

2023 Annual Report

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

DRAFT

February __, 2024

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, except underlined language was added by House Bill 2280 of the 82nd Texas Legislature (2011):

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. (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 2023 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, thereafter, appointing members to staggered four-year terms with expiration of approximately half of the members every two years, subject to reappointment. Committee members for 2023 are listed below; years indicate expiration of their term (December 31).

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

Representing Industry

- Bob Adair (2025), with Advantous Consulting (Chair, 2010-2023)
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 of Texas

Representing Appraisal Districts

- Roland Bieber (2025),¹⁰ 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)

As terms for six of the above listed Committee were scheduled to expire December 31, 2023, the Commission published notice in the June 30, 2023 issue of the Texas Register soliciting nominations for the Committee. On November 22, 2023, the TCEQ Director of Air submitted to Commissioners (through the interim Executive Director and Chief Clerk) an Agenda Item Request for Consideration of Resolution (docket number 2023-0999-RES) and interoffice memorandum (with supporting documents) recommending reappointment of the six Committee members whose terms would expire in 2023. On December 13, 2023, the Commission discussed in an open meeting the appointment of six members to the Advisory Committee to serve four-year terms. On December 21, 2023, Chairman Jon Niermann signed the requested resolution reappointing all six members to four-year terms expiring December 31, 2027.

¹⁰ Roland Bieber resigned from the Committee on January 8, 2024 as he is no longer employed by the contract appraisal firm for appraisal districts who supported his membership on the Committee. He expressed appreciation and regrets with his resignation. Mr. Bieber has consistently served on the Committee since it was formed in 2010. The Committee sincerely appreciates his service and wishes him well. TCEQ will initiate the process to fill this vacancy.

Primary 2023 Actions Taken by Committee

Each Committee meeting generally lasts less than one hour 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 occasionally 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 2023 in person in the agenda room of TCEQ (with optional virtual attendance) on February 17, May 4, November 16, and virtual only on September 8. Each meeting notice was posted on TCEQ's Email List Service and TCEQ's website at <http://www.tceq.texas.gov/airquality/taxrelief>.

The Committee submitted no advice to Commissioners in 2023. Items discussed during 2023 public meetings included the following:

1. TCEQ staff gave an update on the triennial Tax Relief rules review timeline. The tentative timeline is for the review to go before the commissioners for proposal in October, noting there will be an opportunity for the Committee to provide additional advice on the review, however any advice by the committee should be submitted as early as possible but no later than June 30.¹¹
2. Reviewed and approved the 2023 Committee annual report.¹¹
3. TCEQ staff provided a brief overview of the Environmental Protection Agency's (EPA) supplemental proposal regarding Title 40 Code of Federal Regulations (CFR) Part 60 Subparts OOOOb and OOOOc, and indicated that the EPA is expected to finalize the rules later this year.^{11,12,13,14}
4. The Committee Chair requested an overview of legislation affecting Tax Code §11.31 with the stated purpose to give the public an overview of what is pending in the legislature. TCEQ staff gave an overview and update of House Bill (HB) 3355 and House Joint Resolution (HJR) 175 and stated both are pending in committee.¹²
5. With approximately half of the committee's term due to expire at the end of 2023, TCEQ staff provided an overview of the process and timeline for nominations to fill upcoming committee vacancies.¹²
6. A Committee member reminded the committee of new Environmental Protection Agency (EPA) regulations such as Title 40 Code of Federal Regulations (CFR) Part 60 Subparts OOOOb and OOOOc on methane rules for oil and gas facilities and coal combustion residue regulation. He suggested that the committee stay current on the status of those rules and consider if the rules require new pollution control equipment, or if they will be covered by the existing items on the list of property that is tax exempt. He also commented that federal funding is available for companies to invest in technologies such as direct air capture, carbon sequestration, and green hydrogen development and suggested the committee discuss this at a future Committee meeting.¹³

¹¹ February 17, 2023 meeting minutes of the Committee

¹² May 4, 2023 meeting minutes of the Committee

¹³ September 8, 2023 meeting minutes of the Committee

7. The Committee Chair gave a PowerPoint overview of the carbon capture utilization/sequestration (CCU/CCS) processes for the general education of Committee members less familiar with this emerging technology and use. No position or opinion regarding applicability or inapplicability to TCEQ Tax Relief was indicated. However, he reminded the Committee of the Committee’s 2015 “Recommended Clarification of Eligibility” of CCUS equipment for a positive use determination for power plants that was submitted to the Commission. A discussion followed pertaining to the applicability of rules and permits as they relate to CCU/CCS and about applications received by the Tax Relief Program for such property.¹⁴
8. The Committee again agreed to schedule all quarterly 2024 Committee meetings for the entire year.¹⁴ The 2024 meeting dates are scheduled for February 22, May 20, August 16, and November 5. Meeting notices and agendas will be provided on the TCEQ’s website at www.tceq.texas.gov/airquality/taxrelief/advisory_group.html.

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.

On December 13, 2023, the Commission discussed in an open meeting the reappointment/appointment of six members to the Committee to serve four-year terms to expire December 31, 2027. During this meeting, the following appreciation was expressed for the Committee.¹⁵

Chair Niermann: “I want to thank the members and nominees for their service to this important committee and I appreciate the recommendation and I agree with it and I’m ready to move forward.”

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 2023 reimbursement from TCEQ.
- TCEQ Advisory Committee Time – Three in-person public meetings at TCEQ’s office in Austin (with travel for some members), one virtual only meeting, and additional hours reviewing issues, analyzing data, and hearing perspectives from a variety of interested parties.
- TCEQ Staff Time – 118 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.

¹⁴ November 6, 2023 meeting minutes of the Committee

¹⁵ Video record beginning at 41:15 from the Watch Past Agenda Meetings link at https://www.tceq.texas.gov/agency/decisions/agendas/comm/markcomm_agendas.html

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 annual report was approved by the Committee during a public meeting on February 22, 2024 and submitted to TCEQ Commissioners and Executive Director on February __, 2024.

Respectfully submitted,

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

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