

2017 Annual Report

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

February 26, 2018

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 §1-1 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 authority for the 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, 81st 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 focus on the following question:

Which rules, guidelines, forms, instructions, practice, website, 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.¹
2. Number of Members – May not exceed 13.²
3. Terms – Commission appoints or re-appoints members to staggered four-year terms.³
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.⁴
5. Presiding Officer – Annual elections or at the request of a majority of the members of the Committee. May be re-appointed.⁵
6. Meetings – Quarterly or at the call of the Presiding Officer or the Commissioners.⁶
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.⁷
8. Voting – The Committee will vote on any issue communicated as advice to the Commissioners and other issues within the purview of the Committee. If a vote does not have a consensus, minority members are encouraged to submit minority reports for the Commissioners’ consideration.⁸
9. Reports to the Commission – 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.⁹

Members of 2017 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.

References below are to bylaws of the TCEQ Tax Relief for Pollution Control Property Advisory Committee, revised April 27, 2012.

¹ Article 1, Section 1

² Article 2, Section 1

³ Article 2, Section 2

⁴ Article 2, Section 4

⁵ Article 3, Section 2

⁶ Article 4, Section 1

⁷ Article 4, Section 3

⁸ Article 5, Section 4

⁹ Article 6, Section 2

The term for each member is four years. Years indicate expiration of their term (December 31).

Representing Industry

- Bob Adair (2017), with Phillips 66 Company (Chair, 2010-2017)
Representing the Texas Oil and Gas Association
- Tim Jones¹⁰ (2017), with Samsung Austin Semiconductor
Representing Texas Association of Manufacturers
- Paul Coon (2019)
Representing the Association of Electric Companies of Texas
- Greg Maxim (2019), with Cummings Westlake
- Michael Nasi (2019), 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), Representing the Texas Association of Appraisal Districts
- Wayne Frazell (2017), with Pritchard & Abbott, Inc.

Representing Taxing Units

- Lloyd Graham (2019), with La Porte Independent School District
Representing school districts
- Don Lee (2019), with the Texas Conference of Urban Counties
- Bennett Sandlin (2017), with the Texas Municipal League

Representing the Environmental Group

- Dr. Cyrus Reed (2019), with the Sierra Club

Independent Technical Expert

- Charles Allred (2017)

Committee members whose term expired year-end 2017, except Bennett Sandlin, applied for reappointment to another four-year term and TCEQ Commissioners affirmed these reappointments in their December 13, 2017 public meeting. Bennett Sandlin decided not to seek reappointment. The Commissioners filled this position with the appointment of Bill Longley, with the Texas Municipal League.

¹⁰ Committee member Robert Castor resigned from the Committee on October 5, 2016 due to an employment change. TCEQ solicited nominations to complete his term, with a public application period. On February 15, 2017, Commissioners approved the appointment of Tim Jones, with Samsung Austin Semiconductor, nominated by the Texas Association of Manufacturers.

Primary 2017 Actions Taken by Committee

Each Committee meeting generally lasts less than two hours 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 2017 in the agenda room of TCEQ on March 31 and September 25 and via conference call on June 12 and November 28. Each meeting notice was posted on TCEQ's website at <http://www.tceq.texas.gov/airquality/taxrelief> and TCEQ's Email List Service.

The Committee provided no advice to Commissioners in 2017.

Items discussed and/or decided in 2017 included:

1. Reviewed and approved the Committee's 2016 annual report.¹¹
2. The Committee requested TCEQ staff to inform them of Prop 2 legislation they are monitoring. TCEQ staff complied by indicating bill numbers but clarified they are not able to express opinions regarding the content of pending legislation.^{11, 12}
3. Committee members monitored changes to the Prop 2 application process, including: (1) revised Core Data Form; and (2) plans and implementation of an electronic submission process for use determination applications through STEERS (State of Texas Environmental Electronic Reporting System). TCEQ staff indicated applicants have expressed little difficulty in completing the Core Data Form in addition to the Tax Relief Application.¹¹ Staff also explained the Tax Relief electronic application process includes from the filing of and paying for the initial application through the issuance of the final determination. Written instructions for electronic filing through STEERS is available on TCEQ's website. TCEQ will continue to accept paper applications.¹³
4. The Committee requested TCEQ staff 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 rules discussions by the Committee. TCEQ Legal and/or Air Quality Division staff provided verbal updates in Committee meetings.^{11, 13, Error! Bookmark not defined.}
5. An election for the 2018 Committee Presiding Officer (chairman) was not held during the last committee meeting of 2017 (annual election required by Article 3 of the Committee bylaws). The Committee agreed to hold the election during the first Committee meeting in 2018 so that any new members can vote to select the Committee chairman.¹⁴ On February 16, 2018, Bob Adair was reelected 2018 Chairman of the Committee.
6. The Committee again agreed to schedule all quarterly 2018 Committee meetings for the entire year.¹⁴ The 2018 meeting dates are February 16, April 30, September 10, and December 3, which was noticed on TCEQ's website at www.tceq.texas.gov/airquality/taxrelief/advisory_group.html.

¹¹ March 31, 2017 meeting minutes of the Committee

¹² June 12, 2017 meeting minutes of the Committee

¹³ **September 25**, 2017 meeting minutes of the Committee

¹⁴ November 28, 2017 meeting minutes of the Committee

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 conducts public meetings to provide an opportunity to receive verbal input from the public and perspectives from industry, government and independent representatives on the Committee. The Committee also welcomes and encourages written input on issues within the scope of the Committee.

TCEQ Chairman Bryan Shaw expressed the following opinions of the Committee:

"Thank you for your efforts in continuing to make sure that we have this very important advisory panel in place."¹⁵

"I think it's appropriate to approve these [names] and I thank them for their willingness to serve."¹⁶

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 most members chose not to seek reimbursement. Total 2017 requested travel reimbursement was \$54.82.
- TCEQ Advisory Committee Time – Two public meetings at TCEQ's office in Austin (with travel for most members), two public conference call meetings and additional hours reviewing issues, and hearing perspectives from a variety of interested parties.
- TCEQ Staff Time – 115 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 at TCEQ's office on February 16, 2018 and submitted to TCEQ Commissioners and Executive Director on February 26, 2018.

Respectfully,



Bob Adair

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

¹⁵ February 15, 2017 Commissioners' Agenda meeting, Item 3, which the Commissioners voted to "Adopt the proposed Resolution appointment of Mr. Timothy Jones to the Tax Relief for Pollution Control Property Advisory Committee as a representative from industry to complete the remaining term of Mr. Robert Castor set to expire on December 31, 2017."

¹⁶ December 13, 2017 Commissioners' Agenda meeting, Item 3, which the Commissioners voted to reappoint Bob Adair, Charles Allred, Roland Bieber, Mike Ford, Wayne Frazell, and Tim Jones, and appoint Bill Longley, all to serve a four-year term expiring December 31, 2021.