

2021 Annual Report

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

April 25, 2022

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 2021 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. 2021 Committee members are listed below; years indicate expiration of their term (December 31).

Representing Industry

- Bob Adair¹⁰ (2021), with Phillips 66 Company (Chair, 2010-2021)
Representing the Texas Oil and Gas Association
- Justin Hyland (2023), with CenterPoint Energy
Representing the Association of Electric Companies of Texas
- Michael Ford¹¹ (2021), with Corteva Agriscience
Representing the Texas Chemical Council
- Tim Jones¹¹ (2021), with Advanced Micro Devices
Representing the Texas Association of Manufacturers
- Greg Maxim (2023), with Cummings Westlake
- Michael Nasi (2023), with Jackson Walker
Representing the Clean Coal Technology Foundation

Representing Appraisal Districts

- Roland Bieber¹⁰ (2021), representing the Texas Association of Appraisal Districts
- Hugh Landrum, Jr.^{10,12} (2021), 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 Longley¹⁰ (2021), with the Texas Municipal League

Representing Environmental Groups

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

Independent Technical Expert

- Charles Allred¹⁰ (2021)

¹⁰ These members were reappointed to another four-year term through December 31, 2025.

¹¹ These members decided not to seek reappointment. Effective January 1, 2022, Martha Landwehr and Michelle Carder were appointed to fill these vacancies to represent the Texas Association of Manufacturers and Texas Chemical Council, respectively.

¹² Effective December 31, 2020, Daryl Attaway resigned from the committee to coincide with his retirement from Pritchard & Abbott. TCEQ solicited applications for 30 days to fill the vacancy. On April 20, 2021, TCEQ Chairman Jon Niermann signed resolution number 2020-1262-RES to appoint Hugh L. Landrum, Jr. as a member of the Advisory Committee to fill the open position for appraisal districts that expires December 31, 2021.

Primary 2021 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 2021 in person in the agenda room of TCEQ or virtually on March 26, June 4, September 10, and November 12. Each meeting notice was posted on TCEQ's Email List Service and TCEQ's website at <http://www.tceq.texas.gov/airquality/taxrelief>.

No advice was submitted to Commissioners in 2021. However, items discussed included the following:

1. Reviewed and approved the 2020 Committee annual report.¹³
2. Monitored proposed legislation related to TCEQ Tax Relief for Pollution Control Property. TCEQ staff confirmed no legislation passed that will impact this tax relief program.^{13,14}
3. The Committee was reminded of TCEQ's triennial review required by Tax Code §11.31(l) and 30 TAC §17.14(b):
 - 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).

TCEQ staff indicated they anticipate receiving advice on this review from the Committee (if they choose to submit advice) by December 2022 and complete this round of rulemaking by December 2023. Consistent with previous triennial reviews, the Committee requested a list of common Tier II applications with a positive use determination and TCEQ staff provided such information.^{15,16} The Committee's review began in their November meeting.

4. The Committee expressed appreciation to Mike Ford and Tim Jones for their significant contributions to the Committee and well wishes as they've decided not to seek reappointment to the Committee.¹⁶
5. The Committee again agreed to schedule all quarterly 2022 Committee meetings for the entire year.¹⁶ The 2022 meeting dates are scheduled for March 25, May 13, August 19, and November 10. 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.

¹³ March 26, 2021 meeting minutes of the Committee

¹⁴ June 4, 2021 meeting minutes of the Committee

¹⁵ September 10, 2021 meeting minutes of the Committee

¹⁶ November 12, 2021 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.¹⁷

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 – 54 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 March 25, 2022 and submitted to TCEQ Commissioners and Executive Director on April 25, 2022.

Respectfully submitted,



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

¹⁷ December 15, 2021 TCEQ agenda webcast archives at <https://www.youtube.com/watch?v=RNSFUI0FFW8>