

# **Tax Relief for Pollution Control Property**

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***2012 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-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.”<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup> 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 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.<sup>4</sup>

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). 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, Chapter 17 was amended by the TCEQ in 2008. The specific equipment added to

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

<sup>2</sup> TTC, §11.31(c) & (d).

<sup>3</sup> TTC, §11.31(i).

<sup>4</sup> TTC, §11.31(g).

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 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 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.

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.

## ***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 §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 §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 or 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, 2012, a total of 16,185 applications have been received.

Table 1: *Total Number of Applications Filed since Program Inception (November 1994 – December 2012)* 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 2012)**

Status	Tier I	Tier II	Tier III	Tier IV <sup>5</sup>	Total
Approved	14,342	405	223	25	14,995
Denied	226	39	26	40	331
Withdrawn	784	29	32	14	859
<b>Total</b>	<b>15,352</b>	<b>473</b>	<b>281</b>	<b>79</b>	<b>16,185</b>

Table 2: *Number of Applications Received During 2012* shows the number of applications received during Calendar Year 2012, categorized by tier level and by approval status. A total of 726 applications were received during 2012 and, of those, 88% were approved, 10% were withdrawn, and 2% were denied. While this report is primarily for Calendar Year 2012 application activities, Calendar Year 2011 information is also provided for comparison purposes.

**Table 2. Number of Applications Received During 2012**

Status	Tier I	Tier II	Tier III	Total
Approved	596	26	16	638
Denied	9	0	5	14
Withdrawn	69	1	4	74
<b>Total</b>	<b>674</b>	<b>27</b>	<b>25</b>	<b>726</b>

Table 3: *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% denied, and 1% remained under review.

**Table 3. Number of Applications Received During 2011**

Status	Tier I	Tier II	Tier III	Total
Approved	483	7	8	498
Denied	4	2	1	7
Withdrawn	95	2	10	107
Under Review	4	0	0	4
<b>Total</b>	<b>586</b>	<b>11</b>	<b>19</b>	<b>616</b>

## Fees Received

The estimated fees received during Calendar Years 2012 and 2011 were \$190,450 and \$146,500, respectively. Table 4: *Application Fees Collected by Tier Level for Years 2011 and 2012* shows fee collections by tier level for years 2011 and 2012.

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

The increase in total fees between 2011 and 2012 is attributable to an increase in the number of 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 6, 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 2012**

Calendar Year	Tier I	Tier II	Tier III	Year Total
2011	\$87,900	\$11,000	\$47,500	\$146,500
2012	\$101,100	\$27,000	\$62,500	\$190,600

### Total Tier III and IV Applications

Because of the complexity, Tier III and Tier IV applications require the most review time. The Tier IV level was established in February 2008 for applications containing only items listed in TTC, §11.31(k). In December 2010 Chapter 17 was amended to allow applications containing subchapter (k) items to be filed as Tier I, II, or III application depending on their eligibility. There has been an increase in the number of Tier III applications received due to the elimination of the Tier IV category and the removed of partial use determinations from the Tier I Table. The Tier I Table was previously known as the Predetermined Equipment List and the Equipment and Categories List.

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.

**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

Calendar Year	Number of Applications	Estimated Dollar Value of Projects
2006	4	\$138,094,437
2007	11	\$64,352,866
2008	5	\$75,293,379
2009	8	\$125,717,478
2010	10	\$333,305,478
2011	19	\$1,071,732,138
2012	25	\$894,318,780
<b>Total</b>	<b>281</b>	<b>\$5,462,373,597</b>

Table 6: *Number of Tier IV Applications Received by Year* shows that a total of 79 Tier IV applications were received during the three years the category existed.

Table 6. 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
<b>Total</b>	<b>79</b>	<b>\$3,659,841,014</b>

## Applications Received in 2012 - County Information

Over one-third of the applications received during Calendar Year 2012 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 49% of the total estimated dollar value in the use determination applications. Over 42% of the applications, containing 62% of the estimated dollar value, were from entities located in counties within TCEQ Regions 5 (Tyler), 10 (Beaumont), 12 (Houston), and 14 (Corpus Christi).

Applications have been received from 230 of Texas' 254 counties. Applications have not been received from the following counties: Bailey, Bandera, Baylor, Brewster, Briscoe, Collingsworth, Crosby, Dickens, Foard, Hartley, Jeff Davis, Kimble, King, Kinney, Lynn, Menard, Mills, Motley, Oldham, Presidio, Real, San Saba, Swisher, and Throckmorton Counties. These counties are primarily located in the Panhandle and West Texas. As of 2010, the population of these counties represents 0.5% of the population of Texas.

Table 7: *Applications Received for Calendar Year 2012 Grouped by County* shows the distribution, by county, of all Tier I-III applications received during Calendar Year 2012 and the total estimated dollar value.

**Table 5. Applications Received for Calendar Year 2012 Grouped by County**

<b>County Name</b>	<b>Number of Applications in 2012</b>	<b>Total Estimated Dollar Value</b>
Andrews	4	\$285,811
Angelina	2	\$751,566
Archer	1	\$15,089
Atascosa	6	\$3,831,142
Austin	6	\$8,400,498
Bexar	6	\$1,953,317
Borden	1	\$586,900
Bosque	1	\$44,903,977
Bowie	1	\$34,600
Brazoria	13	\$36,273,138
Brown	1	\$5,670,619
Calhoun	8	\$9,815,907
Callahan	2	\$336,601
Cass	11	\$15,375,588
Chambers	10	\$6,728,319
Cherokee	2	\$35,332
Collin	10	\$8,555,528
Comal	9	\$5,377,504
Comanche	1	\$55,000
Crane	1	\$338,900
Crockett	1	\$17,237
Culberson	1	\$777,100
Dallam	13	\$3,630,515
Dallas	27	\$3,015,913
Deaf Smith	1	\$28,990,000
Denton	1	\$289,549
Dewitt	16	\$10,478,072
Dimmit	10	\$14,186,638
Duval	2	\$808,674
Eastland	5	\$409,754
Ector	6	\$1,655,304
El Paso	9	\$12,387,377
Ellis	4	\$2,971,029
Erath	1	\$119,700
Fayette	1	\$51,769
Fort Bend	13	\$20,899,224
Freestone	9	\$1,796,889

<b>County Name</b>	<b>Number of Applications in 2012</b>	<b>Total Estimated Dollar Value</b>
Frio	1	\$777,100
Gaines	3	\$3,869,420
Galveston	3	\$6,260,600
Glasscock	1	\$28,225
Gonzales	14	\$11,602,246
Gray	4	\$7,026,819
Grayson	1	\$24,475
Gregg	3	\$3,190,669
Guadalupe	1	\$806,640
Hale	73	\$38,838,788
Hansford	7	\$672,725
Hardin	1	\$92,576
Harris	90	\$186,012,846
Harrison	7	\$8,281,853
Hemphill	2	\$688,781
Henderson	3	\$69,092
Hill	1	\$12,546
Hockley	1	\$630,400
Hood	3	\$833,770
Howard	4	\$953,580
Hutchinson	3	\$67,462,791
Jack	1	\$78,575,488
Jefferson	45	\$728,168,822
Jim Wells	4	\$3,092,200
Johnson	4	\$807,906
Jones	1	\$107,881
Karnes	8	\$5,129,866
La Salle	15	\$13,157,351
Lamar	1	\$43,315
Lamb	5	\$7,705,671
Lavaca	3	\$1,528,299
Leon	1	\$14,328
Liberty	1	\$129,258
Limestone	4	\$17,983,125
Live Oak	4	\$41,715,012
Loving	2	\$1,349,700
Marion	1	\$584,282
Martin	4	\$242,296

<b>County Name</b>	<b>Number of Applications in 2012</b>	<b>Total Estimated Dollar Value</b>
Matagorda	2	\$135,915
McLennan	2	\$6,149,588
McMullen	14	\$7,938,171
Midland	7	\$983,089
Mitchell	3	\$124,067
Montague	1	\$825,862
Montgomery	4	\$1,736,267
Moore	2	\$57,408,784
Navarro	5	\$313,051
Newton	3	\$63,286,624
Nolan	2	\$285,225
Nueces	3	\$34,007,858
Ochiltree	1	\$2,731,800
Orange	2	\$9,707,322
Palo Pinto	3	\$222,745
Panola	5	\$3,617,766
Parker	5	\$281,468
Polk	1	\$14,729
Potter	2	\$346,631
Reagan	2	\$1,287,500
Reeves	6	\$44,960,943
Refugio	3	\$2,048,373
Robertson	1	\$170,005,823
Runnels	1	\$141,038
Rusk	3	\$1,573,360
San Augustine	2	\$1,554,200
San Patricio	2	\$15,869,850
Scurry	6	\$363,018
Smith	1	\$49,251
Tarrant	17	\$5,109,270
Taylor	3	\$3,793,940
Titus	3	\$6,735,923
Travis	4	\$7,712,830
Upton	1	\$17,237
Victoria	9	\$46,256,585
Ward	2	\$1,302,000
Webb	17	\$46,181,359
Wheeler	3	\$522,000

<b>County Name</b>	<b>Number of Applications in 2012</b>	<b>Total Estimated Dollar Value</b>
Wichita	5	\$837,634
Williamson	1	\$83,424
Wilson	6	\$7,416,504
Winkler	4	\$9,527,598
Wise	1	\$26,172
Yoakum	6	\$8,595,205
Young	2	\$62,201
<b>Totals</b>	<b>726</b>	<b>\$2,062,524,253</b>

**Table 8: 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 estimated dollar value.

**Table 6. Applications Received for Calendar Year 2011 Grouped by County**

<b>County Name</b>	<b>Number of Applications in 2011</b>	<b>Total Estimated Dollar Value</b>
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
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

<b>County Name</b>	<b>Number of Applications in 2011</b>	<b>Total Estimated Dollar Value</b>
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
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

<b>County Name</b>	<b>Number of Applications in 2011</b>	<b>Total Estimated Dollar Value</b>
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
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

<b>County Name</b>	<b>Number of Applications in 2011</b>	<b>Total Estimated Dollar Value</b>
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
<b>Totals</b>	<b>616</b>	<b>\$2,959,704,060</b>

## **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, 56% of the rules cited in applications received during Calendar Years 2011 and 2012 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 2012.

- 40 Code of Federal Regulations(CFR) 112: Oil Pollution Prevention;
- 40 CFR 60: Standards of Performance for New Stationary Sources;
- 30 TAC 116: Control of Air Pollution by Permits for New Construction or Modification;

- 16 TAC 3.8: Water Protection Texas Railroad Commission; and
- 49 CFR 192: Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.

In 2011, 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;
- 16 TAC 3.8: Water Protection Texas Railroad Commission;
- 30 TAC 111: Control of Air Pollution from Visible Emissions and Particulate Matter;
- 40 CFR 60: Standards of Performance for New Stationary Sources; and
- 30 TAC 115: Control of Air Pollution from Volatile Organic Compounds.

## **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:

- 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 2012, 29% were from electricity generating facilities; 27% were from natural gas processing, storage, and transportation facilities; 11% of the applications received were for drilling rigs; 10% were from chemical manufacturing facilities; 4% were from manufacturers of building materials; and 2% were from 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.

## Type of Equipment

Table 9: *Types and Quantities of Equipment Listed on Applications Received in Calendar Year 2012* shows a list of the types of equipment that have been included in applications received during Calendar Year 2012. 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 items were installed to control either volatile organic compound (VOC) or particulate matter emissions.

**Table 9. Types and Quantities of Equipment Listed on Applications Received in Calendar Year 2012**

Type of Equipment	Quantity of Equipment Listed in Calendar Year 2012 Applications
Air Emission Controls - Various	18
Continuous Emission Monitoring Systems	37
Compressor Equipment	20
Double Hulled Barge	6
Drilling Rigs - MUD Recycling/Blow Out Prevention	117
Dust/Particulate Collection Devices	77
Electrostatic Precipitator	4
Flue Gas Desulphurization	6
Flare	38
Flare Gas Recovery	3
Internal/External Floating roofs	20
HRSG	5
Injection Well	2
Low NOx Burner	8
Monitoring Equipment	47
Other	35
Pipeline Equipment	105
Selective/Nonselective Catalytic Reduction	33
Scrubber	24
Service Station Equipment	52
Spill Containment	55
Stack	27
Stormwater Controls	109
Thermal Oxidizer	20
Vapor Control	5
Waste Treatment	7
Wastewater Treatment System	71

## **Application Processing**

The average administrative processing time in 2012 was 35 days. During 2011, the average administrative processing time was 66 days.

By rule, staff has a 60-day time frame after an application is declared administratively complete to complete the technical review. In 2012, the average technical review time was 15 days with 95% of technical reviews being completed in 60 or fewer days. During 2011, the average technical review time was 38 days with 75% of technical reviews being completed in 60 or fewer days.

## **Appeals**

On July 12, 2012, a mixed use determination was issued for an application filed by Salado at Walnut Creek Partner, LLC. On August 3, 2012, the applicant appealed the negative portion of the determination. The negative determination was issued for the first floor units of the apartment buildings. During the TCEQ Commissioners' agenda meeting on October 31, 2012, the commission denied the appeal. The applicant filed a Motion for Rehearing on November 28, 2012. The motion was denied. Subsequently, the applicant filed suit in district court. The suit is pending at the time of this report.

On July 19, 2012, notice of withdrawal letters were issued for three applications filed by Dallas Clean Energy, LLC for property installed to collect, clean, compress, and then sell landfill gas collected on a landfill not owned by the applicant. The applicant failed to respond to technical notice of deficiency letters. On August 7, 2012, the applicant appealed the withdrawal. Since neither a positive nor negative determination was issued, the TCEQ general counsel treated the appeal as a Motion for Rehearing and denied it. Subsequently, the applicant filed suit in district court. The suit is pending at the time of this report.

On May 1, 2008, 100% positive use determinations were issued for 25 applications containing heat recovery steam generators (HRSG). On May 14, 2008, appeals were filed by appraisal districts for six of the positive determinations. In response to the appeals, the TCEQ placed the reviews of additional applications containing HRSGs on hold. The appeals were scheduled to be heard at the TCEQ Commissioners' January 28, 2009 agenda meeting but were withdrawn from consideration. On June 29, 2012, the appealed applications were remanded to the executive director for additional review. 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. Subsequently one of the appeals was withdrawn. During the December 5, 2012 agenda meeting, the commission considered the remaining 23 appeals and remanded the applications to the ED for additional consideration. On February 20, 2013, technical notices of deficiency letters were mailed with a response due date of March 26, 2013. On March 6, 2013, a request for

clarification of the deficiencies and a 90-day extension of the response due date was received from an attorney representing multiple appellants. On March 19, 2013, a second deficiency letter granting the 90-day extension and containing clarification of the information required was issued. The extended response date was June 24, 2013. Additional information was received from the applicants on June 24, 2013. The outcome of the additional review of these applications is pending at the time of this report.

## ***Appendix A***

### **Applications Received between November 1994 and December 2012, Sorted by County**

**Applications Received between November 1994 and December 2012, Sorted by County**

<b>County</b>	<b>Number of Applications Received</b>	<b>Total Estimated Dollar Value of Projects<sup>6</sup></b>
Anderson	30	\$54,796,423
Andrews	20	\$14,283,642
Angelina	118	\$191,995,993
Aransas	1	\$1,484,000
Archer	1	\$15,089
Armstrong	1	\$6,387
Atascosa	28	\$52,542,734
Austin	15	\$21,960,810
Bastrop	27	\$182,872,351
Bee	4	\$736,842
Bell	96	\$33,888,451
Bexar	235	\$330,726,319
Borden	7	\$3,392,642
Bosque	17	\$129,772,547
Bowie	26	\$13,025,425
Brazoria	1,105	\$2,408,390,841
Brazos	32	\$17,060,313
Brooks	19	\$12,971,376
Brown	26	\$52,638,230
Burleson	20	\$6,587,164
Burnet	16	\$10,465,914
Caldwell	3	\$3,143,971
Calhoun	153	\$380,295,985
Callahan	7	\$355,201
Cameron	27	\$4,862,391
Camp	1	\$32,934
Carson	5	\$621,455
Cass	36	\$81,393,696
Castro	3	\$2,523,897
Chambers	184	\$710,713,959
Cherokee	31	\$20,902,578
Childress	1	\$15,558
Clay	9	\$391,735
Cochran	1	\$141,000
Coke	5	\$2,075,603

<sup>6</sup> Estimated value provided by applicants.

<b>County</b>	<b>Number of Applications Received</b>	<b>Total Estimated Dollar Value of Projects<sup>6</sup></b>
Coleman	2	\$30,800
Collin	199	\$87,002,267
Colorado	11	\$3,917,324
Comal	68	\$123,825,654
Comanche	14	\$797,181
Concho	4	\$773,378
Cooke	44	\$2,221,808
Coryell	9	\$131,854
Cottle	3	\$723,616
Crane	8	\$5,123,736
Crockett	32	\$27,092,943
Culberson	7	\$23,766,954
Dallam	16	\$15,511,344
Dallas	827	\$253,602,464
Dawson	1	\$103,050
Deaf Smith	13	\$88,890,892
Delta	1	\$20,400
Denton	182	\$101,051,374
DeWitt	28	\$29,764,747
Dimmit	14	\$17,868,700
Donley	1	\$13,316
Duval	17	\$9,957,622
Eastland	24	\$844,679
Ector	175	\$378,275,387
Edwards	12	\$6,035,282
El Paso	386	\$692,916,937
Ellis	221	\$656,597,380
Erath	17	\$5,518,152
Falls	8	\$1,127,571
Fannin	17	\$31,399,038
Fayette	16	\$15,032,744
Fisher	4	\$140,391
Floyd	1	\$429,800
Fort Bend	280	\$399,826,989
Franklin	2	\$25,858
Freestone	120	\$393,299,239
Frio	4	\$17,788,595
Gaines	12	\$24,789,415

<b>County</b>	<b>Number of Applications Received</b>	<b>Total Estimated Dollar Value of Projects<sup>6</sup></b>
Galveston	366	\$1,980,958,385
Garza	1	\$25,000
Gillespie	1	\$31,800
Glasscock	7	\$1,597,129
Goliad	21	\$80,715,800
Gonzales	17	\$12,842,057
Gray	43	\$45,520,007
Grayson	86	\$36,769,544
Gregg	126	\$45,941,657
Grimes	29	\$125,260,522
Guadalupe	38	\$295,878,134
Hale	79	\$52,804,718
Hall	1	\$10,229
Hamilton	1	\$18,771
Hansford	16	\$4,368,559
Hardeman	1	\$2,441
Hardin	44	\$55,774,935
Harris	3,611	\$7,589,052,448
Harrison	202	\$284,288,182
Haskell	9	\$3,218,472
Hays	46	\$166,853,937
Hemphill	35	\$24,127,951
Henderson	57	\$8,965,263
Hidalgo	82	\$211,774,997
Hill	36	\$11,373,294
Hockley	17	\$9,648,090
Hood	35	\$59,982,404
Hopkins	21	\$15,587,261
Houston	24	\$11,032,043
Howard	23	\$117,140,211
Hudspeth	1	\$1,657
Hunt	27	\$10,209,212
Hutchinson	88	\$253,833,729
Irion	13	\$3,270,406
Jack	12	\$106,368,469
Jackson	3	\$11,090,532
Jasper	19	\$71,700,259
Jefferson	776	\$5,036,203,263

<b>County</b>	<b>Number of Applications Received</b>	<b>Total Estimated Dollar Value of Projects<sup>6</sup></b>
Jim Hogg	7	\$3,230,776
Jim Wells	46	\$57,038,501
Johnson	184	\$221,182,540
Jones	13	\$630,614
Karnes	17	\$14,620,043
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
Kleberg	8	\$444,993
Knox	1	\$109,007
La Salle	21	\$18,372,087
Lamar	28	\$117,593,081
Lamb	56	\$27,010,948
Lampasas	3	\$977,405
Lavaca	18	\$12,460,824
Lee	13	\$21,267,133
Leon	24	\$45,869,843
Liberty	42	\$49,101,073
Limestone	127	\$161,986,224
Lipscomb	13	\$4,697,749
Live Oak	27	\$162,074,681
Llano	2	\$24,921
Loving	18	\$21,926,507
Lubbock	49	\$16,440,213
Madison	15	\$29,932,139
Marion	20	\$19,680,297
Martin	7	\$1,439,352
Mason	1	\$3,315,303
Matagorda	79	\$497,806,267
Maverick	1	\$18,175
McCulloch	5	\$2,873,342
McLennan	108	\$633,197,618
McMullen	22	\$15,231,330
Medina	7	\$908,559
Midland	30	\$18,694,298

<b>County</b>	<b>Number of Applications Received</b>	<b>Total Estimated Dollar Value of Projects<sup>6</sup></b>
Milam	119	\$1,033,327,323
Mitchell	15	\$6,194,646
Montague	17	\$7,354,888
Montgomery	135	\$104,850,219
Moore	32	\$326,794,509
Morris	16	\$3,647,294
Nacogdoches	85	\$41,327,020
Navarro	45	\$19,548,054
Newton	7	\$134,350,028
Nolan	24	\$9,114,169
Nueces	216	\$1,354,500,212
Ochiltree	16	\$39,026,254
Orange	141	\$325,398,833
Palo Pinto	28	\$6,934,121
Panola	115	\$230,010,553
Parker	66	\$56,401,141
Parmer	5	\$9,091,282
Pecos	42	\$91,563,767
Polk	17	\$21,599,605
Potter	133	\$119,343,337
Rains	2	\$194,078
Randall	7	\$602,248
Reagan	7	\$2,423,262
Red River	11	\$968,236
Reeves	13	\$74,009,003
Refugio	7	\$13,305,380
Roberts	5	\$2,247,189
Robertson	88	\$884,237,889
Rockwall	29	\$3,509,165
Runnels	6	\$2,624,118
Rusk	119	\$517,100,456
Sabine	3	\$1,394,385
San Augustine	3	\$2,247,095
San Jacinto	14	\$18,970,731
San Patricio	39	\$188,862,955
Schleicher	12	\$1,112,663
Scurry	16	\$7,598,982
Shackelford	5	\$1,278,966

<b>County</b>	<b>Number of Applications Received</b>	<b>Total Estimated Dollar Value of Projects<sup>6</sup></b>
Shelby	50	\$24,995,066
Sherman	5	\$5,984,348
Smith	190	\$223,141,804
Somervell	13	\$12,781,201
Starr	33	\$29,469,326
Stephens	8	\$260,626
Sterling	9	\$4,159,175
Sutton	44	\$19,802,712
Tarrant	623	\$427,864,075
Taylor	52	\$94,461,620
Terrell	11	\$9,521,589
Terry	3	\$79,422
Titus	83	\$287,659,347
Tom Green	16	\$35,551,618
Travis	342	\$465,092,551
Trinity	3	\$22,263,465
Tyler	14	\$15,558,724
Upshur	10	\$20,228,280
Upton	25	\$15,818,688
Uvalde	2	\$991,244
Val Verde	6	\$4,485,968
Van Zandt	10	\$597,680
Victoria	73	\$245,973,143
Walker	6	\$2,763,099
Waller	16	\$13,643,888
Ward	14	\$10,033,080
Washington	15	\$10,877,437
Webb	66	\$89,139,536
Wharton	34	\$174,697,187
Wheeler	57	\$56,899,676
Wichita	38	\$45,182,154
Wilbarger	43	\$17,845,203
Willacy	5	\$4,906,064
Williamson	121	\$18,724,329
Wilson	7	\$7,545,129
Winkler	11	\$17,175,815
Wise	143	\$208,624,614
Wood	20	\$5,948,468

<b>County</b>	<b>Number of Applications Received</b>	<b>Total Estimated Dollar Value of Projects<sup>6</sup></b>
Yoakum	18	\$115,308,705
Young	18	\$7,685,059
Zapata	44	\$27,002,047
Zavala	1	\$1,346,000
<b>Total</b>	<b>16,185</b>	<b>\$35,746,308,540</b>