

Tax Relief for Pollution Control Property

2017 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.”¹

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.² 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.³ 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.⁴

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

¹ TEXAS CONSTITUTION, Article 8, §1-1(a), (November 2, 1993).

² TTC, §11.31(c) & (d).

³ TTC, §11.31(i).

⁴ 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, 2017, a total of 20,289 applications have been received.

Table 1: *Total Number of Applications Filed since Program Inception (November 1994 - December 2017)* 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 2017)

Status	Tier I	Tier II	Tier III	Tier IV⁵	Total
Approved	17,738	533	252	25	18,548
Denied	235	39	30	40	344
Under Review	24	1	1	0	26
Withdrawn	1,270	55	32	14	1,371
Total	19,267	628	315	79	20,289

Table 2: *Number of Applications Received During 2017* shows the number of applications received during Calendar Year 2017, categorized by tier level and by approval status. A total of 652 applications were received during 2017 and, of those, 88% were approved, and 9% were withdrawn or returned. Less than 0.2% were denied and 3% were still under review as of January 1, 2017. While this report is primarily for Calendar Year 2017 application activities, Calendar Year 2016 information is also provided for comparison purposes.

Table 2. Number of Applications Received During 2017

Status	Tier I	Tier II	Tier III	Total
Approved	533	40	2	575
Denied	1	0	0	1
Under Review	18	1	1	20
Withdrawn	50	6	0	56
Total	602	47	3	652

⁵ 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 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, 11% were withdrawn, and less than 1% were denied.

Table 3. Number of Applications Received During 2016

Status	Tier I	Tier II	Tier III	Total
Approved	490	31	3	524
Denied	1	0	0	1
Withdrawn	65	0	0	65
Total	556	31	3	590

Fees Received

The estimated fees received during Calendar Years 2016 and 2017 were \$121,900 and \$144,800 respectively. Table 4: *Application Fees Collected by Tier Level for Years 2016 and 2017* shows fee collections by tier level for years 2016 and 2017. The increase in total fees between 2017 and 2016 is attributable to an increase in the number of Tier I and Tier II 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 84th 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 2016 and 2017

Calendar Year	Tier I	Tier II	Tier III	Year Total
2016	\$83,400	\$31,000	\$7,500	\$121,900
2017	\$90,300	\$47,000	\$7,500	\$144,800

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

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	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
2017	3	\$5,410,014
Total	315	\$7,049,288,717

Applications Received in 2017 – County Information

Around 47% of the applications received during Calendar Year 2017 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 51% of the total estimated dollar value in the use determination applications. Over 78% of the applications, containing 84% 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 235 of Texas's 254 counties. Applications have not been received from the following counties: Bandera, Baylor, Blanco, Brewster, Briscoe, Collingsworth, Crosby, 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 2017, the population of these counties represents less than 0.4% of the population of Texas.

Table 6: *Applications Received for Calendar Year 2017 Grouped by County* shows the distribution, by county, of all Tier I, II, and III applications received during Calendar Year 2017 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 2017 and the total estimated dollar value.

Table 6. Applications Received for Calendar Year 2017 Grouped by County

County Name	Number of Applications in 2017	2017 Total Estimated Dollar Value
Andrews	6	\$928,989
Angelina	7	\$6,868,565
Austin	1	\$3,540,000
Bastrop	3	\$1,659,276
Bee	5	\$4,231,788
Bexar	8	\$6,219,056
Brazoria	53	\$146,920,506
Brazos	2	\$372,924
Burleson	4	\$816,370
Burnet	2	\$200,000
Caldwell	1	\$159,462
Calhoun	1	\$143,462
Cameron	5	\$27,264,555
Cass	2	\$305,993
Chambers	1	\$87,217
Cochran	2	\$144,213
Coleman	1	\$941,605
Collin	9	\$5,202,735
Colorado	1	\$1,489,500
Comal	6	\$1,536,520

County Name	Number of Applications in 2017	2017 Total Estimated Dollar Value
Comanche	1	\$77,505
Coryell	1	\$159,462
Crane	5	\$5,435,846
Crockett	1	\$240,720
Culberson	6	\$3,486,519
Dallas	13	\$4,859,691
Delta	3	\$1,704,053
Denton	5	\$7,906,694
Dickens	1	\$122,404
Dimmit	1	\$186,462
Ector	8	\$2,557,923
El Paso	1	\$1,205,242
Ellis	11	\$97,383,483
Erath	1	\$44,615
Falls	1	\$41,707
Fannin	3	\$4,849,944
Fort Bend	1	\$174,462
Frio	11	\$22,643,784
Gaines	4	\$982,747
Galveston	5	\$2,730,893
Gillespie	1	\$162,462
Glasscock	1	\$937,500
Gray	4	\$26,441,485
Guadalupe	1	\$203,077
Harris	161	\$386,159,176
Harrison	15	\$46,373,879
Hays	2	\$466,010
Henderson	1	\$24,670
Hidalgo	9	\$12,535,753
Hockley	1	\$5,643,945
Hood	1	\$531,436
Houston	1	\$1,180,376
Howard	3	\$3,177,720
Hunt	1	\$25,252
Hutchinson	2	\$2,231,000
Jackson	2	\$4,389,340
Jefferson	7	\$20,071,908
Johnson	15	\$26,749,560
Karnes	5	\$4,513,762

County Name	Number of Applications in 2017	2017 Total Estimated Dollar Value
Kendall	1	\$226,225
Kenedy	4	\$19,315,216
Kerr	1	\$203,077
Kleberg	4	\$7,549,792
La Salle	6	\$1,384,827
Lamar	4	\$688,571
Lampasas	1	\$115,579
Lavaca	2	\$1,125,538
Leon	1	\$30,673
Liberty	2	\$476,690
Limestone	1	\$186,462
Live Oak	1	\$858,528
Llano	1	\$3,431,000
Loving	8	\$7,936,285
Martin	2	\$1,583,928
Maverick	1	\$186,462
McLennan	1	\$159,462
McMullen	1	\$858,528
Midland	13	\$6,492,979
Montgomery	3	\$631,583
Moore	3	\$1,292,027
Navarro	2	\$125,407
Nolan	3	\$9,652,692
Nueces	29	\$306,101,587
Oldham	1	\$122,404
Orange	12	\$40,624,524
Parmer	1	\$59,414
Pecos	6	\$6,540,113
Polk	4	\$1,815,924
Potter	2	\$51,512,436
Randall	1	\$77,505
Reeves	19	\$24,415,091
Rusk	1	\$73,107
Sabine	1	\$162,462
San Patricio	3	\$1,788,839
Scurry	1	\$29,317
Smith	1	\$71,317
Tarrant	4	\$508,146
Titus	3	\$1,481,799

County Name	Number of Applications in 2017	2017 Total Estimated Dollar Value
Tom Green	2	\$405,882
Travis	8	\$6,165,904
Upton	9	\$4,577,438
Uvalde	1	\$159,462
Val Verde	1	\$120,462
Van Zandt	2	\$81,432
Victoria	1	\$218,275
Waller	2	\$72,147
Ward	6	\$4,048,974
Wharton	1	\$100,000
Wheeler	2	\$1,328,000
Wilbarger	2	\$4,219,444
Willacy	5	\$11,554,888
Williamson	8	\$826,153
Winkler	8	\$4,742,358
Wise	2	\$149,702
Young	1	\$0 ⁶
	652	\$1,446,311,244

Table 7: 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.

Table 7. Applications Received for Calendar Year 2016 Grouped by County

County Name	Number of Applications in 2016	2016 Total Estimated Dollar Value
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

⁶ As received this application did not contain an estimated cost. An Administrative notice of deficiency was issued and the response was pending on December 31, 2017.

County Name	Number of Applications in 2016	2016 Total Estimated Dollar Value
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
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 ⁷
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

⁷ None of the five applications contained a dollar value and all five were withdrawn.

County Name	Number of Applications in 2016	2016 Total Estimated Dollar Value
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
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

County Name	Number of Applications in 2016	2016 Total Estimated Dollar Value
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
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

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 2016 and 2017, 61% of the rules cited in applications were rules that have been adopted by the TCEQ and other Texas state agencies and 36% were adopted by federal agencies.

During 2017, 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 2017.

- 30 TAC §116: Control of Air Pollution by Permits for New Construction or Modification;
- 30 TAC §334: Underground and Aboveground Storage Tanks;
- 40 CFR §112: Oil Pollution Prevention;
- 49 CFR §195: Transportation of Hazardous Liquids by Pipeline;
- 30 TAC §307: Texas Surface Water Quality Standards; and
- 30 TAC §111: Control of Air Pollution from Visible Emissions and Particulate Matter

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.

Type of Facilities

During 2016, just over 77% of the applications received by the TCEQ were submitted by entities that one the following 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 2017, 79% of the applications received were from the types of facilities listed above. Approximately 33% of the applications were from natural gas processing, storage, and transportation facilities; 33% were from chemical manufacturing facilities; 11% were from electricity generating facilities; and 17% were from service stations.

Type of Equipment

Table 8: *Types and Quantities of Equipment Listed on Applications Received in Calendar Year 2017* shows a list of the types of equipment that have been included in applications received during Calendar Year 2017. 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 2017

Type of Equipment	Quantity of Equipment Listed in Calendar Year 2017 Applications
Air Emission Controls - Various	30
Continuous Emission Monitoring Systems	14
Double Hulled Barge	27
Drilling Rigs - Mud Recycling/Blow Out Prevention	6
Dust/Particulate Collection Devices	45
Electrostatic Precipitator	2
Flue Gas Desulfurization	9
Flare	46
Flare Gas Recovery	0
Internal/External Floating Roofs	17
NOx Reduction Equipment	19
Monitoring Equipment	8
Other	39
Pipeline Equipment	127
Selective/Nonselective Catalytic Reduction	13
Scrubber	17
Service Station Equipment	94
Spill Containment	96
Stack	5
Stormwater Controls	19
Thermal Oxidizer	7
Vapor Control	27
Waste Treatment	3
Wastewater Treatment System	44

Application Processing

The average administrative processing time in 2017 was five days. During 2016, the average administrative processing time was six days.

By rule, staff has a 60-day time frame after an application is declared administratively complete to complete the technical review. In 2017, 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 2016, the average technical review time was two days with 99% of technical reviews being completed in 60 days or less.

Appeals

HRSGs

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. On January 8, 2018, the court denied the motion. On March 26, 2018, the TCEQ filed a petition for review with the Texas Supreme Court asking for a review of the appeals court decision.

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 on April 13, 2017. On

September 15, 2017, 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. The appellant filed a motion for rehearing. On October 23, 2017, the court denied the motion. On October 23, 2017, the appellant petitioned the Texas Supreme Court for review of the decision. On March 29, 2018, the TCEQ filed a response to the petition for review.

Other Appeals

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, 2017, the Nueces County Appraisal District appealed the determinations. The basis of the appeals 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.

Electronic Application Process

In September 2017 the agency deployed a Tax Relief for Pollution Control Property application on the State of Texas Environmental Electronic Reporting System (STEERS). This system allows an applicant to prepare an application electronically, pay the application fee, and submit the application to the TCEQ. Program staff will use the ePermits system to review the electronic applications. All correspondence between the applicants and staff will be handled electronically. As of December 31, 2017, a total of 50 applications had been received and processed electronically.

Appendix A

Applications Received between November 1994 and December 2017, Sorted by County

Applications Received between November 1994 and December 2017, Sorted by County

County	Number of Applications Received	Total Estimated Dollar Value of Projects
Anderson	46	\$61,328,707
Andrews	38	\$21,156,962
Angelina	128	\$198,991,065
Aransas	4	\$1,716,533
Archer	1	\$15,089
Armstrong	1	\$6,387
Atascosa	51	\$83,013,181
Austin	17	\$25,535,610
Bailey	1	\$122,404
Bastrop	38	\$186,005,166
Bee	27	\$37,172,219
Bell	141	\$90,469,948
Bexar	332	\$375,296,293
Borden	9	\$3,463,754
Bosque	42	\$199,787,562
Bowie	30	\$13,347,428
Brazoria	1,234	\$3,617,163,432
Brazos	44	\$24,063,333
Brooks	19	\$12,971,376
Brown	32	\$53,349,878
Burleson	34	\$15,194,146
Burnet	25	\$12,824,270
Caldwell	4	\$3,303,433
Calhoun	193	\$460,275,921
Callahan	11	\$2,166,669
Cameron	39	\$32,516,616
Camp	1	\$32,934
Carson	6	\$743,859
Cass	39	\$85,212,689
Castro	4	\$2,600,137
Chambers	203	\$734,644,888
Cherokee	32	\$20,924,197
Childress	1	\$15,558
Clay	13	\$20,313,608
Cochran	3	\$285,213
Coke	8	\$2,372,149
Coleman	5	\$1,580,903
Collin	301	\$115,179,827

County	Number of Applications Received	Total Estimated Dollar Value of Projects
Colorado	12	\$5,406,824
Comal	96	\$159,660,255
Comanche	18	\$1,208,644
Concho	4	\$773,378
Cooke	51	\$4,812,162
Coryell	19	\$1,631,339
Cottle	3	\$723,616
Crane	18	\$14,299,822
Crockett	48	\$43,333,751
Culberson	15	\$29,787,073
Dallam	16	\$15,511,344
Dallas	1,108	\$327,267,572
Dawson	1	\$103,050
Deaf Smith	13	\$88,890,892
Delta	8	\$3,528,554
Denton	245	\$144,732,181
DeWitt	36	\$36,754,612
Dickens	1	\$122,404
Dimmit	33	\$26,433,925
Donley	1	\$13,316
Duval	17	\$9,957,622
Eastland	27	\$5,972,198
Ector	254	\$422,962,573
Edwards	18	\$14,725,494
El Paso	403	\$705,789,914
Ellis	250	\$832,039,824
Erath	21	\$6,848,870
Falls	13	\$1,575,679
Fannin	29	\$43,502,623
Fayette	19	\$17,880,924
Fisher	5	\$475,405
Floyd	1	\$429,800
Fort Bend	299	\$935,954,272
Franklin	3	\$140,393
Freestone	133	\$407,038,629
Frio	21	\$46,066,697
Gaines	18	\$26,356,402
Galveston	408	\$2,381,973,595
Garza	1	\$25,000
Gillespie	2	\$194,262

County	Number of Applications Received	Total Estimated Dollar Value of Projects
Glasscock	31	\$18,156,028
Goliad	36	\$108,842,768
Gonzales	33	\$21,279,348
Gray	52	\$71,961,492
Grayson	104	\$91,240,258
Gregg	148	\$59,862,427
Grimes	32	\$127,205,811
Guadalupe	49	\$308,992,028
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	4,318	\$9,805,760,576
Harrison	255	\$398,251,575
Haskell	12	\$4,283,221
Hays	62	\$172,881,643
Hemphill	49	\$34,921,545
Henderson	74	\$16,428,437
Hidalgo	101	\$227,707,893
Hill	45	\$12,969,638
Hockley	18	\$15,292,035
Hood	39	\$63,777,713
Hopkins	26	\$16,499,186
Houston	29	\$15,554,465
Howard	31	\$120,680,084
Hudspeth	1	\$1,657
Hunt	40	\$16,799,981
Hutchinson	110	\$262,299,064
Irion	15	\$4,672,055
Jack	19	\$110,372,626
Jackson	42	\$54,780,986
Jasper	19	\$71,700,259
Jefferson	867	\$5,937,633,017
Jim Hogg	7	\$3,230,776
Jim Wells	75	\$76,453,861
Johnson	213	\$258,069,921
Jones	16	\$2,095,592
Karnes	40	\$29,765,643

County	Number of Applications Received	Total Estimated Dollar Value of Projects
Kaufman	87	\$200,095,785
Kendall	2	\$232,497
Kenedy	10	\$21,816,516
Kent	7	\$3,226,030
Kerr	4	\$834,088
King	3	\$652,175
Kinney	6	\$8,502,514
Kleberg	13	\$8,022,927
Knox	2	\$291,596
La Salle	62	\$40,347,299
Lamar	46	\$121,958,065
Lamb	59	\$27,767,750
Lampasas	6	\$14,529,883
Lavaca	24	\$31,605,155
Lee	13	\$21,267,133
Leon	32	\$46,568,903
Liberty	45	\$49,732,163
Limestone	137	\$174,783,965
Lipscomb	14	\$4,710,879
Live Oak	39	\$168,569,250
Llano	5	\$3,761,257
Loving	41	\$39,292,641
Lubbock	53	\$16,804,644
Madison	25	\$35,298,904
Marion	22	\$20,968,907
Martin	21	\$9,297,662
Mason	1	\$3,315,303
Matagorda	102	\$519,544,404
Maverick	7	\$2,147,538
McCulloch	6	\$4,907,760
McLennan	143	\$675,030,112
McMullen	44	\$31,154,067
Medina	9	\$8,515,559
Midland	96	\$93,698,189
Milam	136	\$1,116,726,364
Mitchell	19	\$6,858,982
Montague	31	\$12,711,674
Montgomery	150	\$112,975,279
Moore	41	\$367,647,002
Morris	16	\$3,647,294

County	Number of Applications Received	Total Estimated Dollar Value of Projects
Nacogdoches	92	\$52,098,695
Navarro	65	\$30,439,165
Newton	7	\$134,350,028
Nolan	41	\$24,861,204
Nueces	261	\$1,716,997,427
Ochiltree	23	\$40,873,454
Oldham	4	\$2,767,804
Orange	168	\$650,864,358
Palo Pinto	32	\$7,002,018
Panola	134	\$241,246,298
Parker	75	\$60,674,974
Parmer	7	\$9,376,888
Pecos	57	\$104,130,578
Polk	30	\$24,961,334
Potter	146	\$178,611,086
Rains	2	\$194,078
Randall	8	\$679,753
Reagan	18	\$11,707,633
Red River	14	\$2,193,300
Reeves	59	\$119,718,147
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	135	\$613,163,357
Sabine	4	\$1,556,847
San Augustine	7	\$5,728,995
San Jacinto	14	\$18,970,731
San Patricio	59	\$324,081,699
Schleicher	17	\$1,219,383
Scurry	23	\$9,866,972
Shackelford	6	\$1,665,392
Shelby	54	\$25,647,466
Sherman	39	\$14,786,338
Smith	220	\$299,025,277
Somervell	15	\$15,209,401
Starr	33	\$29,469,326
Stephens	8	\$260,626
Sterling	13	\$8,099,814

County	Number of Applications Received	Total Estimated Dollar Value of Projects
Stonewall	1	\$93,429
Sutton	52	\$28,589,556
Swisher	1	\$76,240
Tarrant	779	\$492,119,618
Taylor	60	\$128,589,327
Terrell	15	\$10,170,764
Terry	3	\$79,422
Titus	101	\$516,457,803
Tom Green	23	\$36,706,863
Travis	446	\$504,440,003
Trinity	5	\$23,007,565
Tyler	17	\$26,813,666
Upshur	12	\$22,555,280
Upton	50	\$31,179,544
Uvalde	3	\$1,150,706
Val Verde	7	\$4,606,430
Van Zandt	16	\$2,900,600
Victoria	99	\$348,811,855
Walker	10	\$4,010,854
Waller	26	\$17,543,134
Ward	40	\$24,497,657
Washington	19	\$12,140,937
Webb	81	\$97,671,442
Wharton	42	\$179,428,548
Wheeler	75	\$72,718,224
Wichita	49	\$47,230,918
Wilbarger	85	\$49,419,054
Willacy	11	\$16,569,482
Williamson	180	\$41,152,514
Wilson	10	\$9,984,629
Winkler	26	\$24,453,268
Wise	173	\$235,372,493
Wood	20	\$5,948,468
Yoakum	19	\$115,357,945
Young	21	\$7,765,403
Zapata	44	\$27,002,047
Zavala	6	\$8,538,059
Total	20,289	\$44,941,369,221

