

2022 Annual Report

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

DRAFT

February __, 2023

This report is submitted in compliance with Article 6.2 of the TCEQ Tax Relief for Pollution Control Property Advisory Committee (Committee) bylaws, which states: "Unless otherwise directed, the Committee shall report to the Commissioners a minimum of once per year. The report must be sufficient to allow the Commissioners to properly evaluate the Committee's work, usefulness, and the costs related to the Committee's existence."

About Tax Relief for Pollution Control Property

Proposition 2 on the November 2, 1993 state ballot approved adding the following §1-1 to the Texas Constitution, Article VIII:

**PROPERTY USED FOR CONTROL OF AIR, WATER, OR LAND POLLUTION;
EXEMPTION FROM AD VALOREM TAXATION.**

- (a) The legislature by general law may exempt from ad valorem taxation all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution.
- (b) This section applies to real and personal property used as a facility, device, or method for the control of air, water, or land pollution that would otherwise be taxable for the first time on or after January 1, 1994.
- (c) This section does not authorize the exemption from ad valorem taxation of real or personal property that was subject to a tax abatement agreement executed before January 1, 1994.

The 73rd Legislature (1993) added Texas Tax Code §11.31, Pollution Control Property, and Texas Tax Code §26.045, Rollback Relief for Pollution Control Requirements, to implement the new constitutional provision. The commission adopted Title 30, Texas Administrative Code, Chapter 277 on September 30, 1994 to establish the procedures for obtaining a tax exemption under Proposition 2. In 1998, Chapter 277 was moved to Chapter 17 to be consistent with the commission's policy of placing general or multimedia rules within 30 TAC Chapters 1-100.

The primary subsections in Tax Code §11.31 regarding eligibility for tax exemption are:

- (a) A person is entitled to an exemption from taxation of all or part of real and personal property that the person owns and that is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. A person is not entitled to an exemption from taxation under this section solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution. Property used for residential purposes, or for recreational, park, or scenic uses as defined by Section 23.81, is ineligible for an exemption under this section.
- (b) In this section, "facility, device, or method for the control of air, water, or land pollution" means land that is acquired after January 1, 1994, or any structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property, that is used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution. This section does not apply to a motor vehicle.

The primary subsections in Tax Code §11.31 regarding authority for the TCEQ Tax Relief for Pollution Control Property rules are:

- (g) The commission shall adopt rules to implement this section. Rules adopted under this section must:
 - (1) establish specific standards for considering applications for determinations;
 - (2) be sufficiently specific to ensure that determinations are equal and uniform; and
 - (3) allow for determinations that distinguish the proportion of property that is used to control, monitor, prevent, or reduce pollution from the proportion of property that is used to produce goods or services.

(g-1) The standards and methods for making a determination under this section that are established in the rules adopted under Subsection (g) apply uniformly to all applications for determinations under this section, including applications relating to facilities, devices, or methods for the control of air, water, or land pollution included on a list adopted by the Texas Commission on Environmental Quality under Subsection (k).

Note: This subsection was added by House Bills 3206 and 3544 of the 81st Texas Legislature (2009).

Purpose of TCEQ Tax Relief for Pollution Control Property Advisory Committee

House Bills 3206 and 3544, 81st Texas Legislature, 2009, added the following subsection (n) to Tax Code §11.31:

The Texas Commission on Environmental Quality shall establish a **permanent advisory committee** consisting of representatives of industry, appraisal districts, taxing units, and environmental groups, as well as members who are not representatives of any of those entities but have substantial technical expertise in pollution control technology and environmental engineering, to *advise the commission regarding the implementation of this section*. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee. (emphasis added)

Consistent with the Committee's purpose, all meeting agendas, discussion and advice focus on the following question:

Which rules, guidelines, forms, instructions, practice, website, or other provisions should be added, deleted, or revised to facilitate and ensure compliance with the implementation of Tax Code §11.31?

Committee Organization

Highlights of the Committee bylaws are:

1. Purpose – Advise the TCEQ Commissioners on matters relating to property tax exemptions for pollution control property.¹
2. Number of Members – May not exceed 13.²
3. Terms – Commission appoints or re-appoints members to staggered four-year terms.³
4. Attendance – Members automatically vacate position if they miss three consecutive regularly scheduled meetings or more than half of all of the regularly scheduled meetings in a one-year period.⁴
5. Presiding Officer – Annual elections or at the request of a majority of the members of the Committee. May be re-appointed.⁵
6. Meetings – Quarterly or at the call of the Presiding Officer or the Commissioners.⁶
7. Public Participation – Committee meetings will be open to the public. The Presiding Officer shall ensure an opportunity for public participation at every Committee meeting.⁷
8. Voting – The Committee will vote on any issue communicated as advice to the Commissioners and other issues within the purview of the Committee. If a vote does not have a consensus, minority members are encouraged to submit minority reports for the Commissioners’ consideration.⁸
9. Reports to the Commission – Unless otherwise directed, the Committee shall report to the Commissioners a minimum of once per year. The report must be sufficient to allow the Commissioners to properly evaluate the Committee’s work, usefulness, and the costs related to the Committee’s existence.⁹

Members of 2022 TCEQ Tax Relief for Pollution Control Property Advisory Committee

On January 27, 2010, the TCEQ Commissioners approved the nomination of six members for two-year terms and seven members for four-year terms. House Bill 2280 of the 82nd Legislature (2011) added the following underlined language to Tax Code §11.31(n):

The Texas Commission on Environmental Quality shall establish a permanent advisory committee consisting of representatives of industry, appraisal districts, taxing units, and environmental groups, as well as members who are not representatives of any of those entities but have substantial technical expertise in pollution control technology and environmental engineering, to advise the commission regarding the implementation of this section. At least one member of the advisory committee must be a representative of a school district or junior college district in which property is located that is or previously was subject to an exemption under this section. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

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

¹ Article 1, Section 1

² Article 2, Section 1

³ Article 2, Section 2

⁴ Article 2, Section 4

⁵ Article 3, Section 2

⁶ Article 4, Section 1

⁷ Article 4, Section 3

⁸ Article 5, Section 4

⁹ Article 6, Section 2

The Advisory Committee consists of 13 members, each of whom serve a four-year, staggered term with expiration of approximately half of the members every two years, subject to reappointment. On December 15, 2021, TCEQ Commissioners reappointed five committee members to another four-year term and two new committee members to a four-year term. 2022 Committee members are listed below; years indicate expiration of their term (December 31).

Representing Industry

- Bob Adair (2025), semi-retired tax advisor (Chair, 2010-2022)
Representing the Texas Oil and Gas Association
- Justin Hyland (2023), with CenterPoint Energy
Representing the Association of Electric Companies of Texas
- Michelle Carder (2025), with Eastman Chemical Company
Representing the Texas Chemical Council
- Martha Landwehr (2025), with BASF Corporation
Representing the Texas Association of Manufacturers
- Greg Maxim (2023), with Cummings Westlake
- Michael Nasi (2023), with Jackson Walker
Representing the Clean Carbon Technology Foundation

Representing Appraisal Districts

- Roland Bieber (2025), representing the Texas Association of Appraisal Districts
- Hugh Landrum, Jr. (2025), with Hugh L. Landrum & Associates, Inc.

Representing a School District or Junior College District

- Lloyd Graham (2023), with Moak Casey
Representing school districts

Representing Taxing Units

- Adam Haynes (2023), with the Texas Conference of Urban Counties
- Bill Longley (2025), with the Texas Municipal League

Representing Environmental Groups

- Dr. Cyrus Reed (2023), with the Sierra Club

Independent Technical Expert

- Charles Allred (2025)

Primary 2022 Actions Taken by Committee

Each Committee meeting generally lasts less than two hours and includes discussion of various issues published on an agenda at least seven days prior to Committee public meetings. Although Committee members and TCEQ staff comprise most of the discussion, ample opportunity is provided for the public to educate the Committee on specific issues, express concerns, and otherwise advise the Committee. Public testimony has included applicants to the Tax Relief program, business associations, appraisal districts, school districts and other interested parties. In compliance with Committee bylaws to meet at least once per quarter, the Committee met in 2022 in person in the agenda room of TCEQ (with optional virtual attendance) on March 25, May 13, August 19, and November 10. Each meeting notice was posted on TCEQ's Email List Service and TCEQ's website at <http://www.tceq.texas.gov/airquality/taxrelief>.

The following advice was submitted to Commissioners on December 1, 2022 (detailed advice attached).

- No change to the Nonexclusive List in Tax Code §11.31(k) and Figure: 30 TAC §17.17(b); and
- Add the following item to the Tier I Table in Figure: 30 TAC §17.14(a): Amine treating system (components necessary to transfer impurities removed from natural gas to a final control device).

Additional items discussed during 2022 public meetings included the following:

1. New committee members Michelle Carder and Martha Landwehr were welcomed.¹⁰
2. Reviewed and approved the 2021 Committee annual report.¹⁰ At the suggestion of committee member Cyrus Reed, the Committee annual report was sent to the Texas Sunset Committee to demonstrate the effectiveness of the Committee.¹¹
3. Anticipated Environmental Protection Agency's supplemental proposal for regulating methane from oil and gas wells and facilities.^{12,13}
4. The Committee again agreed to schedule all quarterly 2023 Committee meetings for the entire year.¹³ The 2023 meeting dates are scheduled for February 17, May 4, September 8, and November 6. Meeting notices and agendas will be provided on the TCEQ's website at www.tceq.texas.gov/airquality/taxrelief/advisory_group.html.
5. Bob Adair was re-elected chair of the Advisory Committee for 2023.¹³

Usefulness of Committee

In addition to the Committee's primary purpose to "advise the commission regarding the implementation" of Tax Code §11.31, the Committee conducts public meetings to provide an opportunity to receive verbal input from the public and perspectives from industry, government and independent representatives on the Committee. The Committee also welcomes and encourages written input on issues within the scope of the Committee.

¹⁰ March 25, 2022 meeting minutes of the Committee

¹¹ Email on April 27, 2022

¹² August 19, 2022 meeting minutes of the Committee

¹³ November 10, 2022 meeting minutes of the Committee

On December 15, 2021, Commissioners approved the Executive Director's recommendation for reappointment/appointment of seven members to the Committee through December 31, 2025. During this meeting, Commissioners expressed the following appreciation for the Committee.

Commissioner Janecka: I'm pleased with some of the names on this matter before us, familiar faces and a few new ones that I think will bring an exciting, competent perspective on this Advisory Committee for our agency. So, I'm very happy to move forward today.

Chair Niermann: Thank you. I do, too. This committee, all 13 members, do enormously helpful work on what can often be difficult challenges for the agency, so I thank all 13 members. We have seven nominations here. Five will continue their service and we have two new members. For Mr. Jones and Mr. Ford, who have been members since its inception and who are rolling off, I want to thank you again. For Ms. Landwehr and Ms. Carder, who will be taking their places, welcome. We appreciate your willingness to serve. For re-upping your service, Mr. Adair, Mr. Bieber, Mr. Landrum, Mr. Longley, and Mr. Allred, thank you for your service.¹⁴

Cost of Committee

- Compensation to Committee Members – None. All members serve without compensation other than from their employers.
- Travel – All members were allowed travel cost reimbursement, however no member requested reimbursement from TCEQ.
- TCEQ Advisory Committee Time – One public meeting at TCEQ's office in Austin (with travel for most members), three conference calls as public meetings, and additional hours reviewing issues, analyzing data, and hearing perspectives from a variety of interested parties.
- TCEQ Staff Time – 70 estimated hours included planning, preparing, and drafting materials for four Committee meetings and related research as the Committee requested.
- TCEQ Facilities – No additional costs were incurred for meeting rooms or other facilities.

Additional information on Tax Relief for Pollution Control Property and the Advisory Committee is available at www.tceq.state.tx.us/implementation/air/taxrelief. This report was approved by the Committee during a public meeting on February 17, 2023 and submitted to TCEQ Commissioners and Executive Director on February __, 2023.

Respectfully submitted,

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

¹⁴ December 15, 2021 TCEQ agenda webcast archives at <https://www.youtube.com/watch?v=RNSFUI0FFW8>

Bob Adair
Chair, Tax Relief for Pollution Control Property
Advisory Committee
Texas Commission on Environmental Quality
(346) 477-5901 [REDACTED]

December 1, 2022

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

Dear Commissioners:

Subject: Advice for Expedited Review List and Tier I Table
Tax Relief for Pollution Control Property

Attached is the above referenced advice related to the current triennial review. The Committee sincerely appreciates you and other TCEQ staff's ongoing support to the Committee.

Please feel free to contact me or any member of the Advisory Committee to discuss this advice.

Respectfully,



B. G. Adair

Enclosures

c: TCEQ Tax Relief for Pollution Control Property Advisory Committee members
Cheryl Covone, TCEQ

Advice to TCEQ Regarding Tax Relief for Pollution Control Property Law and Regulations
By TCEQ Tax Relief for Pollution Control Property Advisory Committee

Background

TCEQ is required by law¹ and regulation² to conduct a review at least every three years of:

- Nonexclusive List in Tax Code §11.31(k) and Figure: 30 TAC §17.17(b); and
- Tier I Table in Figure: 30 TAC §17.14(a).

During a September 10, 2021 public meeting of the TCEQ Tax Relief for Pollution Control Property Advisory Committee, TCEQ staff explained the Commission last met its obligation to complete the triennial review in December 2020, and the next review is anticipated to be completed by December 2023. Staff requested any such advice be submitted from the Committee by December 31, 2022. The Committee requested from staff a list of common items in Tier II applications over the past three years that received positive use determinations as pollution control property. Staff complied with this request on December 22 and provided a triennial review summary. The Committee began its triennial review on November 12 and further included it on 2022 public meeting agendas for March 25, May 13, August 19, and November 10. The public was encouraged to submit relevant input to the Committee. On November 10, 2022, the Committee voted with no opposition for the advice provided below.

Advice

In compliance with the Committee’s legal obligation³ “to advise the commission regarding the implementation of this section” (Tax Code §11.31), the Committee submits the following advice before the requested deadline.

1. No change to the Nonexclusive List in Tax Code §11.31(k) and Figure: 30 TAC §17.17(b); and
2. Add the following item to the Tier I Table in Figure: 30 TAC §17.14(a).

No.	Media	Property	Description	%
A- (number to be assigned by TCEQ)	Air	Amine treating system (components necessary to transfer impurities removed from natural gas to a final control device)	System components include the foul amine collection system used to collect amine that has absorbed impurities in the amine absorption system for transfer to the amine solvent regeneration system and the vent gas system that transfers to a final control device the impurities stripped from foul amine in the regeneration system. (Excludes the amine absorption system components that remove impurities from natural gas (methane) and the amine solvent regeneration system components used to recover amine for reuse in the amine absorption system).	100

¹ Texas Tax Code §11.31(l)

² 30 TAC §17.14(b)

³ Texas Tax Code §11.31(n)

Respectfully submitted December 1, 2022 on behalf of the Committee,

A handwritten signature in blue ink that reads "Bob Adair". The signature is written in a cursive style with a large initial "B".

Bob Adair
Chair, TCEQ Tax Relief for Pollution Control Property Advisory Committee

Members of the TCEQ Tax Relief for Pollution Control Property Advisory Committee
As of November 10, 2022

Representing Industry:

Bob Adair, representing Texas Oil and Gas Association
Michelle Carder, representing Texas Chemical Council
Justin Hyland, representing Association of Electric Companies of Texas
Martha Landwehr, representing Texas Association of Manufacturers
Greg Maxim, with Cummings Westlake LLC
Mike Nasi, representing Clean Carbon Technology Foundation of Texas

Representing Appraisal Districts:

Roland Bieber, retired Chief Appraiser for Jefferson County Appraisal District
Hugh Landrum, Jr., with Hugh L. Landrum & Associates, Inc.

Representing a School District or Junior College District:

Lloyd Graham, Retired Superintendent of the La Porte Independent School District

Representing Taxing Units:

Adam Haynes, with the Texas Conference of Urban Counties
Bill Longley, with the Texas Municipal League

Representing the Environmental Group:

Cyrus Reed, PhD, with the Sierra Club

Independent Technical Expert:

Charles Allred, an independent contractor

The Committee was appointed in compliance with Texas Tax Code §11.31(n), which states:

The Texas Commission on Environmental Quality shall establish a permanent advisory committee consisting of representatives of industry, appraisal districts, taxing units, and environmental groups, as well as members who are not representatives of any of those entities but have substantial technical expertise in pollution control technology and environmental engineering, to advise the commission regarding the implementation of this section. At least one member of the advisory committee must be a representative of a school district or junior college district in which property is located that is or previously was subject to an exemption under this section. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

Approximately half of the Committee is appointed/reappointed every two years to four-year terms. Current terms expire December 31 of 2023 and 2025.