

Tax Relief for Pollution Control Property

2011 Annual Report

Contents

| | |
|--|----|
| Program Background..... | 2 |
| General Program Information..... | 3 |
| Program Statistics..... | 4 |
| Number of Applications..... | 4 |
| Fees Received..... | 5 |
| Total Tier III and IV Applications | 6 |
| Applications Received in 2011- County Information | 7 |
| Rules Cited | 13 |
| Type of Facilities | 14 |
| Type of Equipment..... | 14 |
| Application Processing | 15 |
| Appeals..... | 16 |
| Appendix A | 17 |
| Applications Received from 1994-2011 - Sorted by County..... | 17 |

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-l 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 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 use determination. The TCEQ’s rules governing the program are contained in Chapter 17 of Title 30 of the Texas Administrative Code (30 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 TCEQ in 2002. The amended rules established a standard method to determine how much of a piece of property is pollution control versus production when the property serves both functions. This method was called the Cost Analysis Procedure or CAP and was required to be used for all equipment that is both pollution control and production equipment.⁴

In 2007, the 80th Texas Legislature passed HB 3732, which amended TTC, §11.31 by adding three new subsections, i.e., (k), (l), and (m). The new TTC, §11.31(k) required the TCEQ to adopt a nonexclusive list of property that included 18 property categories. The new TTC, §11.31(l) required that the property list be reviewed at a minimum interval of once every three years and establishes a standard for removing property from the list. The new TTC, §11.31(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 and enhanced steam turbine systems. Due to the unconventional nature of the equipment from a pollution control aspect, TCEQ rules allowed for applicants to

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

² TTC, §11.31(c) & (d).

³ TTC, §11.31(i).

⁴ TTC, §11.31(g).

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 approved revised rules 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.

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 authority.

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 for pollution control at a standard use percentage as listed in the table.

Commonly, property listed on the Tier I Table is 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 it 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 Cost Analysis Procedure, 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 (“application”) was received on November 21, 1994. As of December 31, 2011, a total of 15,459 applications have been received.

Table 1: *Total Number of Applications Filed Since Program Inception* (November 1994 – December 2011) shows the total number of applications received since the inception of the program, categorized by Tier level and by approval status. While this report is primarily for Calendar Year 2011 application activities, Calendar Year 2010 information is also provided for comparison purposes.

Table 1. Total Number of Applications Filed Since Program Inception (November 1994 – December 2011)

| Status | Tier I | Tier II | Tier III | Tier IV⁵ | Total |
|---------------|---------------|----------------|-----------------|----------------------------|---------------|
| Approved | 13,742 | 379 | 207 | 25 | 14,353 |
| Denied | 208 | 39 | 21 | 35 | 303 |
| Withdrawn | 725 | 28 | 28 | 14 | 795 |
| Under Review | 4 | 0 | 0 | 4 | 8 |
| Total | 14,679 | 446 | 256 | 78 | 15,459 |

Table 2: *Number of Applications Received During 2011* shows the number of applications received during Calendar Year 2011, categorized by Tier level and by approval status. A total of 616 applications were received during 2011 and, of those, 81% were approved, 17% were withdrawn, 1% was denied, and four remain under review.

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

Table 2. Number of Applications Received During 2011

| Status | Tier I | Tier II | Tier III | Tier IV ⁶ | Total |
|--------------|------------|-----------|-----------|----------------------|------------|
| Approved | 483 | 7 | 8 | 0 | 498 |
| Denied | 4 | 2 | 1 | 0 | 7 |
| Withdrawn | 95 | 2 | 10 | 0 | 107 |
| Under Review | 4 | 0 | 0 | 0 | 4 |
| Total | 586 | 11 | 19 | 0 | 616 |

Table 3: *Number of Applications Received During 2010* shows the number of applications received during Calendar Year 2010, categorized by Tier level and by approval status. A total of 944 applications were received during 2010 and of those, 62% were approved, 24% were withdrawn, 2% were denied, and 12% remained under review. Three applications were on hold.

Table 3. Number of Applications Received During 2010

| Status | Tier I | Tier II | Tier III | Tier IV ⁶ | Total |
|--------------|------------|-----------|-----------|----------------------|------------|
| Approved | 571 | 7 | 5 | 2 | 585 |
| Denied | 13 | 2 | 1 | 1 | 17 |
| Withdrawn | 227 | 2 | 0 | 1 | 230 |
| Under Review | 90 | 15 | 4 | 0 | 109 |
| On Hold | 0 | 0 | 0 | 3 | 3 |
| Total | 901 | 26 | 10 | 7 | 944 |

Fees Received

The estimated fees received during Calendar Years 2011 and 2010 were \$149,800 and \$189,650 respectively. Table 4: *Application Fees Collected by Tier Level for Years 2011 and 2010* shows fee collections by tier level for years 2011 and 2010. The decrease in total fees between 2010 and 2011 is attributable to a decrease in the number of Tier I 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. The Texas Legislature, by rider, has appropriated \$221,000 from collected fee revenue to the TCEQ 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 2011 and 2010

| Calendar Year | Tier I | Tier II | Tier III | Tier IV ⁶ | Tier Total |
|---------------|-----------|----------|----------|----------------------|------------|
| 2010 | \$135,150 | \$26,000 | \$25,000 | \$3,500 | \$189,650 |
| 2011 | \$88,800 | \$11,000 | \$50,000 | \$0 | \$149,800 |

⁶ Tier IV level was created February 7, 2008, and was combined with the Tier III level effective December 13, 2010.

Total Tier III and IV Applications

Because of the complexity, Tier III and Tier IV applications require the most review time. Table 5: *Number of Tier IV Applications Received by Year* shows that a total of 79 Tier IV applications were received during the three years that the category existed.

Table 5. Tier IV Applications Received by Year

| Calendar Year | Number of Applications | Estimated Dollar Value of Projects |
|---------------|------------------------|------------------------------------|
| 2008 | 53 | \$2,792,204,237 |
| 2009 | 19 | \$575,948,114 |
| 2010 | 7 | \$291,688,663 |
| Total | 79 | \$3,659,841,014 |

Table 6: *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. There has been an increase in the number of Tier III applications received due to recent rule changes, which removed partial use determinations from the Tier I Table⁷ and also eliminated the Tier IV category.

Table 6. 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 | 12 | \$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 | 7 | \$125,717,478 |
| 2010 | 10 | \$333,305,478 |

⁷ The Tier I Table was previously known as the Predetermined Equipment List and the Equipment and Categories List.

| Calendar Year | Number of Applications | Estimated Dollar Value of Projects |
|---------------|------------------------|------------------------------------|
| 2011 | 19 | \$1,071,732,138 |
| Total | 254 | \$4,568,054,817 |

Applications Received in 2011- County Information

Almost half of the applications received during Calendar Year 2011 were from entities located in counties within the Dallas-Fort Worth and Houston-Galveston-Brazoria non-attainment areas and the Beaumont-Port Arthur area. These applications also represent 55% of the total estimated dollar value in the use determination applications. Over 55% of the applications, containing 77% of the estimated dollar value, were from entities located in counties within TCEQ Regions 5 (Tyler), 10 (Beaumont), 12 (Houston), and 14 (Corpus Christi).

In 2011, applications from 228 of Texas' 254 counties were received by the TCEQ. Applications have not been received from the following counties: Archer, Bailey, Bandera, Baylor, Brewster, Briscoe, Collingsworth, Crosby, Dickens, Foard, Hartley, Jeff Davis, Kimble, King, Kinney, Lynn, Menard, Mills, Motley, Oldham, Presidio, Real, San Augustine, San Saba, Swisher, and Throckmorton Counties. These counties are primarily located in the Panhandle and West Texas. The population of these counties represents 0.5% of the population of Texas.

Table 7: *Applications Received for Calendar Year 2011 Grouped by County* shows the distribution, by county, of all Tier I-III applications received during Calendar Year 2011 and the total estimated dollar value.

Table 7. Applications Received for Calendar Year 2011 Grouped by County

| County Name | Number of Applications in 2011 | Total Estimated Dollar Value |
|-------------|--------------------------------|------------------------------|
| Anderson | 3 | \$378,451 |
| Andrews | 1 | \$417,000 |
| Angelina | 2 | \$1,827,334 |
| Atascosa | 5 | \$10,243,978 |
| Bell | 5 | \$768,869 |
| Bexar | 6 | \$3,989,121 |
| Borden | 1 | \$301,923 |
| Bosque | 3 | \$7,113,963 |
| Brazoria | 5 | \$2,209,885 |
| Brazos | 3 | \$3,299,973 |
| Brown | 2 | \$203,315 |
| Burleson | 3 | \$633,837 |
| Calhoun | 2 | \$5,430,412 |

| County Name | Number of Applications in 2011 | Total Estimated Dollar Value |
|--------------------|---------------------------------------|-------------------------------------|
| Cameron | 2 | \$551,698 |
| Cass | 1 | \$6,077,453 |
| Chambers | 4 | \$23,921,109 |
| Clay | 1 | \$33,508 |
| Collin | 11 | \$3,235,691 |
| Comal | 5 | \$543,503 |
| Cooke | 3 | \$681,234 |
| Coryell | 1 | \$467,122 |
| Crockett | 2 | \$539,935 |
| Dallas | 23 | \$12,598,504 |
| Denton | 6 | \$3,705,920 |
| DeWitt | 3 | \$1,918,706 |
| Dimmit | 3 | \$2,336,062 |
| Ector | 12 | \$2,384,989 |
| El Paso | 13 | \$13,677,430 |
| Ellis | 14 | \$3,000,014 |
| Fannin | 1 | \$15,367 |
| Fort Bend | 9 | \$1,555,047 |
| Freestone | 10 | \$24,541,920 |
| Gaines | 1 | \$310,000 |
| Galveston | 5 | \$8,924,569 |
| Glasscock | 3 | \$978,594 |
| Gonzales | 1 | \$1,129,874 |
| Grayson | 2 | \$68,607 |
| Gregg | 5 | \$2,275,263 |
| Grimes | 1 | \$398,000 |
| Guadalupe | 7 | \$4,387,560 |
| Hardin | 1 | \$181,230 |
| Harris | 152 | \$206,616,007 |
| Harrison | 12 | \$15,686,661 |
| Haskell | 1 | \$103,041 |
| Hays | 1 | \$102,958 |
| Hemphill | 2 | \$943,535 |
| Henderson | 1 | \$36,030 |
| Hidalgo | 1 | \$1,161,262 |
| Hill | 3 | \$1,069,881 |
| Houston | 1 | \$26,737 |

| County Name | Number of Applications in 2011 | Total Estimated Dollar Value |
|--------------------|---------------------------------------|-------------------------------------|
| Hunt | 1 | \$2,108,674 |
| Jack | 2 | \$10,383,666 |
| Jasper | 1 | \$1,159,033 |
| Jefferson | 40 | \$1,343,475,690 |
| Jim Hogg | 2 | \$495,456 |
| Jim Wells | 3 | \$1,123,026 |
| Karnes | 5 | \$5,066,342 |
| Kaufman | 1 | \$24,474 |
| Knox | 1 | \$109,007 |
| La Salle | 5 | \$4,467,035 |
| Lamar | 1 | \$80,000 |
| Lamb | 5 | \$1,570,012 |
| Lavaca | 1 | \$3,542,998 |
| Liberty | 3 | \$1,333,650 |
| Lubbock | 2 | \$359,522 |
| Martin | 1 | \$30,526 |
| Matagorda | 9 | \$383,010,294 |
| McLennan | 5 | \$2,457,021 |
| McMullen | 3 | \$2,267,702 |
| Midland | 2 | \$929,996 |
| Milam | 4 | \$325,975,106 |
| Mitchell | 1 | \$28,844 |
| Montague | 4 | \$3,234,927 |
| Montgomery | 6 | \$1,662,442 |
| Moore | 1 | \$31,381,973 |
| Nacogdoches | 9 | \$4,217,325 |
| Navarro | 1 | \$53,007 |
| Newton | 1 | \$26,043,320 |
| Nolan | 2 | \$375,249 |
| Nueces | 4 | \$96,823,087 |
| Orange | 7 | \$4,446,416 |
| Panola | 18 | \$38,219,312 |
| Potter-Randall | 5 | \$10,126,808 |
| Red River | 1 | \$33,481 |
| Robertson | 2 | \$4,642,651 |
| Rockwall | 2 | \$66,596 |
| Rusk | 7 | \$8,740,318 |

| County Name | Number of Applications in 2011 | Total Estimated Dollar Value |
|--------------------|---------------------------------------|-------------------------------------|
| San Augustine | 1 | \$692,895 |
| San Patricio | 1 | \$2,523,450 |
| Scurry | 2 | \$420,316 |
| Shelby | 3 | \$2,676,967 |
| Sherman | 1 | \$101,206 |
| Smith | 4 | \$81,236,968 |
| Starr | 1 | \$1,546,589 |
| Tarrant | 14 | \$15,248,406 |
| Taylor | 1 | \$125,700 |
| Titus | 9 | \$4,078,293 |
| Travis | 11 | \$124,747,328 |
| Upton | 3 | \$1,057,154 |
| Van Zandt | 1 | \$25,253 |
| Ward | 3 | \$2,550,100 |
| Washington | 1 | \$345,000 |
| Webb | 8 | \$8,251,075 |
| Wheeler | 3 | \$2,346,427 |
| Wichita | 1 | \$29,355 |
| Wilbarger | 3 | \$2,325,056 |
| Williamson | 1 | \$53,804 |
| Wise | 6 | \$3,721,123 |
| Wood | 1 | \$77,971 |
| Yoakum | 2 | \$2,725,000 |
| Young | 2 | \$109,007 |
| Totals | 616 | \$2,960,082,514 |

Table 8: *Applications Received for Calendar Year 2010 Grouped by County* shows the distribution, by county, of all Tier I-III applications received during Calendar Year 2010 and the estimated dollar value.

Table 8. Applications Received for Calendar Year 2010 Grouped by County

| County Name | Number of Applications in 2010 | Total Estimated Dollar Value |
|--------------------|---------------------------------------|-------------------------------------|
| Andrews | 5 | \$3,490,700 |
| Angelina | 4 | \$1,886,646 |
| Atascosa | 7 | \$3,832,346 |
| Bastrop | 1 | \$70,201 |
| Bell | 2 | \$367,850 |

| County Name | Number of Applications in 2010 | Total Estimated Dollar Value |
|--------------------|---|-------------------------------------|
| Bexar | 5 | \$4,942,272 |
| Bosque | 1 | \$211,354 |
| Bowie | 1 | \$30,000 |
| Brazoria | 43 | \$14,430,742 |
| Brazos | 1 | \$53,444 |
| Brooks | 1 | \$680,530 |
| Burnet | 3 | \$1,134,766 |
| Calhoun | 9 | \$4,579,511 |
| Cass | 1 | \$8,660,967 |
| Chambers | 15 | \$31,812,628 |
| Collin | 4 | \$556,635 |
| Comal | 4 | \$21,042,930 |
| Comanche | 3 | \$112,560 |
| Crockett | 3 | \$1,695,855 |
| Dallas | 54 | \$8,234,135 |
| Denton | 8 | \$4,152,251 |
| DeWitt | 3 | \$10,669,082 |
| Duval | 1 | \$85,000 |
| Eastland | 1 | \$29,836 |
| Ector | 4 | \$1,186,761 |
| El Paso | 22 | \$254,777,804 |
| Ellis | 23 | \$22,366,268 |
| Falls | 1 | \$139,474 |
| Fannin | 1 | \$18,064,667 |
| Fort Bend | 9 | \$2,871,324 |
| Franklin | 1 | \$2,371,388 |
| Freestone | 5 | \$2,645,180 |
| Frio | 1 | \$15,632,969 |
| Galveston | 20 | \$104,769,113 |
| Goliad | 2 | \$5,491,817 |
| Gray | 1 | \$5,040,000 |
| Grayson | 2 | \$2,070,479 |
| Gregg | 2 | \$52,705 |
| Guadalupe | 4 | \$3,117,465 |
| Hardin | 4 | \$6,976,789 |
| Harris | 249 | \$296,342,703 |
| Harrison | 27 | \$15,300,079 |
| Hays | 1 | \$377,059 |
| Hemphill | 5 | \$3,491,758 |
| Henderson | 1 | \$40,522 |
| Hill | 1 | \$14,445 |
| Hockley | 1 | \$600,190 |
| Hopkins | 3 | \$73,211 |

| County Name | Number of Applications in 2010 | Total Estimated Dollar Value |
|--------------------|---|-------------------------------------|
| Howard | 1 | \$27,800,000 |
| Hunt | 3 | \$1,511,988 |
| Hutchinson | 4 | \$3,629,401 |
| Jefferson | 68 | \$696,264,231 |
| Jim Wells | 1 | \$4,000,000 |
| Johnson | 11 | \$33,151,790 |
| Kaufman | 4 | \$258,620 |
| La Salle | 1 | \$747,701 |
| Lamar | 3 | \$413,915 |
| Lamb | 4 | \$948,365 |
| Lampasas | 1 | \$367,850 |
| Lee | 3 | \$1,336,479 |
| Liberty | 3 | \$4,305,869 |
| Limestone | 5 | \$10,743,465 |
| Lipscomb | 2 | \$1,396,280 |
| Live Oak | 3 | \$759,000 |
| Lubbock | 2 | \$1,157,088 |
| Madison | 2 | \$3,362,800 |
| Matagorda | 10 | \$46,394,192 |
| McCulloch | 1 | \$843,130 |
| McLennan | 9 | \$430,761 |
| Medina | 4 | \$576,412 |
| Midland | 1 | \$1,200,000 |
| Milam | 17 | \$148,032,494 |
| Montague | 3 | \$758,296 |
| Montgomery | 22 | \$5,877,483 |
| Morris | 1 | \$1,940,696 |
| Nacogdoches | 1 | \$924,775 |
| Navarro | 2 | \$37,269 |
| Nolan | 2 | \$145,717 |
| Nueces | 3 | \$38,615,669 |
| Orange | 8 | \$2,245,572 |
| Palo Pinto | 4 | \$711,619 |
| Panola | 9 | \$6,465,416 |
| Parker | 5 | \$2,380,913 |
| Pecos | 8 | \$5,470,738 |
| Potter | 5 | \$1,225,260 |
| Reagan | 1 | \$1,200,000 |
| Red River | 1 | \$22,184 |
| Robertson | 15 | \$156,148,688 |
| Rusk | 1 | \$74,551 |
| San Jacinto | 4 | \$1,291,632 |
| San Patricio | 1 | \$15,573,200 |

| County Name | Number of Applications in 2010 | Total Estimated Dollar Value |
|---------------|--------------------------------|------------------------------|
| Scurry | 3 | \$135,230 |
| Shelby | 1 | \$1,029,504 |
| Smith | 5 | \$910,820 |
| Starr | 1 | \$698,140 |
| Stephens | 3 | \$191,026 |
| Sutton | 1 | \$49,918 |
| Tarrant | 19 | \$2,362,042 |
| Taylor | 6 | \$643,134 |
| Titus | 3 | \$163,245 |
| Tom Green | 1 | \$179,400 |
| Travis | 12 | \$4,852,527 |
| Upton | 1 | \$11,359 |
| Waller | 2 | \$168,868 |
| Ward | 4 | \$1,348,000 |
| Wharton | 5 | \$8,621,464 |
| Wheeler | 13 | \$17,984,135 |
| Wichita | 8 | \$10,223,938 |
| Wilbarger | 2 | \$623,887 |
| Willacy | 1 | \$698,140 |
| Williamson | 5 | \$491,432 |
| Wise | 15 | \$28,043,857 |
| Young | 2 | \$179,036 |
| Zapata | 2 | \$1,028,000 |
| Totals | 944 | \$2,197,955,023 |

Rules Cited

Each use determination application submitted to the TCEQ must list which rule(s) or regulation(s) are being met or exceeded by having certain pollution prevention property/equipment. State rules are cited in the majority of applications. For example, 54% of the rules cited in applications received during calendar years 2010 and 2011 were rules that have been adopted by the TCEQ and other Texas state agencies.

The majority of applications submitted to the TCEQ are for equipment intended to control or prevent air pollution.

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 five rules most frequently cited in applications for which a positive use determination was granted during calendar year 2011.

- 40 CFR 112: Oil Pollution Prevention
- 16 TAC 3.8: Water Protection Texas Railroad Commission
- 30 TAC 111: Control of Air Pollution from Visible Emission sand Particulate Matter

- 40 CFR 60: Standards of Performance for New Stationary Sources
- 30 TAC 115: Control of Air Pollution from Volatile Organic Compounds

In 2010, the five most frequently-cited rules in applications for which a positive use determination was granted are as follows:

- 40 CFR 112: Oil Pollution Prevention;
- 30 TAC 106: Permits By Rule;
- 30 TAC 115: Control of Air Pollution from Volatile Organic Compounds;
- 40 CFR 60: Standards of Performance for New Stationary Sources; and
- 30 TAC 111: Control of Air Pollution from Visible Emission sand Particulate Matter.

Type of Facilities

Each year about 70% of the applications received by the TCEQ are submitted by entities that own the following types of facilities:

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

During calendar year 2011, 21% of the applications received were for drilling rigs, 20% were from electricity generating facilities, 16% were from chemical manufacturing facilities, 15% were from natural gas processing, storage, and transportation facilities, 9% were from manufacturers of building materials, and 4% were from oil refineries.

During calendar year 2010, 22% of the applications were from chemical manufacturing plants, 18% were from electricity generating facilities, 15% were from natural gas processing, storage, and transportation facilities, 11% were from manufacturers of building materials, and 5% were from oil refineries.

Type of Equipment

Table 9: *Types and Quantity of Equipment Listed on Applications Received in 2011* shows a list of the types of equipment that have been included in applications received during Calendar Year 2011. 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. The majority of the listed equipment was installed to control volatile organic compound (VOC) emissions.

Table 9. Types and Quantity of Equipment Listed on Applications Received in 2011

| Type of Equipment | Quantity of Equipment Listed in 2011 Applications |
|---|--|
| Carbon Absorber | 3 |
| Cathodic Protection | 8 |
| Compressor Related | 3 |
| Continuous Emission Monitoring Systems | 19 |
| Double-Hulled Barges | 57 |
| Drilling Rigs - MUD Recycling/Blow Out Prevention | 123 |
| Dust/Particulate Collection Devices | 53 |
| Flare Systems | 27 |
| Flue Gas Desulfurization Equipment | 4 |
| Hydrotreaters | 2 |
| Internal Floating Roofs | 49 |
| Liners | 1 |
| Monitoring Wells | 2 |
| Nitrogen Oxide (NO _x) Reduction/Control | 25 |
| Oil/Water Separators | 1 |
| Other | 78 |
| Scrubbers | 14 |
| Secondary Containment | 89 |
| Selective Catalytic Reduction | 7 |
| Service Station | 36 |
| Storm Water Controls | 20 |
| Strippers | 2 |
| Sweepers/Water Trucks | 5 |
| Tank Overfill/Leak Detection | 84 |
| Thermal Oxidizer | 6 |
| Vapor Control Units | 19 |
| Various Controls/Monitors | 29 |
| Vent Controls | 1 |
| VOC Reduction Systems | 4 |
| Wastewater Treatment Equipment | 56 |

Application Processing

The average administrative processing time in 2011 was 66 days. During 2010, the average administrative processing time was 61 days.

In 2011, the TCEQ had two full-time employees dedicated to reviewing use determination applications. These staff have a 60-day timeframe to complete the technical review of each application. In 2011, the average technical review was

completed in 38 days with 75% being completed in 60 or fewer days. During 2010, the average technical review took 104 days with 30% being completed in 60 or fewer days.

Appeals

On April 13, 2007, negative use determinations were issued for ten applications filed by Valero Refining - Texas, L.P., Diamond Shamrock Refining Company, L.P., and The Premcor Refining Group, Inc. (“Valero”) for hydrotreater equipment located at five refineries in Texas. Valero filed an appeal on May 9, 2007. During the TCEQ Commissioner’s Agenda Meeting on January 13, 2010 the commission remanded the applications to the executive director for additional review. Valero supplied additional information during 2010. Additional information was requested during 2011. On December 13, 2011, program staff completed the technical reviews and new negative use determinations were issued for the Valero hydrotreater equipment applications. Additional information provided by the applicant did not demonstrate that the hydrotreating equipment provided an environmental benefit at the site in satisfaction of 30 TAC §17.15 (adopted to be effective January 9, 2002), which was repealed by the commission in December 2010 (35 TexReg 10964). Valero did not further appeal the negative use determinations.

Subsequent to the Valero appeal, several hydrotreater equipment applications were received from other applicants and placed on hold. After the new negative use determinations were issued for the Valero applications, the executive director issued technical notice of deficiency letters to the other 11 applicants. These letters requested the same supplemental information as previously-requested from Valero. The applicants did not respond within the required 30 days. As a result, all of the applications are considered withdrawn.

On May 3, 2010 an application was received from Geep Texas, LLC (“Geep”). Geep recycles electronic components such as computers. The recycling process involves the crushing and grinding of material followed by separation using magnets and air classifiers. This application requested a positive use determination for conveyors, chutes, belts and imagers. The requested equipment was deemed production equipment and a negative use determination was issued on October 26, 2010. An appeal was filed by Geep on November 11, 2010 and then withdrawn on March 24, 2011.

Appendix A

Applications Received from 1994-2011 - Sorted by County

Table 10. Applications Received between November 1994 and December 2011, Sorted by County

| County | Number of Applications Received | Total Estimated Dollar Value of Projects⁸ |
|---------------|--|---|
| Anderson | 28 | \$54,703,192 |
| Andrews | 16 | \$13,997,831 |
| Angelina | 116 | \$191,244,427 |
| Aransas | 1 | \$1,484,000 |
| Armstrong | 1 | \$6,387 |
| Atascosa | 22 | \$48,711,592 |
| Austin | 9 | \$13,560,312 |
| Bastrop | 27 | \$182,872,351 |
| Bee | 4 | \$736,842 |
| Bell | 96 | \$33,888,451 |
| Bexar | 229 | \$328,773,002 |
| Borden | 6 | \$2,805,742 |
| Bosque | 16 | \$84,868,570 |
| Bowie | 25 | \$12,990,825 |
| Brazoria | 1092 | \$2,372,117,703 |
| Brazos | 32 | \$17,060,313 |
| Brooks | 19 | \$12,971,376 |
| Brown | 25 | \$46,967,611 |
| Burleson | 20 | \$6,587,164 |
| Burnet | 16 | \$10,465,914 |
| Caldwell | 3 | \$3,143,971 |
| Calhoun | 145 | \$370,480,078 |
| Callahan | 5 | \$18,600 |
| Cameron | 27 | \$4,862,391 |
| Camp | 1 | \$32,934 |
| Carson | 5 | \$621,455 |
| Cass | 25 | \$66,018,108 |
| Castro | 3 | \$2,523,897 |
| Chambers | 174 | \$703,985,640 |
| Cherokee | 29 | \$20,867,246 |
| Childress | 1 | \$15,558 |
| Clay | 9 | \$391,735 |
| Cochran | 1 | \$141,000 |
| Coke | 5 | \$2,075,603 |
| Coleman | 2 | \$30,800 |

⁸ Estimated value provided by applicants.

| County | Number of Applications Received | Total Estimated Dollar Value of Projects⁸ |
|---------------|--|---|
| Collin | 189 | \$78,446,739 |
| Colorado | 11 | \$3,917,324 |
| Comal | 59 | \$118,448,150 |
| Comanche | 13 | \$742,181 |
| Concho | 4 | \$773,378 |
| Cooke | 44 | \$2,221,808 |
| Coryell | 9 | \$131,854 |
| Cottle | 3 | \$723,616 |
| Crane | 7 | \$4,784,836 |
| Crockett | 31 | \$27,075,706 |
| Culberson | 6 | \$22,989,854 |
| Dallam | 3 | \$11,880,829 |
| Dallas | 800 | \$250,586,551 |
| Dawson | 1 | \$103,050 |
| Deaf Smith | 12 | \$59,900,892 |
| Delta | 1 | \$20,400 |
| Denton | 181 | \$100,761,825 |
| DeWitt | 12 | \$19,286,675 |
| Dimmit | 4 | \$3,682,062 |
| Donley | 1 | \$13,316 |
| Duval | 15 | \$9,148,948 |
| Eastland | 19 | \$434,925 |
| Ector | 169 | \$376,620,083 |
| Edwards | 12 | \$6,035,282 |
| El Paso | 377 | \$680,529,560 |
| Ellis | 217 | \$653,626,351 |
| Erath | 16 | \$5,398,452 |
| Falls | 8 | \$1,127,571 |
| Fannin | 17 | \$31,399,038 |
| Fayette | 15 | \$14,980,975 |
| Fisher | 4 | \$140,391 |
| Floyd | 1 | \$429,800 |
| Fort Bend | 267 | \$378,927,765 |
| Franklin | 2 | \$25,858 |
| Freestone | 111 | \$391,502,350 |
| Frio | 3 | \$17,011,495 |
| Gaines | 9 | \$20,919,995 |
| Galveston | 363 | \$1,974,697,785 |
| Garza | 1 | \$25,000 |

| County | Number of Applications Received | Total Estimated Dollar Value of Projects⁸ |
|---------------|--|---|
| Gillespie | 1 | \$31,800 |
| Glasscock | 6 | \$1,568,904 |
| Goliad | 21 | \$80,715,800 |
| Gonzales | 3 | \$1,239,811 |
| Gray | 39 | \$38,493,188 |
| Grayson | 85 | \$36,745,069 |
| Gregg | 123 | \$42,750,988 |
| Grimes | 29 | \$125,260,522 |
| Guadalupe | 37 | \$295,071,494 |
| Hale | 6 | \$13,965,930 |
| Hall | 1 | \$10,229 |
| Hamilton | 1 | \$18,771 |
| Hansford | 9 | \$3,695,834 |
| Hardeman | 1 | \$2,441 |
| Hardin | 43 | \$55,682,359 |
| Harris | 3,527 | \$7,403,039,602 |
| Harrison | 195 | \$276,006,329 |
| Haskell | 9 | \$3,218,472 |
| Hays | 46 | \$166,853,937 |
| Hemphill | 33 | \$23,439,170 |
| Henderson | 54 | \$8,896,171 |
| Hidalgo | 82 | \$211,774,997 |
| Hill | 35 | \$11,360,748 |
| Hockley | 16 | \$9,017,690 |
| Hood | 32 | \$59,148,634 |
| Hopkins | 21 | \$15,587,261 |
| Houston | 24 | \$11,032,043 |
| Howard | 19 | \$116,186,631 |
| Hudspeth | 1 | \$1,657 |
| Hunt | 27 | \$10,209,212 |
| Hutchinson | 85 | \$186,370,938 |
| Irion | 13 | \$3,270,406 |
| Jack | 11 | \$27,792,981 |
| Jackson | 3 | \$11,090,532 |
| Jasper | 19 | \$71,700,259 |
| Jefferson | 731 | \$4,308,034,441 |
| Jim Hogg | 7 | \$3,230,776 |
| Jim Wells | 42 | \$53,946,301 |
| Johnson | 180 | \$220,374,634 |

| County | Number of Applications Received | Total Estimated Dollar Value of Projects⁸ |
|---------------|--|---|
| Jones | 12 | \$522,733 |
| Karnes | 9 | \$9,490,177 |
| Kaufman | 70 | \$187,552,202 |
| Kendall | 1 | \$6,272 |
| Kenedy | 6 | \$2,501,300 |
| Kent | 7 | \$3,226,030 |
| Kerr | 2 | \$131,392 |
| King | 1 | \$18,175 |
| Kleburg | 8 | \$444,993 |
| Knox | 1 | \$109,007 |
| La Salle | 6 | \$5,214,736 |
| Lamar | 27 | \$117,549,766 |
| Lamb | 51 | \$19,305,277 |
| Lampasas | 3 | \$977,405 |
| Lavaca | 15 | \$10,932,525 |
| Lee | 13 | \$21,267,133 |
| Leon | 23 | \$45,855,515 |
| Liberty | 41 | \$48,971,815 |
| Limestone | 123 | \$144,003,099 |
| Lipscomb | 13 | \$4,697,749 |
| Live Oak | 23 | \$120,359,669 |
| Llano | 2 | \$24,921 |
| Loving | 16 | \$20,576,807 |
| Lubbock | 49 | \$16,440,213 |
| Madison | 15 | \$29,932,139 |
| Marion | 19 | \$19,096,015 |
| Martin | 3 | \$1,197,056 |
| Mason | 1 | \$3,315,303 |
| Matagorda | 77 | \$497,670,352 |
| Maverick | 1 | \$18,175 |
| McCulloch | 5 | \$2,873,342 |
| McLennan | 106 | \$627,048,030 |
| McMullen | 8 | \$7,293,159 |
| Medina | 7 | \$908,559 |
| Midland | 23 | \$17,711,209 |
| Milam | 119 | \$1,033,327,323 |
| Mitchell | 12 | \$6,070,579 |
| Montague | 16 | \$6,529,026 |
| Montgomery | 131 | \$103,113,952 |

| County | Number of Applications Received | Total Estimated Dollar Value of Projects⁸ |
|---------------|--|---|
| Moore | 30 | \$269,385,725 |
| Morris | 16 | \$3,647,294 |
| Nacogdoches | 85 | \$41,327,020 |
| Navarro | 40 | \$19,235,003 |
| Newton | 4 | \$71,063,404 |
| Nolan | 22 | \$8,828,944 |
| Nueces | 213 | \$1,320,492,354 |
| Ochiltree | 15 | \$36,294,454 |
| Orange | 139 | \$315,691,511 |
| Palo Pinto | 25 | \$6,711,376 |
| Panola | 110 | \$226,392,787 |
| Parker | 61 | \$56,119,673 |
| Parmer | 5 | \$9,091,282 |
| Pecos | 42 | \$91,563,767 |
| Polk | 16 | \$21,584,876 |
| Potter | 131 | \$118,996,706 |
| Rains | 2 | \$194,078 |
| Randall | 7 | \$602,248 |
| Reagan | 5 | \$1,135,762 |
| Red River | 11 | \$968,236 |
| Reeves | 7 | \$29,048,060 |
| Refugio | 4 | \$11,257,007 |
| Roberts | 5 | \$2,247,189 |
| Robertson | 87 | \$714,232,066 |
| Rockwall | 29 | \$3,509,165 |
| Runnels | 5 | \$2,483,080 |
| Rusk | 116 | \$515,527,096 |
| Sabine | 3 | \$1,394,385 |
| San Augustine | 1 | \$692,895 |
| San Jacinto | 12 | \$3,100,881 |
| San Patricio | 39 | \$188,862,955 |
| Schleicher | 12 | \$1,112,663 |
| Scurry | 10 | \$7,235,964 |
| Shackelford | 5 | \$1,278,966 |
| Shelby | 50 | \$24,995,066 |
| Sherman | 5 | \$5,984,348 |
| Smith | 189 | \$223,092,553 |
| Somervell | 13 | \$12,781,201 |
| Starr | 33 | \$29,469,326 |

| County | Number of Applications Received | Total Estimated Dollar Value of Projects⁸ |
|---------------|--|---|
| Stephens | 8 | \$260,626 |
| Sterling | 9 | \$4,159,175 |
| Sutton | 44 | \$19,802,712 |
| Tarrant | 606 | \$422,754,805 |
| Taylor | 49 | \$90,667,680 |
| Terrell | 11 | \$9,521,589 |
| Terry | 3 | \$79,422 |
| Titus | 80 | \$280,923,424 |
| Tom Green | 16 | \$35,551,618 |
| Travis | 338 | \$457,379,721 |
| Trinity | 3 | \$22,263,465 |
| Tyler | 14 | \$15,558,724 |
| Upshur | 10 | \$20,228,280 |
| Upton | 24 | \$15,801,451 |
| Uvalde | 2 | \$991,244 |
| Val Verde | 6 | \$4,485,968 |
| Van Zandt | 10 | \$597,680 |
| Victoria | 64 | \$199,716,558 |
| Walker | 6 | \$2,763,099 |
| Waller | 16 | \$13,643,888 |
| Ward | 12 | \$8,731,080 |
| Washington | 15 | \$10,877,437 |
| Webb | 49 | \$42,958,177 |
| Wharton | 34 | \$174,697,187 |
| Wheeler | 54 | \$56,377,676 |
| Wichita | 33 | \$44,344,520 |
| Wilbarger | 43 | \$17,845,203 |
| Willacy | 5 | \$4,906,064 |
| Williamson | 120 | \$18,640,905 |
| Wilson | 1 | \$128,625 |
| Winkler | 7 | \$7,648,217 |
| Wise | 142 | \$208,598,442 |
| Wood | 20 | \$5,948,468 |
| Yoakum | 12 | \$106,713,500 |
| Young | 16 | \$7,622,858 |
| Zapata | 44 | \$27,002,047 |
| Zavala | 1 | \$1,346,000 |
| Total | 15,465 | \$33,683,784,287 |

