March 18, 2019

Mr. Jon Niermann, Chairman
Ms. Emily Lindley, Commissioner
Texas Commission on Environmental Quality
Mail Code 100
P.O. Box 13087
Austin, TX 78711-3087

Mr. Chairman and Commissioner:

In compliance with bylaws of the TCEQ Tax Relief for Pollution Control Property Advisory Committee, attached is an original and copy of the 2018 Annual Report of the Committee. The report was also emailed to Shelley Naik to be posted on TCEQ's website.

We appreciate the perspectives and significant work of Committee members and TCEQ staff during 2018. Although differences remain in such a diverse group of 13 members, we continue a commitment to productive discussion of various issues in this program and adhere to our statutory requirement to "advise the commission regarding the implementation of" Tax Code §11.31.

Please feel free to contact me at (832) 765-1419 or bob.adair@p66.com or other Committee members regarding issues within the purview of this Committee.

Respectfully submitted,

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

c: Shelley Naik, Stationary Source Programs, Air Quality Division, TCEQ
Members of TCEQ Tax Relief for Pollution Control Property Advisory Committee

2018
Annual Report

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

March 18, 2019

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 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 2018 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 (2021), with Phillips 66 Company (Chair, 2010-2019)
  Representing the Texas Oil and Gas Association
- Paul Coon (2019)
  Representing the Association of Electric Companies of Texas
- Michael Ford (2021), with Dow DuPont
  Representing the Texas Chemical Council
- Tim Jones (2021), with Samsung Austin Semiconductor
  Representing Texas Association of Manufacturers
- Greg Maxim (2019), with Cummings Westlake
- Michael Nasi (2019), with Jackson, Walker
  Representing the Clean Coal Technology Foundation

Representing Appraisal Districts

- Roland Bieber (2021), representing the Texas Association of Appraisal Districts
- Wayne Frazell[10] (December 3, 2018), with Pritchard & Abbott, Inc.

Representing Taxing Units

- Lloyd Graham (2019), with La Porte Independent School District
  Representing school districts
- Don Lee (2019), formerly with the Texas Conference of Urban Counties
- Bill Longley (2021), with the Texas Municipal League

Representing the Environmental Group

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

Independent Technical Expert

- Charles Allred (2021)

[10] Wayne Frazell retired and notified TCEQ on October 8, 2018 that his resignation from the appraisal districts position on the Committee would be effective December 4, 2018. A request for applications for nomination to fill this vacancy was published in the November 2, 2018 issue of the *Texas Register*. TCEQ reviewed the applications received and recommended Daryl Attaway, with Pritchard & Abbott. On February 13, 2019, TCEQ Commissioners approved the Executive Director's recommendation to appoint Daryl Attaway for a term that will expire December 31, 2021.

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.

Former 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."[16]
>
> "I think it's appropriate to approve these [names] and I thank them for their willingness to serve."[17]

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 2018 requested travel reimbursement was $408.74.
- TCEQ Advisory Committee Time – Four public meetings at TCEQ's office in Austin (with travel for most members) and additional hours reviewing issues, and hearing perspectives from a variety of interested parties.
- TCEQ Staff Time – 111 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 22, 2019 and submitted to TCEQ Commissioners and Executive Director on March 18, 2019.

Respectfully,

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

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[16] 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."

[17] 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.