

2011 Annual Report

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

February 20, 2012

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 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 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 TCEQ Tax Relief for Pollution Control Property Advisory Committee

House Bills 3206 and 3544 of the 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)

House Bills 3206 and 3544 of the 81st Texas Legislature (2009) also added the following subsection (g-1) to Tax Code §11.31:

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).

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

Which rules, guidelines, forms, instructions, practice, web site, 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.
2. Number of Members – May not exceed 13.
3. Terms – Commission appoints or re-appoints 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 re-appointed.
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 no 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.

Members of 2011 TCEQ 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. Numbers beside each name indicate the number of years in their term. Each member continued active participation on the Committee in 2011.

Representing Industry

- Bob Adair (4), with ConocoPhillips (2010 and 2011 chairman)
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 Technical Expert

- Leo Scherrer (4)

Revision to 2012 TCEQ Tax Relief for Pollution Control Property Advisory Committee

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.

The May 3, 2011 House Journal of the 82nd Legislature proceedings included the following “HB 2280 Statement of Legislative Intent.”

REPRESENTATIVE HARDCASTLE: Is it your intent with this bill that the number of advisory committee members remain the same and that the school district or junior college district representative be appointed to fill one of the current positions designated to represent a taxing unit?

REPRESENTATIVE EILAND: Yes.

HARDCASTLE: So, the way you envision the TCEQ implementing this is for a school district or junior college district representative to fill the spot of one of the three slots TCEQ currently has for taxing units the next time their term runs out?

EILAND: Exactly.

HARDCASTLE: I understand that two of the three current taxing unit representatives will complete their two-year terms at the end of this year. So, your idea would be for one of those two slots to be filled by the school district or junior college district representative contemplated by your bill?

EILAND: That is how I expect it to play out, yes.

Minutes of the Committee’s May 13, 2011 meeting indicate “Mr. Eddie Arnold volunteered to step down for this new position.”

TCEQ received two applications from school districts and no applications from junior colleges for this new position. On November 18, 2011, TCEQ staff submitted an “Agenda Item Request” with the caption: “Consideration of the re-nominations and re-appointment of five positions on the Tax Relief for Pollution Control Property Advisory Committee and the nomination and appointment of one person to fill the school district/junior college district position.” A TCEQ inter-office memo was included with the Agenda Item Request, which included an explanation of statutory changes, names of five members whose two-year term were pending expiration (and recommended re-nomination), TCEQ staff recommended appointment for school district/junior college, and other nomination for school district/junior college. Applications were also included.

On December 7, 2011, the Commission approved the re-appointment of five current members and appointment of Mr. Lloyd Graham, Superintendent, La Porte Independent School District. All appointments were for a four-year term. TCEQ Chairman Dr. Bryan Shaw and Committee Chairman Bob Adair sent letters of appreciation to outgoing member Honorable Eddie Arnold.

Primary 2011 Action Taken by Committee

Each committee meeting generally lasts two hours or longer and includes discussion of various issues introduced by Committee members or TCEQ staff. Items discussed included:

- Possible rules or guidance revision of the following items in Equipment and Categories List Tier I (advice requested by TCEQ staff).
 - S-1 Stationary Mixing and Sizing Equipment
 - M-4 Compactors, Barrel Crushers, Balers, Shredders
 - M-5 Solvent Recycling Systems
 - Waste Minimization (in general)
- Are implementing Best Management Practices (as part of a Storm Water Pollution Prevention Plan under a general storm water permit) pollution control under Tax Code §11.31 (advice requested by TCEQ staff)? Tier I table numbers are:
 - W-57 Conveyances, Pumps, Sumps, Tanks, Basins (storm water)
 - W-64 Storm Water Containment Systems
 - Best Management Practices: Storm water control
- If material becomes a hazardous waste when spilled, are the hazardous waste management rules an appropriate citation under the Prop 2 program (advice requested by TCEQ staff)? Tier I table reference is:
 - Hazardous Materials Storage Areas
- Draft Prop. 2 application and instructions.
- TCEQ Regulatory Guidance 461: Property Tax Exemptions for Pollution Control Property (March 2011 Draft).

The Committee discussed many issues during 2011, however its preference to carefully weigh unintended consequences and obtain consensus among the diverse perspectives represented resulted in relatively few actions taken or formal advice provided. Actions taken in 2011 were:

- Approved 2010 annual report of the Committee.
- Informal advice (no formal vote) to TCEQ staff to revise Prop 2 application.
 - Delete reference to environmental incentive grant. Texas Emissions Reduction Plan and other financial incentives should not disqualify applicants from Prop 2.
- Informal advice (no formal vote) to TCEQ staff to revise Prop 2 application instructions.
 - Page 1 – Add sentence to encourage early filing of definite projects. Although TCEQ does not want to accept applications for projects that may not be constructed, early applications for definite projects help ensure adequate time for correspondence between the applicant and TCEQ and provide a use determination to appraisal districts for preparation of the appraisal roll.
 - Page 2 – In the Requirement for Submission section, clarify that multiple items performing the same function may be included on one application.
 - Page 3 – In the Property Owner Information section, delete “Please note if the property is appraised by more than one appraisal district; a separate application must be filed for each appraisal district.” The law changed and this sentence is no longer applicable.
 - Page 4 – In the Rule Citation section, delete links for federal and Texas environmental regulations. Deleting the links should remove any implication these two sources are primary sources; they are two of many sources.

Usefulness of Committee

As TCEQ Chairman Bryan Shaw addressed item 8 of the December 7, 2011 agenda regarding re-appointment of five Committee members and replaced one Committee member as required by House Bill 2280 of the 82nd Legislature (2011) with a school district or junior college member, he expressed the following appreciation for the Committee:

“I am supportive of the Executive Director’s efforts in this as well and appreciate those willing to continue serving and the new member we’re looking to have to serve in this capacity. Obviously, it’s an issue that we’ve leaned on and have been looking forward to guidance from this council. So, I think it’s one that’s worth the effort you put into to ensure we have quality individuals to serve.”

On December 7, 2011, Chairman Shaw further expressed in a letter of appreciation to outgoing Committee member Eddie Arnold:

“The commission and staff consider the cumulative expertise of the advisory committee’s diverse membership to be a tremendous asset that will result in improved effectiveness and efficiency in the administration of the Tax Relief for Pollution Control Property Program. This program enhancement will benefit the citizens of Texas through advancements in pollution control while facilitating economic growth in the state.”

Cost of Committee

- Compensation to Committee Members – None. All members serve without compensation other than from their employers.
- TCEQ Advisory Committee Time – Four public meetings at TCEQ’s office in Austin (with travel for most members) and many additional hours reviewing issues, hearing perspectives from a variety of interested parties, and considering formal and informal advice regarding proposed rules and procedures.
- Travel – All members were allowed travel cost reimbursement, however some members chose not to seek reimbursement. Total 2011 requested travel reimbursement was \$1,436.36.
- TCEQ Staff Time – 266 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 15, 2012 and submitted to TCEQ on February 20, 2012.



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