2014
Annual Report

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

March 19, 2015

This report is submitted in compliance with Article 6.2 of the TCEQ Tax Relief for Pollution Control Property Advisory Committee (Committee) bylaws, which states: "Unless otherwise directed, the Committee shall report to the Commissioners a minimum of once per year. The report must be sufficient to allow the Commissioners to properly evaluate the Committee's work, usefulness, and the costs related to the Committee's existence."

About Tax Relief for Pollution Control Property

Proposition 2 on the November 2, 1993 state ballot approved adding the following §1-l to the Texas Constitution, Article VIII:

> PROPERTY USED FOR CONTROL OF AIR, WATER, OR LAND POLLUTION; EXEMPTION FROM AD VALOREM TAXATION.
> (a) The legislature by general law may exempt from ad valorem taxation all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution.
> (b) This section applies to real and personal property used as a facility, device, or method for the control of air, water, or land pollution that would otherwise be taxable for the first time on or after January 1, 1994.
> (c) This section does not authorize the exemption from ad valorem taxation of real or personal property that was subject to a tax abatement agreement executed before January 1, 1994.

The 73rd Legislature (1993) added Texas Tax Code §11.31, Pollution Control Property, and Texas Tax Code §26.045, Rollback Relief for Pollution Control Requirements, to implement the new constitutional provision. The commission adopted Title 30, Texas Administrative Code, Chapter 277 on September 30, 1994 to establish the procedures for obtaining a tax exemption under Proposition 2. In 1998, Chapter 277 was moved to Chapter 17 to be consistent with the commission's policy of placing general or multimedia rules within 30 TAC Chapters 1-100.

The primary subsections in Tax Code §11.31 regarding eligibility for tax exemption are:

(a) A person is entitled to an exemption from taxation of all or part of real and personal property that the person owns and that is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. A person is not entitled to an exemption from taxation under this section solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution. Property used for residential purposes, or for recreational, park, or scenic uses as defined by Section 23.81, is ineligible for an exemption under this section.

(b) In this section, "facility, device, or method for the control of air, water, or land pollution" means land that is acquired after January 1, 1994, or any structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property, that is used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution. This section does not apply to a motor vehicle.

The primary subsections in Tax Code §11.31 regarding the authority for TCEQ Tax Relief for Pollution Control Property rules are:

(g) The commission shall adopt rules to implement this section. Rules adopted under this section must:
  (1) establish specific standards for considering applications for determinations;
  (2) be sufficiently specific to ensure that determinations are equal and uniform; and
  (3) allow for determinations that distinguish the proportion of property that is used to control, monitor, prevent, or reduce pollution from the proportion of property that is used to produce goods or services.

(g-1) The standards and methods for making a determination under this section that are established in the rules adopted under Subsection (g) apply uniformly to all applications for determinations under this section, including applications relating to facilities, devices, or methods for the control of air, water, or land pollution included on a list adopted by the Texas Commission on Environmental Quality under Subsection (k).
Note: This subsection was added by House Bills 3206 and 3544 of the 81st Texas Legislature (2009).

Purpose of TCEQ Tax Relief for Pollution Control Property Advisory Committee

House Bills 3206 and 3544 of the 81st Texas Legislature (2009) added the following subsection (n) to Tax Code §11.31:

> The Texas Commission on Environmental Quality shall establish a permanent advisory committee consisting of representatives of industry, appraisal districts, taxing units, and environmental groups, as well as members who are not representatives of any of those entities but have substantial technical expertise in pollution control technology and environmental engineering, to ***advise the commission regarding the implementation of this section***. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee. (emphasis added)

Consistent with the Committee's purpose, all meeting agendas, discussion and advice focuses on the following question:

> Which rules, guidelines, forms, instructions, practice, web site, or other provisions should be added, deleted, or revised to facilitate and ensure compliance with the implementation of Tax Code §11.31?

Committee Organization

Highlights of the Committee bylaws are:

1. Purpose – Advise the TCEQ Commissioners on matters relating to property tax exemptions for pollution control property.
2. Number of Members – May not exceed 13.
3. Terms – Commission appoints or re-appoints members to staggered four-year terms.
4. Attendance – Members automatically vacate position if they miss three consecutive regularly scheduled meetings or more than half of all of the regularly scheduled meetings in a one-year period.
5. Presiding Officer – Annual elections or at the request of a majority of the members of the Committee. May be re-appointed.
6. Meetings – Quarterly or at the call of the Presiding Officer or the Commissioners.
7. Public Participation – Committee meetings will be open to the public. The Presiding Officer shall ensure an opportunity for public participation at every Committee meeting.
8. Voting – If there is no consensus among all members of the Committee, minority members are encouraged to submit minority reports.
9. Reports to the Commission – Minimum of once per year. The report must be sufficient to allow the Commissioners to properly evaluate the Committee's work, usefulness, and the costs related to the Committee's existence.

Members of 2014 TCEQ Tax Relief for Pollution Control Property Advisory Committee

On January 27, 2010, the TCEQ Commissioners approved the nomination of six members for two-year terms and seven members for four-year terms. House Bill 2280 of the 82nd Legislature (2011) added the following underlined language to Tax Code §11.31(n):

> The Texas Commission on Environmental Quality shall establish a permanent advisory committee consisting of representatives of industry, appraisal districts, taxing units, and environmental groups, as well as members who are not representatives of any of those entities but have substantial technical expertise in pollution control technology and environmental engineering, to advise the commission regarding the implementation of this section. At least one member of the advisory committee must be a representative of a school district or junior college district in which property is located that is or previously was subject to an exemption under this section. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

On December 11, 2013, the TCEQ Commissioners approved the nomination or re-nomination of seven members for four-year terms, including a replacement of the expired term for an industry member and the independent member, both who retired. Years beside each name indicate the year their term is scheduled to expire. The term for each member is four years.

Representing Industry

- Bob Adair (2017), with Phillips 66 Company (Chair, 2010-2014, re-elected for 2015)
  Representing the Texas Oil and Gas Association
- Robert Castor (2017), with Freescale Semiconductor
- Paul Coon (2015), with Luminant Power
  Representing the Association of Electric Companies of Texas
- Greg Maxim (2015), with Cummings Westlake
- Michael Nasi (2015), with Jackson, Walker
  Representing the Clean Coal Technology Foundation
- Michael Ford (2017), with E.I. Du Pont de Nemours & Company
  Representing the Texas Chemical Council

Representing Appraisal Districts

- Roland Bieber (2017), Chief Appraiser for Jefferson County Appraisal District
  Representing the Texas Association of Appraisal Districts
- Wayne Frazell (2017), with Pritchard & Abbott, Inc.

Representing Taxing Units

- Lloyd Graham (2015), Superintendent, La Porte Independent School District
  Representing school districts
- Don Lee (2015), with the Texas Conference of Urban Counties
- Bennett Sandlin (2017), with the Texas Municipal League

Representing the Environmental Group

- Dr. Cyrus Reed (2015), with the Sierra Club

Independent Technical Expert

- Charles Allred (2017)

Primary 2014 Actions Taken by Committee

Each Committee meeting generally lasts two hours or longer and includes discussion of various issues published on an agenda at least seven days prior the public Committee meetings. Although Committee members and TCEQ staff comprise most of the discussion, ample opportunity is provided for the public to educate the Committee on specific issues, express concerns, rebut positions of members or speakers and otherwise advise the Committee. Public testimony has included applicants to the Prop 2 program, business associations, appraisal districts, school districts and other interested parties. In compliance with Committee bylaws to meet at least once per quarter, the Committee met in 2014 in the agenda room of TCEQ on February 24, March 27, May 30 and December 15 and by conference call on September 15. Each meeting notice was posted on TCEQ's web site at http://www.tceq.texas.gov/airquality/taxrelief, with email notices sent to the public as they chose to be on the distribution list.

Items discussed and/or decided in 2014 included:

1. In compliance with Article 3 of the Committee bylaws, an annual election was held for Committee Presiding Officer. Bob Adair was re-elected chair for 2014.[1]
2. Reviewed and approved the Committee's 2013 annual report.[1]
3. The Committee requested TCEQ staff (and they complied) to update the Committee on the status of applications for tax relief for heat recovery steam generators (HRSG) pending final resolution and their possible implications on Tier III partial determination rule discussions by the Committee.[1]
4. Reviewed TCEQ proposed revisions to Prop 2 rules in two basic categories:[2]
    a. Align rules with 2013 House Bill 1897 requiring TCEQ to make a final determination (including any appeal process) within one year of the application being declared administratively complete; and
    b. Figure: 30 TAC §17.14 (a) – Tier I Table and Figure: 30 TAC §17.14 (b) – Expedited Review List. This review is in compliance with 30 TAC §17.14(b), which states, "The commission shall review and update the Tier I Table at least once every three years" and Texas Tax Code §11.31(l), which states, "The Texas Commission on Environmental Quality by rule shall update the list adopted under Subsection (k) at least once every three years." The Committee specifically discussed and advised (see section below) staff's proposal to remove recycling related items from the Tier I Table due to the generation of a marketable product.
5. The Cost Analysis Procedure (CAP) for Tier III partial use determinations was again re-evaluated.[3] The Committee agreed, without opposition, the CAP is not an ideal formula and does not appropriately address all situations. However, after review of sample Tier III applications, much discussion and solicitation of alternatives from interested parties, the Committee did not advise any alternative(s) to the current CAP formula. Nevertheless, the Committee continues to search for a viable alternative(s).
6. A Committee member referenced a September 24, 2013 negative use determination which dealt with carbon dioxide (CO_2) capture and sequestration, item B-16 on the list contained in Texas Tax Code §11.31(k), recent United States Environmental Protection Agency (EPA) rulemaking, and a Supreme Court ruling pertaining to regulating CO_2. He

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1 February 24, 2014 minutes of the Committee
2 February 24, 2014 and March 27, 2014 minutes of the Committee
3 May 30, 2014 minutes of the Committee

asked if these actions satisfied the trigger requirement of B-16; i.e., "This item is only in effect upon the effective date of an EPA final rule regulating carbon dioxide as a pollutant." Another member indicated interest in pursuing this question further after the Committee members and staff have time to prepare for the discussion. The Committee plans to discuss this item further in 2015.[4]

7. Some Committee members are seeking clarification through either rulemaking or guidance regarding the meaning of meets or exceeds an environmental law, rule, or regulation in Texas Tax Code §11.31(b). One Committee member prepared and distributed a paper entitled "Recommended Adjustments to the TCEQ Pollution Control Property Tax Exemption Program." Discussion covered pollution control equipment: (1) used to assist in achieving a goal or general standard such as water conservation; (2) used to meet an environmental standard that does not apply to the applicant's facility due to the timing of the equipment installation relative to rule adoption; (3) used to maintain emission rates below a threshold that would trigger the rule requirements cited in the application (including Title V permitting requirements); (4) used to comply with a proposed rule yet to be adopted; (5) used for carbon capture utilization and storage (CCUS); and (6) used to meet or exceed an environmental rule that is withdrawn or impacted by judicial action after installation of the equipment. Prior to the first meeting in 2015, a proposed letter for the commissioners addressing the concerns will be distributed to the Committee. The letter will be voted on by the Committee before it is sent to the commissioners.[5]
8. In compliance with Article 3 of the Committee bylaws, an annual election was held for Committee Presiding Officer. Bob Adair was re-elected for 2015.[4]

The Committee provided the following advice in 2014:

1. Advised TCEQ staff to provide public training on how to complete a tax relief application and respond to deficiency letters. TCEQ provided such training in three public meetings in Austin, Fort Worth and Houston.
2. The Committee voted[6] to provide a written comment on the rule proposal that the TCEQ "leave the recycling related items on the Tier I Table pending further discussion by the advisory committee." Chair Bob Adair communicated such advice to TCEQ in a letter dated April 7, 2014, specifically listing the following Tier I items.

    A-186 Blast Cleaning System – Connected to a Control Device
    W-58 Water Recycling Systems
    W-62 Recycled Water Cleaning System
    S-27 Concrete Reclaiming Equipment
    M-4 Compactors, Barrel Crushers, Balers, Shredders
    M-5 Solvent Recovery Systems
    M-6 Boxes, Bins, Carts, Barrels, Storage Bunkers

    The letter further said, "The Advisory Committee determined it is premature to remove the above items from the Tier I table until more analysis can be done to better define the categories of recycling equipment and further evaluate the basis of TCEQ's proposed revisions. This advice is consistent with 30 TAC 17.14(b)(2), which states: "The commission may remove an item from the table only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.""

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4 September 15, 2014 minutes of the Committee
5 March 27, 2014 and December 15, 2014 minutes of the Committee
6 February 24, 2014 minutes of the Committee

3. The April 7, 2014 letter also stated, "We have no advice regarding other proposed revisions in the above referenced issue of the Texas Register." These other proposed revisions related to 2013 House Bill 1897 requiring TCEQ to make a final determination (including any appeal process) within one year of the application being declared administratively complete

Usefulness of Committee

In addition to the Committee's primary purpose to "advise the commission regarding the implementation" of Tax Code §11.31, the Committee receives public input from the public and perspectives from industry, government and independent representatives on the Committee.

As TCEQ Chairman Bryan Shaw addressed item 6 of the December 11, 2013 agenda regarding re-appointment of five Committee members and appointment of two new Committee members, he expressed the following appreciation for the Committee:

> "I look forward to good things from the group. We do appreciate and value the input we get from our advisory groups and especially on issues such as this. At times issues can not only be controversial but have fairly significant impact on not only entities that are being taxed but also those tax levying entities as well, so thank you for your efforts."

Cost of Committee

- Compensation to Committee Members – None. All members serve without compensation other than from their employers.
- Travel – All members were allowed travel cost reimbursement, however some members chose not to seek reimbursement. Total 2014 requested travel reimbursement was $2,631.71.
- TCEQ Advisory Committee Time – Four public meetings at TCEQ's office in Austin (with travel for most members), one public Committee conference call and many additional hours reviewing issues, hearing perspectives from a variety of interested parties, and considering formal and informal advice regarding proposed rules and procedures.
- TCEQ Staff Time – 129 estimated hours included planning, preparing, and drafting materials for four Committee meetings and related research as the Committee requested.
- TCEQ Facilities – No additional costs were incurred for meeting rooms or other facilities.

Additional information on Tax Relief for Pollution Control Property and the Advisory Committee is available at www.tceq.state.tx.us/implementation/air/taxrelief. This report was approved by the Committee during a public meeting on March 6, 2015 and submitted to TCEQ on March 19, 2015.

Respectfully,

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