

# **Tax Relief for Pollution Control Property**

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***2016 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, §1-1 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 in 1993 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 positive use determination. The TCEQ’s rules governing the program are contained in Chapter 17 of Title 30 of the Texas Administrative Code (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 the TCEQ in 2002. The amended rules established a standard method to determine the portion of a piece of property that is pollution control versus production when the property serves both functions. This method is called the Cost Analysis Procedure (CAP) and is required to be used for all equipment that is both pollution control and production equipment.<sup>4</sup>

In 2007, the 80th Texas Legislature enacted HB 3732, which amended TTC, §11.31 by adding three new subsections, (k), (l), and (m). Subsection (k) required the TCEQ to adopt a nonexclusive list of property that included 18 property categories. Subsection (l) required that the property

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<sup>1</sup> TEXAS CONSTITUTION, Article 8, §1-1(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).

list be reviewed at least once every three years and established a standard for removing property from the list. Subsection (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 in 2008. The specific equipment added to TTC, §11.31 was primarily energy production-related equipment such as heat recovery steam generators (HRSG) and enhanced steam turbine systems. Due to the unconventional nature of the equipment from a pollution control perspective, TCEQ rules 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 adopted revisions to 30 TAC Chapter 17 on November 18, 2010.

In 2011, HB 2280, 82nd Texas Legislature, amended TTC, §11.31(n) by adding: “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.” The commission appointed a school district representative on December 7, 2011.

In 2013, HB 1897, 83rd Texas Legislature, amended TTC, §11.31 by adding (e-1). New §11.31(e-1) requires the executive director to issue a final determination and the commission to take final action on an initial appeal not later than the first anniversary of the application being declared to be administratively complete. The commission adopted revisions to 30 TAC Chapter 17 to implement this requirement on August 6, 2014. The revisions limit the review process to a total of 230 days by limiting the number of deficiency letters to two administrative and two technical.

## ***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 district.

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: Tier I, Tier II, and Tier III. 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 lists specific property that the TCEQ has determined can be 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 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 may be eligible for a partial use determination. Partial percentages are calculated using the CAP, which is a calculation designed to determine the portion of the

property that is for pollution control. Tier III applications require a \$2,500 fee.

## ***Program Statistics***

### **Number of Applications**

The first application for pollution control property tax exemption was received on November 21, 1994. As of December 31, 2016, a total of 19,637 applications have been received.

Table 1: *Total Number of Applications Filed since Program Inception (November 1994 - December 2016)* shows the total number of applications received since the inception of the program, categorized by tier level and by approval status.

**Table 1. Total Number of Applications Filed Since Program Inception (November 1994 - December 2016)**

<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	17,205	493	250	25	17,973
Denied	234	39	30	40	343
Under Review	6	0	0	0	6
Withdrawn	1,220	49	32	14	1,315
<b>Total</b>	<b>18,665</b>	<b>581</b>	<b>312</b>	<b>79</b>	<b>19,637</b>

Table 2: *Number of Applications Received During 2016* shows the number of applications received during Calendar Year 2016, categorized by tier level and by approval status. A total of 590 applications were received during 2016 and, of those, 88% were approved, and 11% were withdrawn. Less than 1% were denied or still under review as of January 1, 2017. While this report is primarily for Calendar Year 2016 application activities, Calendar Year 2015 information is also provided for comparison purposes.

**Table 2. Number of Applications Received During 2016**

<b>Status</b>	<b>Tier I</b>	<b>Tier II</b>	<b>Tier III</b>	<b>Total</b>
Approved	487	31	3	521
Denied	1	0	0	1
Under Review	3	0	0	3
Withdrawn	65	0	0	65
<b>Total</b>	<b>556</b>	<b>31</b>	<b>3</b>	<b>590</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 2015* shows the number of applications received during Calendar Year 2015, categorized by tier level and by approval status. A total of 1,087 applications were received during 2015 and, of those, 82% were approved, 17% were withdrawn, and less than 1% were denied.

**Table 3. Number of Applications Received During 2015**

Status	Tier I	Tier II	Tier III	Total
Approved	870	15	11	896
Denied	1	0	2	3
Withdrawn	179	9	0	188
<b>Total</b>	<b>1,050</b>	<b>24</b>	<b>13</b>	<b>1,087</b>

## Fees Received

The estimated fees received during Calendar Years 2016 and 2015 were \$121,900 and \$214,000, respectively. Table 4: *Application Fees Collected by Tier Level for Years 2016 and 2015* shows fee collections by tier level for years 2016 and 2015. The decrease in total fees between 2016 and 2015 is attributable to a decrease in the number of Tier I and Tier III applications received. Under TTC, §11.31(f), the TCEQ may charge an applicant a fee for processing the information, making the determination, and issuing the required use determination letters. Under Article VI, Commission on Environmental Quality, Rider 5, of the General Appropriations Act for the 2016-17 Biennium, enacted by the 84rd Texas Legislature, the TCEQ has been appropriated \$221,000 from collected fee revenue for each fiscal year for the purpose of determining whether pollution control equipment is exempt from taxation.

**Table 4. Application Fees Collected by Tier Level for Years 2015 and 2016**

Calendar Year	Tier I	Tier II	Tier III	Year Total
2015	\$157,500	\$24,000	\$32,500	\$214,000
2016	\$83,400	\$31,000	\$7,500	\$121,900

## Total Tier III Applications

Because of the complexity, Tier III applications require the most review time. Table 5: *Tier III Applications Received Each Calendar Year* shows that the number of Tier III applications processed each year has varied from as few as one to as many as 42. While Tier III applications represent less than 2% of the total applications processed, the applications' total estimated dollar value is 16% of the total estimated dollar value listed on all applications.

**Table 5. Tier III Applications Received Each Calendar Year**

<b>Calendar Year</b>	<b>Number of Applications</b>	<b>Estimated Dollar Value of Projects</b>
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	13	\$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	8	\$125,717,478
2010	10	\$333,305,478
2011	19	\$1,071,732,138
2012	25	\$894,318,780
2013	8	\$489,105,075
2014	7	\$157,826,363
2015	13	\$865,989,150
2016	3	\$68,584,518
<b>Total</b>	<b>312</b>	<b>\$7,043,878,703</b>

### **Applications Received in 2016 – County Information**

Around 39% of the applications received during Calendar Year 2016 were from entities located in counties within the Dallas-Fort Worth (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise County) and Houston-Galveston-Brazoria (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller County) ozone nonattainment areas and the Beaumont-Port Arthur (Hardin, Jefferson, and Orange County) area. These applications also represent 67% of the total estimated dollar value in the use determination applications. Over 72% of the applications, containing 88% of the estimated dollar value, were from entities located in counties within TCEQ Regions 4 (Dallas/Fort Worth), 5 (Tyler), 7 (Midland), 10 (Beaumont), 12 (Houston), and 14 (Corpus Christi).

Applications have been received from 234 of Texas's 254 counties. Applications have not been received from the following counties: Bandera, Baylor, Blanco, Brewster, Briscoe, Collingsworth, Crosby, Dickens, Foard, Hartley, Jeff Davis, Kimble, Lynn, Menard, Mills, Motley, Presidio, Real, San Saba, and Throckmorton. These counties are all located west of Interstate 35 and are primarily located in the Panhandle and West Texas. Three of the counties, San Saba, Blanco, and Mills are located in Central Texas. As of 2016, the population of these counties represents less than 0.4% of the population of Texas.

Table 6 *Applications Received for Calendar Year 2016 Grouped by County* shows the distribution, by county, of all Tier I, II, and III applications received during Calendar Year 2016 and the total estimated dollar value. Appendix A includes a table that shows the distribution, by county, of all applications received between November 1994 and December 2016 and the total estimated dollar value.

**Table 6. Applications Received for Calendar Year 2016 Grouped by County**

<b>County Name</b>	<b>Number of Applications in 2016</b>	<b>2016 Total Estimated Dollar Value</b>
Anderson	2	719,746
Andrews	4	995,731
Angelina	1	83,880
Atascosa	5	9,509,755
Bailey	1	122,404
Bastrop	3	227,278
Bell	7	766,090
Bexar	18	12,669,831
Bosque	1	93,133
Brazoria	26	405,904,050
Burleson	3	2,930,640
Burnet	2	466,970
Callahan	1	975,303
Carson	1	122,404
Chambers	3	4,417,246
Clay	1	17,836,858
Coke	2	227,000
Coleman	1	122,404
Collin	10	6,750,867
Comal	4	22,365,563
Cooke	2	439,717
Crockett	1	946,880
Culberson	2	2,533,600

County Name	Number of Applications in 2016	2016 Total Estimated Dollar Value
Dallas	10	5,217,721
De Witt	4	2,771,165
Delta	4	1,804,101
Denton	6	10,011,141
Dimmit	2	216,000
Eastland	1	4,412,317
Ector	27	22,919,029
Edwards	1	19,000
El Paso	5	1,443,374
Ellis	1	192,910
Erath	1	1,104,602
Falls	4	406,401
Fannin	4	4,947,184
Fayette	1	891,680
Fort Bend	6	626,060
Freestone	2	3,872,220
Galveston	12	269,047,400
Glasscock	2	2,432,274
Gonzales	4	380,958
Gray	5	0 <sup>6</sup>
Grayson	1	214,923
Gregg	9	6,756,361
Grimes	1	856,182
Guadalupe	6	5,329,913
Hamilton	1	97,152
Hardeman	1	17,544,130
Hardin	1	492,550
Harris	124	538,317,040
Harrison	9	11,828,013
Haskell	1	287,293
Hays	4	4,082,812
Hemphill	1	891,680
Henderson	3	2,445,426
Hidalgo	1	1,115,665
Hood	3	3,263,873
Hopkins	1	258,197
Houston	1	969,920
Howard	2	56,186

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<sup>6</sup> None of the five applications contained a dollar value and all five were withdrawn.

<b>County Name</b>	<b>Number of Applications in 2016</b>	<b>2016 Total Estimated Dollar Value</b>
Hunt	3	365,654
Hutchinson	4	318,393
Jefferson	17	191,659,844
Jim Wells	4	3,996,560
Johnson	3	2,670,599
Jones	1	863,081
Karnes	2	1,783,360
Kaufman	9	5,164,590
Kerr	1	499,619
La Salle	6	1,052,458
Lamar	7	900,200
Lampasas	1	13,351,539
Liberty	1	154,400
Limestone	1	398,486
Live Oak	3	843,020
Loving	4	2,249,656
Madison	2	144,010
Martin	2	998,629
Matagorda	1	80,900
McLennan	3	1,584,927
McMullen	4	380,958
Medina	2	7,607,000
Midland	6	14,183,354
Milam	1	140,831
Mitchell	1	33,719
Montgomery	2	2,889,895
Moore	2	39,256,000
Navarro	4	5,864,447
Nolan	1	29,467
Nueces	3	40,689,620
Orange	2	6,439,342
Panola	4	769,000
Parker	2	3,182,715
Pecos	2	1,436,329
Potter	2	492,488
Reagan	2	2,429,713
Red River	1	137,325
Reeves	3	2,876,880
Robertson	1	3,068,055
Runnels	1	126,000

<b>County Name</b>	<b>Number of Applications in 2016</b>	<b>2016 Total Estimated Dollar Value</b>
San Patricio	2	7,028,105
Scurry	1	118,877
Smith	14	10,361,136
Somervell	1	1,579,317
Tarrant	7	2,474,518
Taylor	2	1,153,312
Terrell	4	649,175
Titus	1	960,353
Travis	10	15,425,020
Tyler	3	11,254,942
Van Zandt	3	2,124,545
Victoria	6	24,308,269
Waller	3	217,970
Ward	2	1,603,900
Washington	2	30,000
Webb	3	2,200,680
Wharton	2	140,780
Wheeler	1	362,000
Wichita	2	570,163
Wilbarger	11	13,663,270
Williamson	8	8,686,096
Winkler	3	274,276
Wise	5	18,049,547
	590	1,903,099,519

*Table 7: Applications Received for Calendar Year 2015 Grouped by County* shows the distribution, by county, of all Tier I, II, and III applications received during Calendar Year 2015 and the total estimated dollar value.

<b>County Name</b>	<b>Number of Applications in 2015</b>	<b>2015 Total Estimated Dollar Value</b>
Andrews	2	\$59,024
Atascosa	2	\$568,817
Bastrop	2	\$126,670
Bee	9	\$28,199,260
Bell	14	\$27,157,885
Bexar	64	\$17,648,493
Bosque	4	\$3,808,915
Bowie	4	\$322,003
Brazoria	34	\$595,266,771
Brazos	7	\$5,614,850

<b>County Name</b>	<b>Number of Applications in 2015</b>	<b>2015 Total Estimated Dollar Value</b>
Burleson	3	\$2,491,300
Burnet	2	\$1,358,040
Calhoun	9	\$17,716,992
Cameron	7	\$389,670
Chambers	6	\$8,325,000
Collin	31	\$9,241,371
Comal	9	\$3,392,810
Coryell	2	\$529,700
Crane	2	\$1,752,200
Dallas	101	\$23,072,761
Denton	23	\$19,863,917
Dimmit	4	\$1,608,600
Ector	15	\$4,366,000
El Paso	3	\$3,100,735
Ellis	6	\$1,418,379
Erath	1	\$47,403
Fannin	2	\$1,097,254
Fort Bend	5	\$524,094,837
Freestone	5	\$1,369,919
Galveston	21	\$123,604,917
Glasscock	8	\$7,151,398
Goliad	9	\$22,205,263
Grayson	5	\$1,906,072
Gregg	1	\$400,381
Guadalupe	3	\$125,698
Hale	10	\$41,278,366
Hamilton	1	\$375,010
Harris	164	\$487,389,188
Harrison	11	\$21,177,640
Haskell	1	\$76,240
Hays	7	\$1,171,639
Hemphill	4	\$1,962,590
Henderson	2	\$61,934
Hidalgo	7	\$507,082
Hill	4	\$956,520
Houston	1	\$1,114,600
Howard	2	\$85,967
Hunt	2	\$1,776,433
Hutchinson	6	\$3,904,002
Irion	1	\$880,200

<b>County Name</b>	<b>Number of Applications in 2015</b>	<b>2015 Total Estimated Dollar Value</b>
Jack	7	\$4,004,157
Jackson	14	\$17,284,612
Jefferson	13	\$4,325,670
Johnson	5	\$1,726,997
Karnes	8	\$3,937,320
Kaufman	3	\$5,949,703
Kleburg	1	\$28,142
La Salle	9	\$4,630,229
Lamar	1	\$26,442
Lavaca	1	\$1,212,400
Leon	3	\$495,122
Limestone	3	\$10,967,713
Live Oak	1	\$1,114,600
Llano	1	\$61,726
Loving	5	\$2,744,814
Madison	5	\$2,529,437
Martin	6	\$1,900,616
Matagorda	6	\$11,547,486
McLennan	4	\$3,336,714
McMullen	5	\$5,344,400
Midland	28	\$38,068,414
Milam	2	\$3,695,181
Mitchell	1	\$29,717
Montague	5	\$915,064
Montgomery	8	\$3,486,550
Navarro	6	\$2,530,206
Nolan	1	\$294,285
Nueces	1	\$452,864
Ochiltree	2	\$113,000
Orange	3	\$258,937,394
Palo Pinto	1	\$31,786
Panola	2	\$1,011,000
Parker	6	\$848,614
Pecos	3	\$3,041,800
Potter	1	\$1,183,600
Reagan	3	\$1,868,790
Red River	1	\$159,996
Reeves	11	\$7,232,231
Refugio	10	\$14,613,498
Roberts	1	\$880,200

County Name	Number of Applications in 2015	2015 Total Estimated Dollar Value
Robertson	2	\$4,905,375
Rockwall	3	\$756,381
Rusk	6	\$9,976,317
San Patricio	15	\$126,401,800
Scurry	1	\$122,404
Smith	3	\$61,639,600
Somervell	1	\$848,883
Sterling	2	\$1,500,000
Sutton	1	\$373,260
Tarrant	58	\$8,829,946
Titus	5	\$94,372,936
Travis	55	\$13,161,722
Upshur	2	\$2,327,000
Upton	5	\$2,119,740
Victoria	7	\$13,142,548
Walker	3	\$470,655
Ward	3	\$1,316,830
Webb	9	\$4,191,158
Wheeler	1	\$287,500
Wichita	2	\$662,635
Wilbarger	14	\$6,359,362
Willacy	1	\$108,530
Williamson	23	\$10,499,433
Winkler	4	\$2,260,819
Wise	12	\$4,965,493
Yoakum	1	\$49,240
Young	2	\$80,344
Grand Total	1,087	\$2,816,447,921

## Rules Cited

Each use determination application submitted to the TCEQ must list which rule(s) or regulation(s) are being met or exceeded by using certain pollution control property/equipment. During most years state rules are cited in the majority of applications. For example, 61% of the rules cited in applications received during 2016 were rules that have been adopted by the TCEQ and other Texas state agencies and 36% were adopted by federal agencies. During 2015, rules adopted by the federal agencies were cited in 54% of the applications and only 43% of the applications contained citations to state rules and regulations. This change can be

attributed to 328 service station applications received in 2015 containing citations to federal rules rather than state rules.

During 2016, most of the applications submitted were for equipment intended to control or prevent water or land pollution. Traditionally, applications have listed rules regarding the control of air pollution, but with the increase in oil and gas activities, such as drilling, gathering, and processing, there has been a steady increase in applications for water pollution prevention and control activities.

The TCEQ's guidance requires rule citations to the subsection level. For ease of reading this report, these citations are generally only listed to the chapter level for regulations contained in the Texas Administrative Code (TAC) and Part for regulations contained in the Code of Federal Regulations (CFR).

Below are the six rules most frequently cited in applications for which a positive use determination was granted during Calendar Year 2016.

- 30 TAC §116: Control of Air Pollution by Permits for New Construction or Modification;
- 40 CFR §112: Oil Pollution Prevention;
- 16 TAC §3.8: Water Protection Texas Railroad Commission;
- 49 CFR §192: Transportation; Pipeline and Hazardous Materials Safety Administration, Department of Transportation; Transportation of Natural and Other Gas by Pipeline;
- 30 TAC §115: Control of Air Pollution from Volatile Organic Compounds; and
- 30 TAC §305: Consolidated Permits.

In 2015, the six most frequently cited rules in applications for which a positive use determination was granted are as follows:

- 40 CFR §280: Technical Standards and Corrective Action Requirements for Owners and Operators Of Underground Storage Tanks (UST);
- 40 CFR §112: Oil Pollution Prevention;
- 30 TAC §334: Underground and Aboveground Storage Tanks;
- 16 TAC §3.8: Water Protection Texas Railroad Commission;
- 30 TAC §335: Industrial Solid Waste and Municipal Hazardous Waste; and

- 30 TAC §111: Control of Air Pollution from Visible Emissions and Particulate Matter.

## **Type of Facilities**

Prior to 2013, about 70% of the applications received each year by the TCEQ were submitted by entities that own the following types of facilities. Eighty percent of the applications received in 2013 and 90.5% of the applications received in 2014 were submitted by entities that own these types of facilities:

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

During Calendar Year 2015, only 57% of the applications received were from the types of facilities listed above. The decrease was due to 31% of the applications being from service stations. Approximately 18% of the applications were from natural gas processing, storage, and transportation facilities; 15% were from electricity generating facilities; 10% were from chemical manufacturing facilities; 8% were for drilling rigs; 4% were from manufacturers of building materials; and less than 0.5% were from oil refineries.

During Calendar Year 2016, just over 77% of the applications received were from the types of facilities listed in the bullets above. The increase from 57% to 77% is attributable to a reduction in the number of applications filed for service stations in 2016 versus 2015.

Approximately 26% of the applications were from natural gas processing, storage, and transportation facilities; 10% were from electricity generating facilities; 16% were from chemical manufacturing facilities; 16% were for drilling rigs; 3% were from manufacturers of building materials; and less than 4% were from oil refineries.

## Type of Equipment

Table 8: *Types and Quantities of Equipment Listed on Applications Received in Calendar Year 2016* shows a list of the types of equipment that have been included in applications received during Calendar Year 2016. Since more than one piece of equipment may be included on an application, the number of total pieces of equipment listed is higher than the number of applications received. Most of the listed equipment items were installed to control or prevent water or land pollution.

**Table 8. Types and Quantities of Equipment Listed on Applications Received in Calendar Year 2016**

Type of Equipment	Quantity of Equipment Listed in Calendar Year 2016 Applications
Air Emission Controls - Various	31
Continuous Emission Monitoring Systems	17
Double Hulled Barge	10
Drilling Rigs - Mud Recycling/Blow Out Prevention	96
Dust/Particulate Collection Devices	37
Electrostatic Precipitator	2
Flue Gas Desulphurization	3
Flare	33
Flare Gas Recovery	3
Internal/External Floating Roofs	17
NOx Reduction Equipment	13
Monitoring Equipment	10
Other	15
Pipeline Equipment	12
Selective/Nonselective Catalytic Reduction	8
Scrubber	13
Service Station Equipment	30
Spill Containment	112
Stack	1
Stormwater Controls	57
Thermal Oxidizer	18
Vapor Control	20
Waste Treatment	5
Wastewater Treatment System	27

## **Application Processing**

The average administrative processing time in 2016 was 6 days. During 2015, the average administrative processing time was 10 days.

By rule, staff has a 60-day time frame after an application is declared administratively complete to complete the technical review. In 2016, the average technical review time was two days with 99% of technical reviews being completed in 60 days or less. The technical review of only two applications took longer than sixty days. During 2015, the average technical review time was three days with 99% of technical reviews being completed in 60 days or less.

## **Appeals**

On July 10, 2012, negative determinations were issued for the 38 open applications containing HRSGs. During early August 2012, applicants appealed 24 of the negative determinations. One of the appeals was subsequently withdrawn. During the December 5, 2012 agenda meeting, the commission considered the remaining 23 appeals and remanded the applications to the executive director (ED) for additional consideration. On February 20, 2013, technical notices of deficiency letters were mailed with a response due date of March 26, 2013. On March 6, 2013, a request for clarification of the deficiencies and a 90-day extension of the response due date was received from an attorney representing multiple appellants. On March 19, 2013, a second letter granting the 90-day extension and containing clarification of the information required was issued. The extended response date was June 24, 2013. The applicants provide their response by June 24, 2013. A second round of technical deficiency letters were issued between December 2013 and February 2014. Applicant responses were received in a timely manner. Two more appeals were withdrawn. Negative determinations were issued for the 21 remaining HRSG applications during June, 2014. All 21 were appealed. The appeals were heard at the September 24, 2014 agenda. The commission upheld the negative determinations. The applicant filed suit in district court. The Tier III and Tier IV applications were separated. Briefs for the Tier IV applications were filed in early 2016. The hearing occurred on June 28, 2016. On September 1, 2016 the judge affirmed the negative determinations. Several of the applicants appealed the district court ruling. The eight Tier IV appeals were heard by the Austin Court of Appeals. On July 11, 2017, the Austin Court of Appeals issued the following ruling: "This is an appeal from the judgment signed by the trial court on September 13, 2016. Having reviewed the record and the parties' arguments, the Court holds that there was reversible error in the court's judgment. Therefore, the Court reverses the trial court's judgment and

remands the case to the trial court for further proceedings consistent with the Court's opinion." On August 10, 2017, TCEQ filed a motion for rehearing with the court. The court has not ruled on the motion and has not issued a final judgment. Briefs for the two Tier III applications were filed in November 2015. The judge affirmed the negative determinations on December 23, 2015. The applicant appealed. The appeal was transferred to the El Paso Court of Appeals. Briefs were filed. The hearing occurred in April 2017. On September 18, 2017, the TCEQ was notified that the court issued its ruling. The court ruled in TCEQ's favor. The appeals court affirmed TCEQ's reading of Section 11.31 and its determination that Brazos Electric Power Cooperative was not using the HRSGs as pollution control property. A dissenting justice would have found that TCEQ did not have discretion to deny a positive use determination to HRSGs.

During March 2017 100% positive use determinations were issued for four applications filed by Flint Hills Resources East and West facilities located in Nueces County. Two of the applications were for internal floating roofs installed on storage tanks and the other two were for flare systems. On March 27 the Nueces County Appraisal District appealed the determinations. The basis of the appeal was that the equipment was part of the facility's risk management system and only a partial use determination should have been issued. The appeals were heard by the commission on July 7, 2017. The 100% positive use determinations were upheld.

## ***Appendix A***

### **Applications Received between November 1994 and December 2016, Sorted by County**

**Applications Received between November 1994 and December 2016, Sorted by County**

<b>County</b>	<b>Number of Applications Received</b>	<b>Total Estimated Dollar Value of Projects</b>
Anderson	40	\$60,399,718
Andrews	38	\$21,156,962
Angelina	121	\$192,122,500
Aransas	4	\$1,716,533
Archer	1	\$15,089
Armstrong	1	\$6,387
Atascosa	51	\$83,013,181
Austin	16	\$21,995,610
Bailey	1	\$122,404
Bastrop	35	\$184,345,890
Bee	22	\$32,940,431
Bell	141	\$90,469,948
Bexar	324	\$369,077,237
Borden	9	\$3,463,754
Bosque	42	\$199,787,562
Bowie	30	\$13,347,428
Brazoria	1,181	\$3,470,242,926
Brazos	42	\$23,690,409
Brooks	19	\$12,971,376
Brown	32	\$53,349,878
Burleson	30	\$14,377,776
Burnet	23	\$12,624,270
Caldwell	3	\$3,143,971
Calhoun	192	\$460,132,459
Callahan	11	\$2,166,669
Cameron	34	\$5,252,061
Camp	1	\$32,934
Carson	6	\$743,859
Cass	37	\$84,906,696
Castro	4	\$2,600,137
Chambers	202	\$734,557,671
Cherokee	32	\$20,924,197
Childress	1	\$15,558
Clay	13	\$20,313,608
Cochran	1	\$141,000

County	Number of Applications Received	Total Estimated Dollar Value of Projects
Coke	8	\$2,372,149
Coleman	4	\$639,298
Collin	292	\$109,977,092
Colorado	11	\$3,917,324
Comal	90	\$158,123,735
Comanche	17	\$1,131,139
Concho	4	\$773,378
Cooke	51	\$4,812,162
Coryell	18	\$1,471,877
Cottle	3	\$723,616
Crane	13	\$8,863,976
Crockett	47	\$43,093,031
Culberson	9	\$26,300,554
Dallam	16	\$15,511,344
Dallas	1,095	\$322,407,881
Dawson	1	\$103,050
Deaf Smith	13	\$88,890,892
Delta	5	\$1,824,501
Denton	240	\$136,825,487
DeWitt	36	\$36,754,612
Dimmit	32	\$26,247,463
Donley	1	\$13,316
Duval	17	\$9,957,622
Eastland	27	\$5,972,198
Ector	246	\$420,404,650
Edwards	18	\$14,725,494
El Paso	402	\$704,584,672
Ellis	239	\$734,656,341
Erath	20	\$6,804,255
Falls	12	\$1,533,972
Fannin	26	\$38,652,679
Fayette	19	\$17,880,924
Fisher	5	\$475,405
Floyd	1	\$429,800
Fort Bend	298	\$935,779,810
Franklin	3	\$140,393
Freestone	133	\$407,038,629

County	Number of Applications Received	Total Estimated Dollar Value of Projects
Frio	10	\$23,422,913
Gaines	14	\$25,373,655
Galveston	403	\$2,379,242,702
Garza	1	\$25,000
Gillespie	1	\$31,800
Glasscock	30	\$17,218,528
Goliad	36	\$108,842,768
Gonzales	33	\$21,279,348
Gray	48	\$45,520,007
Grayson	104	\$91,240,258
Gregg	148	\$59,862,427
Grimes	32	\$127,205,811
Guadalupe	48	\$308,788,951
Hale	89	\$94,083,084
Hall	1	\$10,229
Hamilton	4	\$582,662
Hansford	27	\$5,894,829
Hardeman	2	\$17,546,571
Hardin	45	\$56,267,485
Harris	4,157	\$9,419,601,400
Harrison	240	\$351,877,696
Haskell	12	\$4,283,221
Hays	60	\$172,415,633
Hemphill	49	\$34,921,545
Henderson	73	\$16,403,767
Hidalgo	92	\$215,172,140
Hill	45	\$12,969,638
Hockley	17	\$9,648,090
Hood	38	\$63,246,277
Hopkins	26	\$16,499,186
Houston	28	\$14,374,089
Howard	28	\$117,502,364
Hudspeth	1	\$1,657
Hunt	39	\$16,774,729
Hutchinson	108	\$260,068,064
Irion	15	\$4,672,055
Jack	19	\$110,372,626

County	Number of Applications Received	Total Estimated Dollar Value of Projects
Jackson	40	\$50,391,646
Jasper	19	\$71,700,259
Jefferson	860	\$5,917,561,109
Jim Hogg	7	\$3,230,776
Jim Wells	75	\$76,453,861
Johnson	198	\$231,320,361
Jones	16	\$2,095,592
Karnes	35	\$25,251,881
Kaufman	87	\$200,095,785
Kendall	1	\$6,272
Kenedy	6	\$2,501,300
Kent	7	\$3,226,030
Kerr	3	\$631,011
King	3	\$652,175
Kinney	6	\$8,502,514
Kleberg	9	\$473,135
Knox	2	\$291,596
La Salle	56	\$38,962,472
Lamar	42	\$121,269,494
Lamb	59	\$27,767,750
Lampasas	5	\$14,414,304
Lavaca	22	\$30,479,617
Lee	13	\$21,267,133
Leon	31	\$46,538,230
Liberty	43	\$49,255,473
Limestone	136	\$174,597,503
Lipscomb	14	\$4,710,879
Live Oak	38	\$167,710,722
Llano	4	\$330,257
Loving	33	\$31,356,356
Lubbock	53	\$16,804,644
Madison	25	\$35,298,904
Marion	22	\$20,968,907
Martin	19	\$7,713,734
Mason	1	\$3,315,303
Matagorda	102	\$519,544,404
Maverick	6	\$1,961,076

County	Number of Applications Received	Total Estimated Dollar Value of Projects
McCulloch	6	\$4,907,760
McLennan	142	\$674,870,650
McMullen	43	\$30,295,539
Medina	9	\$8,515,559
Midland	83	\$87,205,210
Milam	136	\$1,116,726,364
Mitchell	19	\$6,858,982
Montague	31	\$12,711,674
Montgomery	147	\$112,343,696
Moore	38	\$366,354,975
Morris	16	\$3,647,294
Nacogdoches	92	\$52,098,695
Navarro	63	\$30,313,758
Newton	7	\$134,350,028
Nolan	38	\$15,208,512
Nueces	232	\$1,410,895,840
Ochiltree	23	\$40,873,454
Oldham	3	\$2,645,400
Orange	156	\$610,239,834
Palo Pinto	32	\$7,002,018
Panola	134	\$241,246,298
Parker	75	\$60,674,974
Parmer	6	\$9,317,474
Pecos	51	\$97,590,465
Polk	26	\$23,145,410
Potter	144	\$127,098,650
Rains	2	\$194,078
Randall	7	\$602,248
Reagan	18	\$11,707,633
Red River	14	\$2,193,300
Reeves	40	\$95,303,056
Refugio	20	\$28,486,561
Roberts	7	\$3,844,489
Robertson	99	\$915,964,177
Rockwall	37	\$6,983,312
Runnels	9	\$3,742,271
Rusk	134	\$613,090,250

County	Number of Applications Received	Total Estimated Dollar Value of Projects
Sabine	3	\$1,394,385
San Augustine	7	\$5,728,995
San Jacinto	14	\$18,970,731
San Patricio	56	\$322,292,860
Schleicher	17	\$1,219,383
Scurry	22	\$9,837,655
Shackelford	6	\$1,665,392
Shelby	54	\$25,647,466
Sherman	39	\$14,786,338
Smith	219	\$298,953,960
Somervell	15	\$15,209,401
Starr	33	\$29,469,326
Stephens	8	\$260,626
Sterling	13	\$8,099,814
Stonewall	1	\$93,429
Sutton	52	\$28,589,556
Swisher	1	\$76,240
Tarrant	775	\$491,611,472
Taylor	60	\$128,589,327
Terrell	15	\$10,170,764
Terry	3	\$79,422
Titus	98	\$514,976,004
Tom Green	21	\$36,300,981
Travis	438	\$498,274,099
Trinity	5	\$23,007,565
Tyler	17	\$26,813,666
Upshur	12	\$22,555,280
Upton	41	\$26,602,106
Uvalde	2	\$991,244
Val Verde	6	\$4,485,968
Van Zandt	14	\$2,819,168
Victoria	98	\$348,593,580
Walker	10	\$4,010,854
Waller	24	\$17,470,987
Ward	34	\$20,448,683
Washington	19	\$12,140,937
Webb	81	\$97,671,442

<b>County</b>	<b>Number of Applications Received</b>	<b>Total Estimated Dollar Value of Projects</b>
Wharton	41	\$179,328,548
Wheeler	73	\$71,390,224
Wichita	49	\$47,230,918
Wilbarger	83	\$45,199,610
Willacy	6	\$5,014,594
Williamson	172	\$40,326,361
Wilson	10	\$9,984,629
Winkler	18	\$19,710,910
Wise	171	\$235,222,791
Wood	20	\$5,948,468
Yoakum	19	\$115,357,945
Young	20	\$7,765,403
Zapata	44	\$27,002,047
Zavala	6	\$8,538,059
<b>Total</b>	<b>19,637</b>	<b>\$43,495,057,983</b>