive use determination was upheld by the commission.

Company: Energy Transfer Fuel

Application Numbers: 11006, 11009, and 11021

Appeal Requested By: Chief Appraisers of Freestone and Rusk Counties

Counties: Freestone and Rusk

Appeal Date: June 2007

Background: The applications were for a newly constructed compressor station using state-of-the-art electric drive compressor technology. A positive use determination was issued for the four electric drives for the compressors. The appraisal districts appealed stating that the drives served both pollution prevention and a production benefits.

Status: Staff reviewed and determined that the original determination was incorrect. In its brief Legal requested a remand so that a correct determination could be issued. The use determinations were remanded to the executive director. New positive use determinations were issued for the cost difference between the electric drivers and the internal combustion drivers.

Company: Redi-Mix LLC

Application Numbers: 11103, 11104, and 11122

Appeal Requested By: Company

Counties: Collin and Denton

Appeal Date: January 2008

Background: On September 5, 2007, the applicant filed application 11102. Included on the application was the land located under the paving that was installed to control dust and storm water run-off. On September 17, 2007, a positive use determination was issued. These three applications were received on October 11, 2007. Between October 11 and December 12 program management decided that land located at concrete batch plants was not eligible for a positive determination. Negative use determinations were issued based on the changed review guidelines. The applicant appealed.

Status: Remanded to the executive director to issue a positive use determination based on the guidelines that were in place at the time the application was filed. Positive use determinations were issued.

Company: US Concrete

Application Number: 11121

Appeal Requested By: Company

County: Collin

Appeal Date: January 2008

Background: On September 5, 2007, the applicant filed application 11102. Included on the application was the land located under the paving that was installed to control dust and storm water run-off. On September 17, 2007, a positive use determination was

issued. This application was received on October 11, 2007. Between October 11 and December 12 program management decided that land located at concrete batch plants was not eligible for a positive determination. A negative use determination was issued based on the changed review guidelines. The applicant appealed.

Status: Remanded to the executive director to issue a positive use determination based on the guidelines that were in place at the time the application was filed. A positive use determination was issued.

Company: Tenaska Gateway Partners, Ltd.

Application Number: 11914

Appeal Requested By: Chief Appraiser of Rusk County

County: Rusk

Appeal Date: May 2008

Background: A positive use determination was issued for heat recovery steam generators. Appraisal district does not believe that 100% is appropriate.

Status: Appeals on hold.

Company: Navasota Wharton Energy Partners

Application Number: 11926

Appeal Requested By: Chief Appraiser of Wharton County

County: Wharton

Appeal Date: May 2008

Background: A positive use determination was issued for heat recovery steam generators. Appraisal district does not believe that 100% is appropriate.

Status: Appeals on hold.

Company: Freestone Power Generation LP

Application Number: 11966

Appeal Requested By: Chief Appraiser of Freestone County

County: Freestone

Appeal Date: May 2008

Background: A positive use determination was issued for heat recovery steam generators. Appraisal district does not believe that 100% is appropriate.

Status: Appeals on hold.

Company: Brazos Valley Energy LP

Application Number: 11969

Appeal Requested By: Chief Appraiser of Fort Bend County

County: Fort Bend

Appeal Date: May 2008

Background: A positive use determination was issued for heat recovery steam generators. Appraisal district does not believe that 100% is appropriate.

Status: Appeals on hold.

Company: Borger Energy Associates, LP  
Application Number: 11971  
Appeal Requested By: Chief Appraiser of Hutchinson County  
County: Hutchinson  
Appeal Date: May 2008

Background: A positive use determination was issued for heat recovery steam generators. Appraisal district does not believe that 100% is appropriate.

Status: Appeals on hold.

Company: Freeport Energy Center, LP  
Application Number: 11994  
Appeal Requested By: Chief Appraiser of Brazoria County  
County: Brazoria  
Appeal Date: May 2008

Background: A positive use determination was issued for heat recovery steam generators. Appraisal district does not believe that 100% is appropriate.

Status: Appeals on hold.

Company: Mont Belvieu Caverns, LLC  
Application Number: 11881  
Appeal Requested By: Company  
County: Chambers  
Appeal Date: June 2008

Background: This application was for equipment located at a brine storage facility. Program guidelines considered brine storage to be production equipment with only the actual pollution control property being eligible for a positive use determination. A negative use determination was issued. Applicant appealed stating that the entire facility should be eligible.

Status: The negative use determination was upheld by the commission. Appeal was filed with the District Court. The Court ruled in favor of the negative determination.

Company: Mizuho Corporate Bank, MHCB  
Application Number: 8262  
Appealed By: Chief Appraiser of Harris County (1) & Company (2)  
County: Harris  
Appeal Date: December 2009

Background: In January 2004, Sunrise Chemical, LLC (Sunrise Chemical) sold and then leased back one of its ENB units (ENB2) to Mizuho Corporate Bank (MHCB). In February 2005, Sunrise Chemical mistakenly applied for and received a Tier I 100% positive use determination for the pollution control property associated with ENB2.

That property consisted of a flare, monitoring equipment on control devices, fugitive emissions monitors, welded pipe joints, hoods and collection systems, stacks, conveyances, pumps, sumps, tanks, basins, a wastewater treatment facility, storm water containment, and potable water systems.

In December 2009, MHCB asked the executive director to revise the Tier I 100% positive use determination to reflect MHCB's ownership. On December 3, 2009, the executive director issued a revised use determination. The Harris County Appraisal District appealed the use determination on the basis that the company that owned the property did not use the property for pollution control.

On April 28, 2010, the TCEQ considered the appeal filed by Harris County Appraisal District. The commission set aside the revised positive use determination and remanded the matter to the executive director for a new use determination. A negative use determination was then issued to MHCB. MHCB then appealed the negative use determination.

MHCB owns ENB2 and the associated pollution control equipment. MHCB was not required by law to use or possess the pollution control equipment associated with ENB2. MHCB leases ENB2 and the associated pollution control equipment to Sunrise Chemical in return for lease payments. MHCB is not eligible to receive a positive use determination under TTC, §11.31(a) and 30 TAC §17.6(1) because MHCB is:

- providing a service that prevents, monitors, controls, or reduces air, water, or land pollution at Sunrise Chemical's Bayport Facility; and
- participating in the commercial trade of pollution control equipment.

Status: The commission upheld the negative use determination.

Company: Oiltanking Houston, LP

Application Number: 14103

Appeal Requested By: Company

County: Harris

Appeal Date: May 2010

Background: Installed a liner inside of a storage tank. A negative use determination was issued based on liners applied to the inside of a tank are to protect the tank from the chemicals stored in the tank.

Status: Withdrawn by applicant.

Company: WCA Waste Corporation

Application Numbers: 13963 and 13960

Appeal Requested By: Company

County: Fort Bend

Appeal Date: July 2010

Background: The applications were filed for landfill liners installed at commercial landfills. Negative use determinations were issued.

Status: Withdrawn by applicant.

Company: Oiltanking Beaumont, LP

Application Number: 14098

Appeal Requested By: Company

County: Jefferson

Appeal Date: May 2010

Background: Installed a liner inside of a storage tank. A negative use determination was issued based on liners applied to the inside of a tank are to protect the tank from the chemicals stored in the tank.

Status: Withdrawn by applicant.

Company: WCA Waste Corporation

Application Numbers: 13932, 13924 & 13928

Appeal Requested By: Company

County: Harris

Appeal Date: July 2010

Background: The application was filed for a landfill liner installed at a commercial landfill. A negative use determination was issued.

Status: Withdrawn by applicant.

Company: Encore Wire Corporation

Application Number: 14259

Appeal Requested By: Company

County: Collin

Appeal Date: September 2010

Background: Purchased balers. A negative determination was issued based on the lack of adopted rule requiring the installation or use of the balers.

Status: Withdrawn by applicant.

Company: Geep Texas, LLC

Application Number: 14669

Appeal Requested By: Company

County: Tarrant

Appeal Date: November 2010

Background: Commercial electronics recycler requested positive determination for imager, conveyors, chutes, and belts. Negative use determinations were issued based on the equipment being used to commercially recycle electronic equipment and there being no adopted environmental rule being met by the installation of the equipment.

Status: Withdrawn by applicant.

Company: Sandy Creek Energy Associates

Application Number: 13256

Appeal Requested By: Company

County: McLennan

Appeal Date: February 2011

Background: Applicant requested a positive use determination for a raw water pre-treatment system consisting of eleven miles of intake piping, chlorine treatment, solids contact units utilizing coagulant and coagulant aids, lime and soda ash injection for pH adjustment, storage pond, and post treatment storage tank. The following negative determination was issued: The applicant submitted a Tier I application seeking a 100% positive use determination for its raw water pretreatment system. The applicant cited Item W-58 on Part A of the Equipment and Categories List, for water recycling systems. A negative use determination was issued because 1) the raw water pretreatment equipment is production property, necessary for the generation of electricity, and 2) the applicant was unable to cite an applicable environmental regulation being met or exceeded by the installation of the raw water pretreatment system

Status: The commission upheld the negative use determination at the May 11, 2011, agenda.