

Tax Relief for Pollution Control Property

2015 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-I 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 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

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

² TTC, §11.31(c) & (d).

³ TTC, §11.31(i).

⁴ TTC, §11.31(g).

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, 2015, a total of 19,047 applications have been received.

Table 1: *Total Number of Applications Filed since Program Inception (November 1994 – December 2015)* 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 2015)

Status	Tier I	Tier II	Tier III	Tier IV ⁵	Total
Approved	16,718	462	247	25	17,452
Denied	233	39	30	40	342
Under Review	3	0	0	0	3
Withdrawn	1,155	49	32	14	1,250
Total	18,109	550	309	79	19,047

Table 2: *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, and 17% were withdrawn. Less than 1% were denied or still under review as of January 1, 2016. While this report is primarily for Calendar Year 2015 application activities, Calendar Year 2014 information is also provided for comparison purposes.

Table 2. Number of Applications Received During 2015

Status	Tier I	Tier II	Tier III	Total
Approved	867	15	11	893
Denied	1	0	2	3
Under Review	3	0	0	3
Withdrawn	179	9	0	188
Total	1,050	24	13	1,087

Table 3: *Number of Applications Received During 2014* shows the number of applications received during Calendar Year 2014, categorized by tier level and by approval status. A total of 1,107 applications were received during 2014 and, of those, 89% were approved, 10% were withdrawn, and less than 1% were denied.

Table 3. Number of Applications Received During 2014

Status	Tier I	Tier II	Tier III	Total
Approved	943	36	5	984
Denied	2	0	2	4
Withdrawn	109	10	0	119
Total	1,054	46	7	1,107

Fees Received

The estimated fees received during Calendar Years 2015 and 2014 were \$214,000 and \$221,600, respectively. Table 4: *Application Fees Collected by Tier Level for*

⁵ Tier IV level was created February 7, 2008, and was combined with the Tier III level effective December 13, 2010.

Years 2015 and 2014 shows fee collections by tier level for years 2015 and 2014. The decrease in total fees between 2015 and 2014 is attributable to a decrease 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 6, of the General Appropriations Act for the 2014-15 Biennium, enacted by the 83rd 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 2014

Calendar Year	Tier I	Tier II	Tier III	Year Total
2014	\$158,100	\$46,000	\$17,500	\$221,600
2015	\$157,500	\$24,000	\$32,500	\$214,000

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 17% 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

Calendar Year	Number of Applications	Estimated Dollar Value of Projects
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
Total	296	\$6,975,294,185

Applications Received in 2015 – County Information

Around 45% of the applications received during Calendar Year 2015 were from entities located in counties within the Dallas-Fort Worth and Houston-Galveston-Brazoria nonattainment areas and the Beaumont-Port Arthur area. These applications also represent 74% of the total estimated dollar value in the use determination applications. Over 78% of the applications, containing 79% 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 233 of Texas' 254 counties. Applications have not been received from the following counties: Bailey, 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. As of 2015, the population of these counties represents less than 0.7% of the population of Texas.

Table 6 *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. Appendix A includes a table that shows the distribution, by county, of all applications received between November 1994 and December 2015 and the total estimated dollar value.

Table 6. Applications Received for Calendar Year 2015 Grouped by County

County Name	Number of Applications in 2015	2015 Total Estimated Dollar Value
Andrews	2	\$59,024
Atascosa	2	\$568,817
Bastrop	2	\$126,670
Bee	9	\$28,199,260
Bell	14	\$27,157,885

County Name	Number of Applications in 2015	2015 Total Estimated Dollar Value
Bexar	64	\$17,648,493
Bosque	4	\$3,808,915
Bowie	4	\$322,003
Brazoria	34	\$595,266,771
Brazos	7	\$5,614,850
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

County Name	Number of Applications in 2015	2015 Total Estimated Dollar Value
Houston	1	\$1,114,600
Howard	2	\$85,967
Hunt	2	\$1,776,433
Hutchinson	6	\$3,904,002
Irion	1	\$880,200
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

County Name	Number of Applications in 2015	2015 Total Estimated Dollar Value
Reagan	3	\$1,868,790
Red River	1	\$159,996
Reeves	11	\$7,232,231
Refugio	10	\$14,613,498
Roberts	1	\$880,200
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

Table 7: Applications Received for Calendar Year 2014 Grouped by County shows the distribution, by county, of all Tier I, II, and III applications received during Calendar Year 2014 and the total estimated dollar value.

Table 7. Applications Received for Calendar Year 2014 Grouped by County

County Name	Number of Applications in 2014	2014 Total Estimated Dollar Value
Anderson	3	\$1,849,349
Andrews	9	\$5,161,119
Aransas	3	\$232,533
Atascosa	6	\$12,548,167
Bastrop	2	\$1,036,030
Bee	5	\$2,139,048
Bell	19	\$28,287,453
Bexar	5	\$7,904,351
Borden	2	\$71,112
Bosque	16	\$47,606,903
Brazoria	10	\$23,996,239
Brazos	2	\$937,046
Brown	4	\$555,927
Burleson	1	\$70,372
Burnet	2	\$105,430
Calhoun	13	\$1,743,146
Callahan	3	\$836,165
Castro	1	\$76,240
Chambers	9	\$11,101,466
Clay	3	\$2,085,015
Coke	1	\$69,546
Coleman	1	\$486,094
Collin	46	\$6,175,146
Comal	6	\$8,131,580
Comanche	2	\$286,121
Cooke	5	\$2,150,637
Coryell	6	\$792,475
Crane	2	\$1,357,640
Crockett	11	\$11,998,996
Dallas	140	\$27,899,169
Denton	27	\$4,691,489
Dewitt	3	\$3,441,600
Dimmit	5	\$2,298,600
Eastland	2	\$715,202
Ector	15	\$9,093,167
Edwards	5	\$8,671,212
El Paso	3	\$968,053
Ellis	9	\$76,398,091
Erath	1	\$134,098

County Name	Number of Applications in 2014	2014 Total Estimated Dollar Value
Fannin	3	\$1,209,203
Fayette	1	\$1,212,400
Fisher	1	\$335,014
Fort Bend	1	\$3,219,000
Franklin	1	\$114,535
Freestone	2	\$608,418
Frio	6	\$5,634,318
Gaines	2	\$584,240
Galveston	3	\$682,000
Glasscock	11	\$4,637,727
Goliad	6	\$5,921,705
Gonzales	3	\$2,298,200
Grayson	11	\$52,342,986
Gregg	7	\$4,434,855
Grimes	2	\$1,089,107
Guadalupe	1	\$7,455,206
Hamilton	1	\$91,729
Harris	158	\$400,109,180
Harrison	11	\$22,654,979
Haskell	1	\$701,216
Henderson	8	\$4,880,595
Hidalgo	1	\$1,104,396
Hill	2	\$524,004
Hopkins	2	\$604,260
Houston	2	\$1,257,526
Howard	1	\$220,000
Hunt	5	\$4,375,698
Hutchinson	5	\$375,940
Jackson	20	\$20,224,956
Jefferson	18	\$48,867,242
Jim Wells	3	\$2,501,500
Johnson	2	\$586,075
Jones	2	\$601,897
Karnes	2	\$2,367,200
Kaufman	3	\$591,783
King	2	\$634,000
Kinney	6	\$8,502,514
Knox	1	\$182,589
La Salle	11	\$8,848,898
Lamar	3	\$1,852,786

County Name	Number of Applications in 2014	2014 Total Estimated Dollar Value
Lamb	1	\$648,569
Lavaca	3	\$16,806,393
Leon	1	\$126,782
Limestone	3	\$1,166,799
Live Oak	6	\$2,977,821
Llano	1	\$243,610
Loving	3	\$3,608,400
Lubbock	3	\$100,362
Madison	2	\$1,218,318
Marion	1	\$1,212,400
Martin	1	\$1,114,600
Matagorda	9	\$8,520,604
Maverick	5	\$1,942,901
McLennan	24	\$36,653,911
McMullen	7	\$5,862,551
Midland	12	\$6,782,620
Milam	2	\$221,013
Mitchell	2	\$600,900
Montague	6	\$2,643,822
Nacogdoches	3	\$10,624,802
Navarro	4	\$1,538,819
Nolan	5	\$4,915,040
Nueces	9	\$5,432,615
Ochiltree	1	\$50,000
Oldham	1	\$1,281,400
Palo Pinto	3	\$36,111
Panola	8	\$5,532,900
Parker	1	\$242,504
Pecos	2	\$958,184
Potter	6	\$4,819,225
Reagan	6	\$4,985,868
Red River	1	\$927,743
Reeves	5	\$5,271,000
Roberts	1	\$717,100
Robertson	1	\$109,532
Rockwall	5	\$2,717,766
Runnels	2	\$992,153
Rusk	2	\$1,879,904
San Augustine	1	\$1,183,600
Schleicher	5	\$106,720

County Name	Number of Applications in 2014	2014 Total Estimated Dollar Value
Scurry	2	\$1,127,571
Shackelford	1	\$386,426
Shelby	3	\$652,400
Smith	2	\$1,028,445
Sutton	7	\$8,413,584
Tarrant	71	\$29,644,631
Taylor	4	\$24,574,395
Titus	2	\$24,520,209
Tom Green	4	\$536,941
Travis	27	\$3,942,071
Upton	10	\$8,183,078
Van Zandt	1	\$96,943
Victoria	9	\$29,944,394
Waller	5	\$3,609,129
Ward	8	\$3,928,084
Washington	2	\$1,233,500
Webb	2	\$1,362,968
Wharton	5	\$4,490,581
Wheeler	2	\$1,211,500
Wichita	3	\$719,233
Wilbarger	8	\$3,377,385
Williamson	14	\$1,872,885
Wilson	1	\$1,212,400
Wise	6	\$1,687,315
Zavala	5	\$7,192,059
Grand Total	1,107	\$1,250,265,395

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 prevention property/equipment. During most years state rules are cited in the majority of applications. For example, 58% of the rules cited in applications received during 2014 were rules that have been adopted by the TCEQ and other Texas state 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 containing citations to federal rules rather than state rules.

During 2015, 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. However, for ease of reading this report, these citations are listed only to the section level.

Below are the six rules most frequently cited in applications for which a positive use determination was granted during Calendar Year 2015.

- 40 Code of Federal Regulations (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.

In 2014, the six most frequently cited rules in applications for which a positive use determination was granted are as follows:

- 49 CFR §192: Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards;
- 16 TAC §3.8: Water Protection Texas Railroad Commission;
- 40 CFR §112: Oil Pollution Prevention;
- 30 TAC §335: Industrial Solid Waste and Municipal Hazardous Waste;
- 40 CFR §280: Technical Standards and Corrective Action Requirements for Owners and Operators Of Underground Storage Tanks (UST); and
- 30 TAC §334: Underground and Aboveground Storage Tanks.

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 2014, 35% were from natural gas processing, storage, and transportation facilities; 8% were from electricity generating facilities; 6% were from chemical manufacturing facilities; 9% were for drilling rigs; 2% were from manufacturers of building materials; and 0.5% were from oil refineries.

Type of Equipment

Table 8: *Types and Quantities of Equipment Listed on Applications Received in Calendar Year 2015* shows a list of the types of equipment that have been included in applications received during Calendar Year 2015. 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 2015

Type of Equipment	Quantity of Equipment Listed in Calendar Year 2015 Applications
Air Emission Controls – Various	51
Continuous Emission Monitoring Systems	7
Double Hulled Barge	10
Drilling Rigs - Mud Recycling/Blow Out Prevention	153
Dust/Particulate Collection Devices	29
Electrostatic Precipitator	3
Flue Gas Desulphurization	11

Type of Equipment	Quantity of Equipment Listed in Calendar Year 2015 Applications
Flare	62
Flare Gas Recovery	3
Internal/External Floating Roofs	29
Carbon Capture/SO2 Reduction System	1
Injection Well	26
Low NOx Burner	9
Monitoring Equipment	14
Other	71
Pipeline Equipment	61
Selective/Nonselective Catalytic Reduction	7
Scrubber	18
Service Station Equipment	356
Spill Containment	113
Stack	5
Stormwater Controls	30
Thermal Oxidizer	11
Vapor Control	3
Waste Treatment	6
Wastewater Treatment System	28

Application Processing

The average administrative processing time in 2015 was 10 days. During 2014, the average administrative processing time was 16 days.

By rule, staff has a 60-day time frame after an application is declared administratively complete to complete the technical review. In 2015, the average technical review time was 3 days with 99% of technical reviews being completed in 60 or fewer days. During 2014, the average technical review time was six days with 98% of technical reviews being completed in 60 or fewer days.

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. On December 5, 2012, the commission considered the remaining 23 appeals and remanded the applications to the executive director for additional consideration. Technical notices of deficiency (TNOD) letters were mailed with a response due date of March 26, 2013. On June 24, 2013, information was received from 21 of the applicants. Second TNODs were issued to applicants

between December 2013 and February 2014. Responses to these TNODs were received during the spring of 2014. During June 2014, negative determinations were issued for the remaining 21 HRSG related applications. The negative determinations were appealed. The commission heard the appeals on September 24, 2014 and upheld the negative use determinations. Subsequently, 12 lawsuits were filed in Travis County District Court. The TCEQ has filed Answers to all of the lawsuits. The lawsuits have been consolidated for trial and divided into two groups. For the first group, the appeals of the applications for Tier III use determinations were heard by the Travis County District Court in December 2015. The District Court upheld the TCEQ's determinations. The Tier III Plaintiffs have appealed the District Court ruling, and the appeal was assigned to the El Paso Court Appeals. The appeal is still pending. For the second group, the Plaintiffs had all applied for a Tier IV use determination. A hearing in Travis County District Court for the Tier IV Plaintiffs occurred on June 28, 2016. One Plaintiff has dropped out, filing a motion to non-suit its claims against the TCEQ. On September 1, 2016 the District Judge issued a Letter Ruling affirming the negative determinations for the remaining eight HRSG applications.

On December 16, 2015, positive use determinations were issued for three DCP Southern Hills Pipeline LLC applications for property located in Wise County. The property included three 8-inch automatic shut-off valves for natural gas liquids pipeline; cathodic protection; fusion-bonded epoxy (FBE) on the pipe surface; adhesive for top coat; top coat consisting of polyethylene or polypropylene; one 8-inch intelligent pipeline inspection gauge (PIG) receiver and two 8-inch PIG launchers; and nondestructive pipeline testing expenditures (radiography). On January 8, 2016, the Wise County Appraisal District appealed the positive use determinations stating that the property was standard pipeline equipment and should not be eligible for a positive use determination. The appeals were withdrawn by the appraisal district.

On February 4, 2016, a mixed use determination was issued for a stormwater treatment system located at ELG Metals in Harris County. A positive use determination was issued for the stormwater treatment system and a negative use determination was issued for the associated land. The applicant was informed several times during the application review process that to be eligible, land must be acquired on or after January 1, 1994. The applicant insisted that the land was acquired in 1989, but because it was not used as pollution control property until after January 1, 1994, it was eligible for a positive use determination. On March 7, 2016, the applicant appealed the negative use determination and did not provide a basis for the appeal. On April 27, 2016, the applicant filed a response brief stating that ELG Metals had not purchased the land until December 1997. The appeal was remanded to staff to request additional information. On May 16, 2016, a technical notice of deficiency was issued. The applicant failed to respond to the deficiency letter. The appeal was closed and the negative determination remains in effect.

On March 17, 2016, a mixed use determination was issued for a turnings facility located at ELG Metals in Harris County. A positive use determination was issued for the tanks, piping, and pumps used to contain cutting fluids from metal turnings. A negative use determination was issued for the roofs, walls, foundations, and floors of the turnings facility and the land occupied by the facility. On April 27, 2016, the applicant appealed the negative portion of the use determination. The appeal was heard by the commission on June 8, 2016. The negative use determination was upheld.

On April 5, 2016, a mixed use determination was issued for certain property located at Bexley at Anderson Mill apartments in Williamson County. A positive use determination was issued for stormwater quality features including a water quality pond, critical water quality zone area, and weir structure at outfall. A negative use determination was issued for the water quality transition zone, stating that the mere fact that stormwater flows across a piece of land does not make that land pollution control property. On April 14, 2016, the applicant appealed the negative portion of the determination. The appeal stated that the Austin Code of Ordinances clearly states in §25-8-93 and §25-8-422 that: "A lot that lies within a critical water quality zone must also include at least two acres in a water quality transition zone or uplands zone." The appeal went on to say "This definition presents factual evidence that water quality transition zone areas within the Edwards Aquifer is mandated by the COA and acts to filter runoff, preventing pollution and should be considered Pollution Control Property..." The applicant did not provide this citation during the application review process. The appeal was heard by the commission on June 22, 2016. The negative use determination was upheld. On July 22, 2016, the applicant filed suit in Travis County District Court. The suit was served on August 5, 2016. A request for representation was filed with the Office of the Attorney General (OAG) on August 8, 2016. On August 26 OAG filed a response denying the allegations.

On April 8, 2016, a mixed use determination was issued for certain property located at Capitol Chevrolet in Travis County. A positive use determination was issued for water quality ponds, the riparian rock and other structural controls located in the water quality transition zones, three splitter boxes, and three sedimentation ponds. A negative use determination was issued for the water quality transition zone, stating that the mere fact that stormwater flows across a piece of land does not make that land pollution control property. On April 14, 2016, the applicant appealed the negative use determination stating that "A Positive Use Determination was issued to Capitol Chevrolet on April 8, 2016, for Critical Water Quality Zone that is contiguous to the Water Quality Transition Zone area on said property. The appeal stated that the Austin Code of Ordinances clearly states in §25-8-93 and §25-8-422 that: "A lot that lies within a critical water quality zone must also include at least two acres in a water quality transition zone or uplands zone." The appeal went on to say "This definition presents factual evidence that water quality transition zone areas within the

Edwards Aquifer is mandated by the COA and acts to filter runoff, preventing pollution and should be considered Pollution Control Property...” The applicant did not provide this citation during the application review process. The appeal was heard by the commission on June 22, 2016. The negative use determination was upheld. On July 27, 2016, the applicant filed suit in Travis County District Court. The suit was served on August 9, 2016. A request for representation was filed with the OAG on August 10, 2016. On August 26 OAG filed a response denying the allegations.

Appendix A

Applications Received between November 1994 and December 2015, Sorted by County

Applications Received between November 1994 and December 2015, Sorted by County

County	Number of Applications Received	Total Estimated Dollar Value of Projects⁶
Anderson	38	\$59,679,972
Andrews	34	\$20,161,231
Angelina	120	\$192,038,620
Aransas	4	\$1,716,533
Archer	1	\$15,089
Armstrong	1	\$6,387
Atascosa	46	\$73,503,426
Austin	16	\$21,995,610
Bastrop	32	\$184,118,612
Bee	22	\$32,940,431
Bell	134	\$89,703,858
Bexar	306	\$356,407,406
Borden	9	\$3,463,754
Bosque	41	\$199,694,429
Bowie	30	\$13,347,428
Brazoria	1,155	\$3,064,338,876
Brazos	42	\$23,690,409
Brooks	19	\$12,971,376
Brown	32	\$53,349,878
Burleson	27	\$11,447,136
Burnet	21	\$12,157,300
Caldwell	3	\$3,143,971
Calhoun	192	\$460,132,459
Callahan	10	\$1,191,366
Cameron	34	\$5,252,061
Camp	1	\$32,934
Carson	5	\$621,455
Cass	37	\$84,906,696
Castro	4	\$2,600,137
Chambers	199	\$730,140,425
Cherokee	32	\$20,924,197
Childress	1	\$15,558
Clay	12	\$2,476,750

⁶ Estimated value provided by applicants.

County	Number of Applications Received	Total Estimated Dollar Value of Projects⁶
Cochran	1	\$141,000
Coke	6	\$2,145,149
Coleman	3	\$516,894
Collin	282	\$103,226,225
Colorado	11	\$3,917,324
Comal	86	\$135,758,172
Comanche	17	\$1,131,139
Concho	4	\$773,378
Cooke	49	\$4,372,445
Coryell	18	\$1,471,877
Cottle	3	\$723,616
Crane	13	\$8,863,976
Crockett	46	\$42,146,151
Culberson	7	\$23,766,954
Dallam	16	\$15,511,344
Dallas	1,085	\$317,190,160
Dawson	1	\$103,050
Deaf Smith	13	\$88,890,892
Delta	1	\$20,400
Denton	234	\$126,814,346
DeWitt	32	\$33,983,447
Dimmit	30	\$26,031,463
Donley	1	\$13,316
Duval	17	\$9,957,622
Eastland	26	\$1,559,881
Ector	219	\$397,485,621
Edwards	17	\$14,706,494
El Paso	397	\$703,141,298
Ellis	238	\$734,463,431
Erath	19	\$5,699,653
Falls	8	\$1,127,571
Fannin	22	\$33,705,495
Fayette	18	\$16,989,244
Fisher	5	\$475,405
Floyd	1	\$429,800
Fort Bend	292	\$935,153,750
Franklin	3	\$140,393

County	Number of Applications Received	Total Estimated Dollar Value of Projects⁶
Freestone	131	\$403,166,409
Frio	10	\$23,422,913
Gaines	14	\$25,373,655
Galveston	391	\$2,110,195,302
Garza	1	\$25,000
Gillespie	1	\$31,800
Glasscock	28	\$14,786,254
Goliad	36	\$108,842,768
Gonzales	29	\$20,898,390
Gray	43	\$45,520,007
Grayson	103	\$91,025,335
Gregg	139	\$53,106,066
Grimes	31	\$126,349,629
Guadalupe	42	\$303,459,038
Hale	89	\$94,083,084
Hall	1	\$10,229
Hamilton	3	\$485,510
Hansford	27	\$5,894,829
Hardeman	1	\$2,441
Hardin	44	\$55,774,935
Harris	4,033	\$8,881,284,360
Harrison	231	\$340,049,683
Haskell	11	\$3,995,928
Hays	56	\$168,332,821
Hemphill	48	\$34,029,865
Henderson	70	\$13,958,341
Hidalgo	91	\$214,056,475
Hill	45	\$12,969,638
Hockley	17	\$9,648,090
Hood	35	\$59,982,404
Hopkins	25	\$16,240,989
Houston	27	\$13,404,169
Howard	26	\$117,446,178
Hudspeth	1	\$1,657
Hunt	36	\$16,409,075
Hutchinson	104	\$259,749,671
Irion	15	\$4,672,055

County	Number of Applications Received	Total Estimated Dollar Value of Projects⁶
Jack	19	\$110,372,626
Jackson	40	\$50,391,646
Jasper	19	\$71,700,259
Jefferson	843	\$5,725,901,265
Jim Hogg	7	\$3,230,776
Jim Wells	71	\$72,457,301
Johnson	195	\$228,649,762
Jones	15	\$1,232,511
Karnes	33	\$23,468,521
Kaufman	78	\$194,931,195
Kendall	1	\$6,272
Kenedy	6	\$2,501,300
Kent	7	\$3,226,030
Kerr	2	\$131,392
King	3	\$652,175
Kinney	6	\$8,502,514
Kleberg	9	\$473,135
Knox	2	\$291,596
La Salle	50	\$37,910,014
Lamar	35	\$120,369,294
Lamb	59	\$27,767,750
Lampasas	4	\$1,062,765
Lavaca	22	\$30,479,617
Lee	13	\$21,267,133
Leon	31	\$46,538,230
Liberty	42	\$49,101,073
Limestone	135	\$174,199,017
Lipscomb	14	\$4,710,879
Live Oak	35	\$166,867,702
Llano	4	\$330,257
Loving	29	\$29,106,700
Lubbock	53	\$16,804,644
Madison	23	\$35,154,894
Marion	22	\$20,968,907
Martin	17	\$6,715,105
Mason	1	\$3,315,303
Matagorda	101	\$519,463,504

County	Number of Applications Received	Total Estimated Dollar Value of Projects⁶
Maverick	6	\$1,961,076
McCulloch	6	\$4,907,760
McLennan	139	\$673,285,723
McMullen	39	\$29,914,581
Medina	7	\$908,559
Midland	77	\$73,021,856
Milam	135	\$1,116,585,533
Mitchell	18	\$6,825,263
Montague	31	\$12,711,674
Montgomery	145	\$109,453,801
Moore	36	\$327,098,975
Morris	16	\$3,647,294
Nacogdoches	92	\$52,098,695
Navarro	59	\$24,449,311
Newton	7	\$134,350,028
Nolan	37	\$15,179,045
Nueces	229	\$1,370,206,220
Ochiltree	23	\$40,873,454
Oldham	3	\$2,645,400
Orange	154	\$603,800,492
Palo Pinto	32	\$7,002,018
Panola	130	\$240,477,298
Parker	73	\$57,492,259
Parmer	6	\$9,317,474
Pecos	49	\$96,154,136
Polk	26	\$23,145,410
Potter	142	\$126,606,162
Rains	2	\$194,078
Randall	7	\$602,248
Reagan	16	\$9,277,920
Red River	13	\$2,055,975
Reeves	37	\$92,426,176
Refugio	20	\$28,486,561
Roberts	7	\$3,844,489
Robertson	98	\$912,896,122
Rockwall	37	\$6,983,312
Runnels	8	\$3,616,271

County	Number of Applications Received	Total Estimated Dollar Value of Projects⁶
Rusk	134	\$613,090,250
Sabine	3	\$1,394,385
San Augustine	7	\$5,728,995
San Jacinto	14	\$18,970,731
San Patricio	54	\$315,264,755
Schleicher	17	\$1,219,383
Scurry	21	\$9,718,778
Shackelford	6	\$1,665,392
Shelby	54	\$25,647,466
Sherman	39	\$14,786,338
Smith	205	\$288,592,824
Somervell	14	\$13,630,084
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	768	\$489,136,954
Taylor	58	\$127,436,015
Terrell	11	\$9,521,589
Terry	3	\$79,422
Titus	97	\$514,015,651
Tom Green	21	\$36,300,981
Travis	428	\$482,849,079
Trinity	5	\$23,007,565
Tyler	14	\$15,558,724
Upshur	12	\$22,555,280
Upton	41	\$26,602,106
Uvalde	2	\$991,244
Val Verde	6	\$4,485,968
Van Zandt	11	\$694,623
Victoria	92	\$324,285,311
Walker	10	\$4,010,854
Waller	21	\$17,253,017
Ward	32	\$18,844,783
Washington	17	\$12,110,937

County	Number of Applications Received	Total Estimated Dollar Value of Projects⁶
Webb	78	\$95,470,762
Wharton	39	\$179,187,768
Wheeler	72	\$71,028,224
Wichita	47	\$46,660,755
Wilbarger	72	\$31,536,340
Willacy	6	\$5,014,594
Williamson	164	\$31,640,265
Wilson	10	\$9,984,629
Winkler	15	\$19,436,634
Wise	166	\$217,173,244
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
Total	19,047	\$41,591,958,472