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March 3, 2020

Mr. Jon Niermann, Chairman  
Mr. Bobby Janecka, Commissioner  
Ms. Emily Lindley, Commissioner  
Texas Commission on Environmental Quality  
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Mr. Chairman and Commissioners:

Subject: 2019 Annual Report of TCEQ Tax Relief for Pollution Control Property  
Advisory Committee

In compliance with bylaws of the TCEQ Tax Relief for Pollution Control Property Advisory Committee, attached is an original and copy of the 2019 Annual Report of the Committee. The report was also emailed to Guy Hoffman to be posted on TCEQ's website.

We appreciate the perspectives and significant work of Committee members and TCEQ staff during 2019. The Committee continued its commitment to productive discussion and statutory requirement to "advise the commission regarding the implementation of" Tax Code §11.31.

Please feel free to contact me at (832) 765-1419 or bob.adair@p66.com or other Committee members regarding issues within the purview of this Committee.

Respectfully submitted,



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

c: Guy Hoffman, Stationary Source Programs, Air Quality Division, TCEQ  
Members of TCEQ Tax Relief for Pollution Control Property Advisory Committee

# **2019 Annual Report**

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

**March 3, 2020**

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 81<sup>st</sup> Texas Legislature (2009).

### **Purpose of TCEQ Tax Relief for Pollution Control Property Advisory Committee**

House Bills 3206 and 3544, 81<sup>st</sup> 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.<sup>1</sup>
2. Number of Members – May not exceed 13.<sup>2</sup>
3. Terms – Commission appoints or re-appoints members to staggered four-year terms.<sup>3</sup>
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.<sup>4</sup>
5. Presiding Officer – Annual elections or at the request of a majority of the members of the Committee. May be re-appointed.<sup>5</sup>
6. Meetings – Quarterly or at the call of the Presiding Officer or the Commissioners.<sup>6</sup>
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.<sup>7</sup>
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.<sup>8</sup>
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.<sup>9</sup>

## **Members of 2019 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 82<sup>nd</sup> 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.

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

<sup>1</sup> Article 1, Section 1

<sup>2</sup> Article 2, Section 1

<sup>3</sup> Article 2, Section 2

<sup>4</sup> Article 2, Section 4

<sup>5</sup> Article 3, Section 2

<sup>6</sup> Article 4, Section 1

<sup>7</sup> Article 4, Section 3

<sup>8</sup> Article 5, Section 4

<sup>9</sup> Article 6, Section 2

The Advisory Committee consists of 13 members, each of whom serves a four-year, staggered term with expiration of approximately half of the members every two years, subject to reappointment. 2019 Committee members are listed below; years indicate expiration of their term (December 31).<sup>10</sup>

#### Representing Industry

- Bob Adair (2021), with Phillips 66 Company (Chair, 2010-2019)  
Representing the Texas Oil and Gas Association
- Paul Coon (2019)  
Representing the Association of Electric Companies of Texas
- Michael Ford (2021), with Corteva Agriscience  
Representing the Texas Chemical Council
- Tim Jones (2021), with Samsung Austin Semiconductor  
Representing the Texas Association of Manufacturers
- Greg Maxim (2019), with Cummings Westlake
- Michael Nasi (2019), with Jackson Walker  
Representing the Clean Coal Technology Foundation

#### Representing Appraisal Districts

- Roland Bieber (2021), representing the Texas Association of Appraisal Districts
- Daryl Attaway (2021), with Pritchard & Abbott, Inc.

#### Representing a School District or Junior College District

- Lloyd Graham (2019), with La Porte Independent School District  
Representing school districts

#### Representing Taxing Units

- Don Lee (2019), formerly with the Texas Conference of Urban Counties
- Bill Longley (2021), with the Texas Municipal League

#### Representing Environmental Groups

- Dr. Cyrus Reed (2019), with the Sierra Club

#### Independent Technical Expert

- Charles Allred (2021)

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<sup>10</sup> On December 18, 2019, Commissioners reappointed Lloyd Graham, Greg Maxim, Michael Nasi, and Dr. Cyrus Reed and appointed Adam Haynes (Texas Conference of Urban Counties) and Justin Hyland (CenterPoint Energy) to replace Don Lee and Paul Coon, respectively.

## **Primary 2019 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 2019 in the agenda room of TCEQ on February 22, August 23, September 26, October 17, November 8, and December 2 and by conference call on May 17 and November 19. Each meeting notice was posted on TCEQ's Email List Service and TCEQ's website at <http://www.tceq.texas.gov/airquality/taxrelief>.

Items discussed and/or advised in 2019 included:

1. Provided overview of Tax Relief law, Committee bylaws, and other guidance for new Committee member Daryl Attaway and reminder to other Committee members.<sup>11</sup>
2. Reviewed and approved the Committee's 2018 annual report.<sup>11</sup>
3. Monitored 2019 legislative bills that proposed revisions to Tax Code §11.31.<sup>12</sup>
4. In response to a July 19, 2019 letter from Donna Huff, Director, Air Quality Division, TCEQ, requesting advice "on how to determine use percentages for future use termination applications that include HRSGs" (heat recovery steam generators), the Committee focused most of its efforts in the latter half of the year analyzing HRSGs data provided by TCEQ staff and other public sources and discussion of various options.<sup>13,14,15,16,17,18</sup> On December 2,<sup>18</sup> the Committee voted on advice regarding three specific questions presented by TCEQ in the July 19<sup>th</sup> letter. The Committee's written majority advice was submitted December 9<sup>th</sup> to TCEQ as follows:

- Are the existing rules in 30 Texas Administrative Code (TAC) Section 17.17(c) adequate to determine a use percentage, in whole or in part, for new Tier III applications for HRSGs, consistent with the Court's opinions? If yes, what considerations should be given to reviewing input variables (particularly Capital Cost Old and Production Capacity Factor) used in the Cost Analysis Procedure (CAP) for HRSGs?

Advice: No. The Committee considered many alternatives to determine the appropriate use percentage for HRSGs but ultimately considered only two formal motions. The first motion was based upon a methodology that features extensive changes in the pollution control use calculation, while the second motion (presented as a substitute motion) was based on modifications to the current version of the CAP. However, both motions were to advise that TCEQ add HRSGs to the Tier I Table with a partial use percentage.

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<sup>11</sup> February 22, 2019 meeting minutes of the Committee

<sup>12</sup> May 17, 2019 meeting minutes of the Committee

<sup>13</sup> August 23, 2019 meeting minutes of the Committee

<sup>14</sup> September 26, 2019 meeting minutes of the Committee

<sup>15</sup> October 17, 2019 meeting minutes of the Committee

<sup>16</sup> November 8, 2019 meeting minutes of the Committee

<sup>17</sup> November 19, 2019 meeting minutes of the Committee

<sup>18</sup> December 2, 2019 meeting minutes of the Committee

The substitute motion for a modified CAP failed 6-7, while the initial motion (described below) passed 7-6. Although no vote was taken to specifically address Question 1, it is clear from both Committee motions on Question 2 that the Committee determined that yet to be identified changes would be necessary to the current CAP in order to determine an appropriate use percentage for HRSGs.

- If the existing rules are not adequate, what is an appropriate method for distinguishing the proportion of HRSGs used for pollution control from the proportion used for production that is consistent with the Texas Supreme Court’s opinions?

Advice: The Committee voted 7-6 on the following motion (a minority report was not submitted) with the understanding TCEQ staff may need to advise additional revisions in 30 TAC 17 to align with this advice.

- Add “unless otherwise designated with a partial use percentage on the Tier I Table” to the beginning of the last sentence of 30 TAC §17.14(a) to read: Unless otherwise designated with a partial use percentage on the Tier I Table, if a marketable product is recovered (not including materials that are disposed) from property listed in this subsection, a Tier III application is required.
- Add “except heat recovery steam generators listed as a partial use percentage” to the first sentence of Figure 30 TAC §17.14(a) to read: The property listed in this table is property that the executive director has determined is used wholly for pollution control purposes when used as shown in the Description section of the table and when no marketable product arises from using the property, except heat recovery steam generators listed as a partial use percentage.
- Add the following item to Figure 30 TAC §17.14(a).

No.	Media	Property	Description	%
A-90	Air	Heat Recovery Steam Generators	A boiler designed to capture waste heat from combustion turbine exhaust for the generation of steam while reducing unit output-based emissions.	65

- Should the Commission propose rulemaking to remove HRSGs from the Expedited Review List of Section 17.17(b)?

Advice: No. On November 8<sup>th</sup>, a quorum of the committee (only one member was absent) voted, without opposition, “No” to this question. The basis for this vote was the Committee’s agreement that HRSGs provide an environmental benefit and there is no compelling evidence<sup>1</sup> to remove HRSGs from the Expedited Review List.

5. The Committee expressed appreciation for Paul Coon and Don Lee for their significant contributions since their appointment as an initial Committee member in 2010. Their Committee terms ended December 31, 2019 and they did not apply for reappointment.<sup>18</sup>
6. The Committee again agreed to schedule all quarterly 2020 Committee meetings for the entire year.<sup>18</sup> The 2020 meeting dates are scheduled for February 26, June 15, September 21, and December 7. Notices will be provided on the TCEQ’s website at [www.tceq.texas.gov/airquality/taxrelief/advisory\\_group.html](http://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.

Commissioners recently expressed the following appreciation for the Committee.<sup>19</sup>

Commissioner Emily Lindley: "Thank you to the people who serve on the committee."  
Chairman Jon Niermann: "I agree. I think we all appreciate the nominees' willingness to serve."

## **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 – Six public meetings at TCEQ's office in Austin (with travel for most members), two conference calls as public meetings, and additional hours reviewing issues, analyzing data, and hearing perspectives from a variety of interested parties.
- TCEQ Staff Time – 425 estimated hours included planning, preparing, and drafting materials for eight 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](http://www.tceq.state.tx.us/implementation/air/taxrelief). This report was approved by the Committee during a public meeting at TCEQ's office on February 26, 2020 and submitted to TCEQ Commissioners and Executive Director on March 3, 2020.

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<sup>19</sup> December 18, 2019 TCEQ Commissioners agenda meeting