

Annual Report
2010

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

February 14, 2011

This report is submitted in compliance with Article 6.2 of the TCEQ Tax Relief for Pollution Control Property Advisory 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 30 TAC 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 §11.31 regarding eligibility 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.

Purpose of TCEO Tax Relief for Pollution Control Property Advisory Committee

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

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.

Members of 2010 TCEO Tax Relief for Pollution Control Property Advisory Committee

On January 27, 2010, the TCEQ Commissioners approved the nomination of the following individuals to the Tax Relief for Pollution Control Property Advisory Committee ("Committee"). In order to implement staggered four year terms, numbers were drawn in the first Committee meeting to select initial terms of two or four years. Terms are indicated by each name below.

Representing Industry

- Bob Adair (4), with ConocoPhillips (elected chairman February 25, 2010)
Nominated by the Texas Oil and Gas Association
- Robert Castor (4), with Freestone Semiconductor
- Paul Coon (2), with Luminant Power
Nominated by the Association of Electric Companies of Texas
- Greg Maxim (2), with Duff and Phelps
- Michael Nasi (2), with Jackson, Walker
Nominated by the Clean Coal Technology Foundation
- John Nichols (4), with The Dow Chemical Company
Nominated by the Texas Chemical Council

Representing Appraisal Districts

- Roland Bieber (4), Chief Appraiser for Jefferson County Appraisal District
Nominated by Texas Association of Appraisal Districts
- Wayne Frazell (4), with Pritchard & Abbott, Inc.

Representing Taxing Units

- Eddie Arnold (2), Precinct 1 Commissioner for Jefferson County
Nominated by Texas Association of Counties
- Don Lee (2), with the Texas Conference of Urban Counties
- Bennett Sandlin (4), with the Texas Municipal League

Representing the Environmental Group

- Dr. Cyrus Reed (2), with the Sierra Club

Independent Expert

- Leo Scherrer, P.E. (4)

Committee Organization

During the Committee's first meeting on February 22, 2010, the Committee approved bylaws proposed by TCEQ staff, with minor revisions. Highlights of the adopted bylaws are as follows.

1. Purpose – Advise the TCEQ Commissioners on matters relating to property tax exemptions for pollution control property.
2. Number of Members – May not exceed 13.
3. Terms – Commission appoints or reappoints members to staggered four-year terms.
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.
5. Presiding Officer – Annual elections or at the request of a majority of the members of the Committee. May be reappointed.
6. Meetings – Quarterly or at the call of the Presiding Officer or the Commissioners.
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.
8. Voting – If there is not consensus among all members of the Committee, minority members are encouraged to submit minority reports.
9. Reports to the Commission – 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.

Cost of Committee

- Compensation to Committee Members – None. All members serve without compensation other than from their employers.
- TCEQ Advisory Committee Time – Eight meetings at TCEQ's office in Austin (with travel for most members), one conference call, and many additional hours reviewing issues, hearing perspectives from a variety of interested parties, and preparing advice and comments regarding proposed rules and procedures.
- Travel – All members were allowed travel cost reimbursement, however some members chose not to seek reimbursement. Total 2010 requested travel reimbursement was \$7,552.70.
- TCEQ Staff Time – 589 estimated hours included planning, preparing, drafting materials for eight committee meetings and establishing, soliciting, and evaluating the application process on the creation of the committee.
- TCEQ Facilities – No additional costs were incurred for meeting rooms or other facilities.

Priorities

Considering the purpose of the Committee indicated by the legislature in the above referenced legislation, the Committee quickly began to work with TCEQ staff to prioritize issues that may need advice. TCEQ staff provided the Committee with two primary documents: (1) 2010 timeline to revise Chapter 17 rules; and (2) "Major Issues for the Advisory Committee." The timeline indicated a deadline of April 1st to submit advice that may affect 2010 revisions to the rules. This helped sharpen our focus on the following issues:

1. Uniformity – House Bills 3206 and 3544 of the 81st Texas legislative session (2009) added the following subsection (g-1) to §11.31 of the Tax Code:

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).

The basic question considered by the Committee was: Which rules, if any, should be revised to comply with this new subsection?

2. “At the Site” – Commissioners asked the Committee to advise if TCEQ should retain or revise “at the site” in Figure 30: TAC §17.15(a) and (b) Decision Flow Chart.
3. Other Issues – The Committee agreed to address other issues as time permitted.

Below is a summary of 2010 Committee meetings and actions. Blue indicates links to meeting minutes on TCEQ’s web site.

Meeting Date	Major Issues Discussed	Action Taken/Recommendation
2/25/2010	Operating procedures: Member drew lots to determine who would serve two year terms and who would serve four year terms.	Members for two and four year terms were selected.
	Selection of the committee chairman.	Bob Adair was elected.
	Operating bylaws.	Operating bylaws were adopted.
Meeting Minutes	Issues presented: Revision to the rules which include equipment & category list, environmental benefit at the site and partial use determination	
3/12/2010 Meeting Minutes	Revision to the rules which include equipment & category list, environmental benefit at the site, Part A and B, decision flow charts and marketable product.	
3/26/2010 Meeting Minutes	Revision to the rules which include equipment & category list, environmental benefit at the site, Part A and B, decision flow charts and marketable product.	Issued a resolution on environmental benefit at the site.
4/12/2010 Meeting Minutes	Revision to the rules which include cost analysis procedure, definition of capital cost old, replace byproduct with marketable product, Part B and flow charts, byproduct vs. marketable product.	
5/21/2010 Meeting Minutes	Revision to the rules which include cost analysis procedure, definition of capital cost old, Part B, flow charts, and byproduct vs. marketable product.	Recommended the amendment of Part B of the equipment and category list.

6/4/2010 Meeting Minutes	Revision to the rules which include ownership, calculation of partial use determination. Brief overview of the amendment to the Texas Administrative Code (TAC) chapter 17.	Recommended that the commission invite public comments on alternative methodologies for calculating partial use determination.
7/30/2010 Meeting Minutes	Revision to the rule which includes calculation of partial use determination. Brief overview of the amendment to the TAC chapter 17.	Recommendation to modify Part B equipment and category list and minor modification to the rule amendment. Also discussed changing estimated useful life of equipment to 10 years.
8/4/2010 Meeting Minutes	Revision of the rules to modify Part B, equipment and category list and interest rate calculation in the partial use determination equation.	Recommendation to modify Part B equipment and category list and minor modification to the rule amendment. Also recommended to change the interest rate to 10%.

Advice to TCEQ Staff

The Committee submitted the following formal advice to TCEQ staff.

- April 1, 2010
 - ✓ §17.2(8) – Add “environmental benefit” to the definitions. Clarified “environmental benefit does not include benefit from the use or characteristics of the good or service produced or provided.”
 - ✓ 17.6(1) – Revise ineligible property consistent with the new definition of environmental benefit.
 - ✓ §17:15(a) Decision Flow Chart – Delete “at the site.”
 - ✓ §17:15(b) Decision Flow Chart – Delete “at the site.”
- May 27, 2010
 - ✓ Revise the Part B table in several property category headings.
 - ✓ Subdivide item B-15 and include a description column for each category of property consistent with current written agency guidance documents.
 - ✓ Change “V” (for “variable percentage exemptions”) to “100” (for 100% exemption) in the last column of the table for five of the property categories to ensure consistency with existing agency practice.

Comments on Proposed Rules

On August 6, 2010, the Committee also submitted the following comments regarding proposed rules published in the Texas Register.

Advice to Approve

- ✓ §17.2(4) – Add definition of environmental benefit.
- ✓ §17.6 – Revise property ineligible for exemption from taxation.

Advice to Revise

- ✓ §17.2(2) – Retain current definition of capital cost old.
- ✓ §17.10(c) – Clarify filing date for applications.
- ✓ §17.10(d)(3) – Insert “if deemed by TCEQ to be relevant and essential to the use determination” regarding additional data.
- ✓ §17.14(a) and (b) – Move certain Tier III items to Tier I.
- ✓ §17.17 – Revise descriptions of “B” items. Change some items from “V” to “100”, retaining §11.31(k) items in Tier III as cross-reference with Tier I.
- ✓ §17.17(c)(2)^{iv} Replace the proposed definition with “10%”.

Usefulness of Committee

The Commission adopted almost all of the advice submitted by the Committee regarding the above referenced rules revisions. During the November 18, 2010 meeting of the Commission, Commissioners expressed appreciation to the Committee as follows:

- Commissioner Carlos Rubinstein – “I think we would be remiss prior to making the motion of not recognizing the hard work the Committee has put in. I think this rule package has gone through extensive public review and input. I have a list of the times they have met. They met on February 24th, March 12th, March 26th, April 12th, May 21st, June 4th, July 30th, and then they had a conference call in August. So, the group has been busy and the work that y’all have done – thank you, Mr. Adair, for being with us today – is much appreciated. I’m prepared to make a motion, if you are ready, Mr. Chairman.”
- Chairman Dr. Bryan Shaw – “Before you do that, I guess I would ask that Mr. Adair please take back that heartfelt thanks to the Committee and express our appreciation for that work. I know there’s hard work ahead as well, so we look forward to continuing to work with that group.”
- Commissioner Buddy Garcia – Mr. Garcia approved of the above comments with his body language, but did not comment.

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 11, 2011 and submitted to TCEQ on February 14, 2011.



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