



TEXAS COMMISSION  
ON ENVIRONMENTAL QUALITY

Tax Relief for Pollution Control Property Advisory Committee

August 6, 2010

Ms. Devon Ryan  
MC 205, Office of Legal Services  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

Dear Ms. Ryan:

Subject: Rule Project Number 2009-050-017-EN

Enclosed are comments on the above referenced rules from the TCEQ Tax Relief for Pollution Control Property Advisory Committee. We look forward to continued participation in this rulemaking process.

Please feel free to contact me at (832) 486-3395 or other committee members (attached is the list of Committee members on TCEQ's web site).

Respectfully,

A handwritten signature in blue ink that reads "B. G. Adair".

B. G. (Bob) Adair  
Chairman, Tax Relief for Pollution Control Property Advisory Committee  
Texas Commission on Environmental Quality

# Tax Relief for Pollution Control Property Advisory Committee

On January 27, 2010, the Texas Commission on Environmental Quality (TCEQ) Commissioners approved the nomination of the following individuals to the Tax Relief for Pollution Control Property Advisory Committee. The list of the individuals and group represented are as follow:

## Representing Industry:

- Mr. Bob Adair, with ConocoPhillips  
Nominated by the Texas Oil and Gas Association
- Mr. Robert Castor, with Freescale Semiconductor
- Mr. Paul Coon, with Luminant Power  
Nominated by the Association of Electrical Companies of Texas
- Mr. Gregory P. Maxim, with Duff and Phelps
- Mr. Michael J. Nasi, with Clean Coal Technology Foundation
- Mr. John E. Nichols, with The Dow Chemical Company  
Nominated by Texas Chemical Council

## Representing Appraisal Districts:

- Mr. Roland R. Bieber, Chief Appraiser for Jefferson County Appraisal District  
Nominated by Texas Association of Appraisal Districts
- Mr. C. Wayne Frazell, with Pritchard & Abbott Inc.

## Representing Taxing Units:

- Commissioner Eddie Arnold, Precinct 1 Commissioner for Jefferson County  
Nominated by Texas Association of Counties
- Mr. Don Lee, with the Texas Conference of Urban Counties
- Mr. Bennett Sandlin, with the Texas Municipal League

## Representing the Environmental Group:

- Dr. Cyrus Reed, with the Sierra Club

## The Independent Technical Expert:

- Mr. Leo Scherrer, P.E.

Comments on TCEQ Proposed Rules in Title 30, TAC, Chapter 17  
Rule Project Number 2009-050-017-EN  
Submitted by TCEQ Tax Relief for Pollution Control Property Advisory Committee  
August 6, 2010

House Bills 3206 and 3544 of the 2009 Texas Legislature added §11.31(n) to require a “permanent advisory committee ... to advise the commission regarding the implementation of this section.” The Texas Commission on Environmental Quality (TCEQ) appointed the TCEQ Tax Relief for Pollution Control Property Advisory Committee (the “Committee”) on January 27, 2010. In a February 25, 2010 public meeting of the Committee, TCEQ staff informed the Committee of the timeline for rulemaking and issues they requested our attention and advice. Committee members also reviewed issues to decide priorities. Realizing the sense of urgency, we committed to research, discuss, and advise revisions to rules as we considered appropriate. The Committee had seven public meetings at TCEQ offices in Austin and one public conference call. The Committee chairman submitted advice to TCEQ staff on several issues, which are generally mentioned in the following comments.

**Advice to Approve**

The Committee reaffirms advice to approve the following proposed rules.

- **§17.2(4) – Add Definition of Environmental Benefit**  
On April 1, 2010, the Committee submitted advice to TCEQ staff that related entirely to an alternative to environmental benefit “at the site” in Figures: 30 TAC §17.15(a) and 30 TAC §17.15(b). This advice included the addition of a definition in §17.2 for Environmental Benefit and other rules and figures (flow charts). The Committee also indicated, “We request TCEQ to review these proposed revisions and revise as necessary to align with all applicable law and rules. However, we advise that any revisions remain within the concept of the above motion by the Committee.” In a May 21, 2010 public meeting of the Committee, the Committee approved TCEQ staff’s draft revisions in this section, which is the same as the proposed rule.
- **§17.6 – Revise Property Ineligible for Exemption from Taxation**  
“At the site” was one of the major issues the Committee wrestled with as we researched, discussed, and received public comments. On March 26, 2010, during a public meeting at the TCEQ office in Austin, the Committee approved the following language by an 11-0 vote of 13 members. One committee member did not vote because he was absent as previously indicated. According to Rule 58 of Robert’s Rules of Order, the chairman is entitled to vote “where the vote would change the result.” As the chairman’s vote would not change the result, the chairman did not vote.

“The Tax Relief for Pollution Control Advisory Committee advises the TCEQ to replace the ‘at the site’ requirement with a requirement that the portion of the property under consideration is:

- (a) not used, constructed, acquired or installed solely to produce a good or service; and
- (b) being wholly or partly used, constructed, acquired or installed to meet or exceed an adopted environmental rule or regulation that requires the prevention, control, monitoring or reduction of air, water, or land pollution that results from the actions of the applicant in the production of a good or service and not solely from the use or characteristics of the good or service produced or provided.”

TCEQ staff revised the above motion as indicated in proposed §17.6. The Committee agreed the proposed rule is more readable and reflects our intent.

### **Advice to Revise**

On July 30, 2010, the Committee met during a noticed public meeting at the TCEQ office in Austin. Twelve of the thirteen members were present. As indicated several weeks before the meeting, one member was absent. The primary purpose of the meeting was to review proposed Chapter 17 rules published in the July 16, 2010 issue of the Texas Register and consider submitting additional advice to TCEQ during the public comments period. The proposed rules were discussed for over four hours. Comments from the audience were also received. The Committee approved motions regarding the following proposed rules.

- **§17.2(2) Definition of Capital Cost Old**

**Motion/Advice:** Retain the definition in the current rule. I.e., do not approve the proposed change.

**Vote:** 11-0

**Note:** This advice should consistently apply to other rules, figures, and guidance.

**Discussion:** The proposed Cost Analysis Procedure in §17.17 and four draft alternative calculations were analyzed with the same example data. A comparison of each calculation was made available to the public in the July 30<sup>th</sup> meeting. One Committee member observed the last alternative yields a very similar result as the proposed rule and therefore recommended the proposed rule. Others recognized the proposed definition could inappropriately deduct replaced qualified pollution control property. The Committee generally concluded the draft alternatives have not been adequately analyzed with a sufficient number of realistic application scenarios. The Committee, therefore, decided to advise retaining the current definition of Capital Cost Old until a more thorough analysis of alternatives can be conducted and tested, which will be after the public comments period. The analysis and discussion reemphasized the Committee’s approved motion from the June 4, 2010 meeting that “The committee agrees that the uniformity requirement in the governing statute does not require the commission to rely upon a single formula when calculating partial use determinations.”

- **§17.10(c) Application Due Date**

**Motion/Advice:** Revise the first sentence to, “If the applicant desires to apply for a use determination for a specific tax year, the application must be postmarked no later than January 31 of the ~~following~~ same tax year.”

**Vote:** 11-0

**Discussion:** There was no change in the proposed rules. However, a Committee member noticed the current rule does not seem logical as written; applicants have apparently interpreted “following” as the year following the addition of pollution control property, not following the specific tax year. The above change aligns the rule with the current practice and apparent intent of the rule.

- **§17(d)(3) TCEQ Request for Additional Data**

**Motion/Advice:** Insert language in the proposed rule to read, “the purpose of the installation of such facility, device, or method, and the proportion of the installation that is for pollution control, such as, if deemed by TCEQ to be relevant and essential to the use determination, a detailed description of the pollution source and a detailed and labeled process flow diagram that clearly depicts the pollution control property and the processes and equipment that generate the pollutant(s) being controlled;”

**Vote:** 11-0

**Discussion:** A Committee member expressed concern that “such as” may be in conflict with “must” at the beginning of §17(d). Industry Committee members also expressed concern that “such as” may, over time, be applied as an expectation for all applications, which may be an unreasonable and unnecessary burden for some applications. Proprietary and/or homeland security concerns have increased sensitivity with companies releasing certain flow diagrams. Rather than the proposed language after “detailed description...,” industry Committee members preferred a broader “and other appropriate information.” Some Committee members opposed this broader language. Recognizing a “labeled process flow diagram” may be relevant and essential to the use determination for some applications and acceptable to disclose such information, a compromise was reached by inserting the above language.

As the advised language below is much more lengthy than the above sections, the motions, votes, background, and discussion are presented before the advice.

- **§17.14(a) Tier I Pollution Control Property**

- **§17.17(b) Tier III Pollution Control Property**

**Motion July 30, 2010:** Approve the written motion presented by Committee member Mike Nasi, except remove M-23 from Tier I and change B-12 from “100” to “V” in Tier III.

**Vote:** 10-1

**Motion August 4, 2010:** Reconsider M-23 (Tier I) and B-12 (Tier III), revise the descriptions of those items to address concerns expressed by Committee members, and include the revised items M-23 and B-12 in their respective tables at 100%.

**Vote:** 6-5 (chairman voted to break the tie and approve)

**Background:**

- May 21, 2010 – The Committee approved with an 11-0 vote of 13 members advice to integrate proposed revisions to Part B of the Tier I Equipment and Categories List. One committee member did not vote because he was absent as previously indicated. Items A-83, A-187, A-188, A-189, and M-23 in this advice for §17.14 (Tier I) are also listed as B-4, B-12, B-15b, B-15c, and B-15d in §17.17 to retain the complete list of property indicated in §11.31(k) of the Texas Property Tax Code.
- May 27, 2010 – The Committee chairman submitted the Committee’s advice to TCEQ consistent with decisions from the May 21<sup>st</sup> meeting.
- July 16, 2010 – The Committee’s May 27, 2010 advice was not included in the proposed rules published in the Texas Register.
- July 30, 2010 – As Committee member Mike Nasi was unable to attend the Committee’s meeting, he submitted a written motion for the Committee’s consideration; the motion was consistent with the advice approved by the Committee on May 21<sup>st</sup> and submitted May 27<sup>th</sup>. The Committee approved Mike Nasi’s written motion with an amendment to exclude items M-23 from Tier I and revise B-12 from “100” to “V” (variable percentage) in Tier III.
- August 4, 2010 – The Committee approved a motion to reconsider items M-23 and B-12 that added the following language to the end of the descriptions of items M-23 and B-12: “if such byproducts or co-products are either disposed as solid waste or would be disposed as solid waste if not beneficially reused.”

**Discussion of Proponents:** Four of the “B” items the Committee advised to add to Tier I are very similar to existing equipment in Tier I. The August 4<sup>th</sup> motion to reconsider the remaining item (M-23/B-12) added language that sufficiently addressed concerns of potential over reach of a Tier I tax exemption. In response to concerns that other industries may apply for similar tax exemptions as M-23/B-12, proponents expressed that dialogue with the TCEQ may be appropriate. However, that possibility should not preclude a tax exemption on property that we reasonably determine is 100% pollution control.

**Discussion of Opponents to Reconsider M-23 and B-12:** A Committee member explained he reconsidered the May 21<sup>st</sup> motion and decided to present the above July 30<sup>th</sup> motion based on concern expressed by TCEQ staff about the lack of information available to determine whether such equipment would always be 100% pollution control equipment. Opposing votes of the August 4<sup>th</sup> motion to reconsider revised items M-23 and B-12 were primarily based on a concern that some coal combustion byproducts might become profitable in the future. Opponents pointed out that the only downside to keeping the “V” rather than 100% was that applicants would have a slightly longer application process and larger application fee, while incorrectly using 100% in Tier I could result in applicants being incorrectly granted a positive use determination. A concern was also expressed the rule in the motion could potentially result in unintended consequences, including the possibility that businesses outside of this category may notice this rule revision and apply for similar tax exemptions.

**Other:** The Committee acknowledged a Committee member or other interested group or individual may submit separate comments before the end of the public comments period.

The detailed advice in the above referenced motions are as follows.

§17.14(a) Tier I Pollution Control Property

*Note: the following revisions should be made to the Tier I Table, where appropriate. The entire table is not reproduced here in order to conserve space.*

No.	Media	Property	Description	%
A-83	Air	Flue Gas Recirculation Components	Ductwork, blowers, <u>etc.</u> — used to redirect part of the flue gas back to the combustion chamber for reduction of NOx formation. May include flyash collection in coal fired units.	100
<u>A-187</u>	<u>Air</u>	<u>Amine or Chilled Ammonia Scrubbing</u>	<u>Installed to provide post combustion capture of pollutants (including carbon dioxide upon the effective date of a final rule adopted by the USEPA regulating carbon dioxide as a pollutant).</u>	<u>100</u>
<u>A-188</u>	<u>Air</u>	<u>Catalyst based Systems</u>	<u>Installed to allow the use of catalysts to reduce emissions.</u>	<u>100</u>
<u>A-189</u>	<u>Air</u>	<u>Enhanced Scrubbing Technology</u>	<u>Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber.</u>	<u>100</u>
<u>M-23</u>	<u>Air/ Land/ Water</u>	<u>Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities</u>	<u>Used for handling, storage, or treatment of byproducts or co-products produced (resulting) from the combustion or gasification of coal such as boiler and Gasifier slag, bottom ash, flue gas desulfurization (FGD) material, fly ash, and sulfur if such byproducts or co-products are either disposed as solid waste or would be disposed as solid waste if not beneficially reused.</u>	<u>100</u>

## §17.17. Partial Determinations

(a) A Tier III application requesting a partial determination must be submitted [requested] for all property that is either not on the Tier I Table [Part A of the Equipment and Categories List] located in §17.14(a) of this title (relating to Tier I Pollution Control Property), [Equipment and Categories List] or does not fully satisfy the requirements for a 100% positive use determination under this chapter. [In order to calculate a partial determination percentage for pollution control property submitted in a Tier IV application, the cost analysis procedure described in subsection (d) of this section must be used.] For all [other] property for which a partial use determination is sought, the cost analysis procedure (CAP) described in subsection (c) [(b)] of this section must be used.

(b) The [items] **Tier III Equipment and Categories List (ECL)** [in this subsection] **is [are]** adopted as a nonexclusive list of facilities, devices, or methods for the control of air, water, and/or land pollution. [This subsection] **The Tier III ECL** consists of the list located in Texas Tax Code, §11.31(k), along with descriptions of those items. **A Tier I application may be filed for items which have a designated positive use determination percentage.** The commission shall review and update the items listed in this subsection at least once every three years. The commission may add an item to this subsection only if there is compelling evidence to support the conclusion that the item provides pollution control benefits. The commission may remove an item from this subsection only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.

~~(1) Coal Cleaning or Refining Facilities.~~

~~(2) Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems.~~

~~(3) Ultra-Supercritical Pulverized Coal Boilers.~~

~~(4) Flue Gas Recirculation Components.~~

~~(5) Syngas Purification Systems and Gas Cleanup Units.~~

~~(6) Enhanced Heat Recovery Systems.~~

~~(7) Exhaust Heat Recovery Boilers.~~

~~(8) Heat Recovery Steam Generators.~~

~~(9) Super heaters and Evaporators associated with heat recovery systems.~~

~~(10) Enhanced Steam Turbine Systems.~~

~~(11) Methanation.~~

~~(12) Coal Combustion or Gasification By product and Co-product Handling, Storage, and Treatment Facilities.~~

~~(13) Biomass Cofiring Storage, Distribution, and Firing Systems.~~

~~[(14) Coal Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology.]~~

~~[(15) Oxy-Fuel Combustion Technology, Amino or Chilled Ammonia Scrubbing, Catalyst-based Fuel or Emission Conversion Systems, Enhanced Scrubbing Technology, Modified Combustion Technology, Cryogenic Technology.]~~

~~[(16) If the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state.]~~

~~[(17) Fuel Cells generating electricity using hydrocarbon derived from coal, biomass, petroleum coke, or solid waste.]~~

~~[(18) Any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.]~~

### **Tier III Equipment and Categories List**

<b>No.</b>	<b>Property</b>	<b>Description</b>	<b>%</b>
B-1	Coal Cleaning or Refining Facilities	<u>Used to remove impurities from coal in order to boost the heat content and to reduce potential air pollutants.</u>	V
B-2	Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems	<u>Combustion systems that reduce pollution through the use of a fluidized bed that can be atmospheric &amp; bubbling or circulating; gasification combined cycle systems; or pressurized &amp; bubbling or circulating systems.</u>	V
B-3	Ultra-Supercritical Pulverized Coal Boilers.	<u>Boiler system designed to provide 4500 psig/1100°/1100°/1100° double reheat configuration.</u>	V
B-4	Flue Gas Recirculation Components	<u>Ductwork, blowers, etc. — used to redirect part of the flue gas back to the combustion chamber for reduction of NOx formation. May include flyash collection in coal fired units.</u>	100 [✓]
B-5	Syngas Purification Systems and Gas-Cleanup Units	<u>A system, including all necessary appurtenances, that (1) produces synthesis gas from coal, biomass, petroleum coke, or solid waste and is then converted to electricity via combined cycle power generation equipment and (2) equipment that removes sulfur, carbon, and other polluting compounds from synthesis gas streams.</u>	V

No.	Property	Description	%
B-6	Enhanced Heat Recovery Systems	<u>A heating system used to reduce the temperature and humidity of the exhaust gas stream and recover the heat so that it can be returned to the steam generator so as to increase the quantity of steam generated per quantity of fuel consumed.</u>	V
B-7	Exhaust Heat Recovery Boilers	<u>Used to recover the heat from boiler to generate additional steam.</u>	V
B-8	Heat Recovery Steam Generators	<u>A counter-flow heat exchanger consisting of a series of super-heater, boiler (or evaporator) and economizer tube sections, arranged from the gas inlet to the gas outlet to maximize heat recovery from the gas turbine exhaust gas.</u>	V
B-9	<u>Heat Transfer Sections for Heat Recovery Steam Generators</u> [ <del>Super heaters and Evaporators</del> ]	<u>Super-heaters, Evaporators, Re-heaters &amp; Economizers.</u>	V
B-10	Enhanced Steam Turbine Systems	<u>Enhanced efficiency steam turbines.</u>	V
B-11	Methanation	<u>Coal Gasification process that removes carbon and produces methane, including the necessary support systems and appurtenances.</u>	V
B-12	Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities	<u>Used for handling, storage, or treatment of byproducts or co-products produced (resulting) from the combustion or gasification of coal such as boiler and Gasifier slag, bottom ash, flue gas desulfurization (FGD) material, fly ash, and sulfur if such byproducts or co-products are either disposed as solid waste or would be disposed as solid waste if not beneficially reused.</u>	[ <del>V</del> ] 100
B-13	Biomass Cofiring Storage, Distribution, and Firing Systems	<u>Installed to reduce pollution by using biomass as a supplementary fuel.</u>	V
B-14	Coal Cleaning or Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology]	<u>Used to produce a cleaner burning coal (such as coal drying, moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology).</u>	V

No.	Property	Description	%
B-15a	Oxy-Fuel Combustion Technology[, Amine or Chilled Ammonia Scrubbing, Catalyst based Fuel or Emission Conversion Systems, Enhanced Scrubbing Technology, Modified Combustion Technologies, Cryogenic Technology]	<u>Installed to allow the feeding of O2, rather than air, and a proportion of recycled flue gases to the boiler.</u>	V
B-15b	<u>Amine or Chilled Ammonia Scrubbing</u>	<u>Installed to provide post combustion capture of pollutants (including carbon dioxide upon the effective date of a final rule adopted by the USEPA regulating carbon dioxide as a pollutant).</u>	<u>100</u> [✓]
B-15c	<u>Catalyst based Systems</u>	<u>Installed to allow the use of catalysts to reduce emissions.</u>	<u>100</u> [✓]
B-15d	<u>Enhanced Scrubbing Technology</u>	<u>Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber.</u>	<u>100</u> [✓]
B-15e	<u>Modified Combustion Technologies</u>	<u>Systems such as chemical looping and biomass co-firing that are designed to enhance pollutant removal.</u>	V
B-15f	<u>Cryogenic Technology</u>	<u>Cryogenic cooling systems used to reduce pollution (including carbon dioxide upon the effective date of a final rule adopted by the USEPA regulating carbon dioxide as a pollutant).</u>	V
B-16	Greenhouse Gas Capture & Sequestration Equipment [ <del>If the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state]</del>	<u>Used, constructed, acquired, or installed wholly or partly to capture carbon dioxide or other regulated greenhouse gasses from an anthropogenic source in this state that is then sequestered in this state. (This item is only in effect upon the effective date of a USEPA final rule regulating carbon dioxide as a pollutant.)</u>	V

No.	Property	<u>Description</u>	%
B-17	Fuel Cells [ <del>used to generate electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste.</del> ]	<u>Used to generate electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste.</u>	V
B-18	<u>Regulated Air Pollutant Control Equipment</u> [ <del>Any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.</del> ]	<u>Any other facility, device, or method designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.</u>	V

On August 4, 2010, the Committee met by teleconference, which was announced in the July 30<sup>th</sup> meeting and notice posted on the TCEQ's web site. The primary purpose of the call was a follow-up of discussion from our July 30<sup>th</sup> meeting related to review and comments on the proposed rules. In addition to the above motion to reconsider two items, the Committee approved the following motion:

- **§17.17(c)(2)<sup>iv</sup> Interest**

**Motion:** Replace the proposed definition with "10%".

**Vote:** 9-0

**Discussion:** The Committee was confident the prime interest rate proposed in the rule is not an appropriate discount rate to calculate an estimated value of income producing property. Committee members with appraisal experience generally agreed an appropriate discount rate should include the weighted average cost of capital (WACC) plus local property tax rate. A lengthy discussion considered possible sources with recognized WACC rates for each major industry group. Platt's, Value Line, and other financial sources were considered, but no one on the Committee could confidently recommend a source(s) for relatively easy use by TCEQ staff to uniformly apply this rule. One or more sources may be determined with additional research. The motion is based on an abundance of appraisal experience and research indicating 10% is in the low range of discount rates for most business appraisals using the discounted cash flow income approach to value. Actual discount rates vary by industry and often by property. Although this motion was unopposed, most Committee members voted with significant reservation as we realized it is not an ideal recommendation. However, it is more reasonable than the prime interest rate in the published proposed rule.

Submitted August 6, 2010 by:

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