Click to View Bookmarks

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 5, 2007

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Re: Energy Transfer Fuel
TCEQ Docket Nos. 2007-0903-MIS-U (06-11006/Freestone Central Appraisal District)
2007-0911-MIS-U (06-11021/Freestone Central Appraisal District)
2007-0963-MIS-U (06-11009/Rusk County Appraisal District)
Executive Director's Response Brief to Appeals of Positive Use Determinations Issued to Energy Transfer Fuel

Dear Ms. Castañuela:

Enclosed for filing, please find an original and 11 copies of the "*Executive Director's Response Brief to Rusk County and Freestone Central Appraisal Districts' Appeal of the Executive Director's Use Determinations Issued to Energy Transfer Fuel.*" I have also attached the following exhibits to assist the Commission in an expedited resolution of this matter:

Exhibit 1	TCEQ, Predetermined Equipment List.
Exhibit 2	TCEQ, Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications.
Exhibit 3	Prop 2 Decision Flow Chart.
Exhibit 4	TCEQ, TPDES General Permit No. TXR150000.

Please file-stamp these documents and return one complete set to D. A. Chris Ekoh, Staff Attorney, Environmental Law Division, MC 173. If you have any questions, please do not hesitate to contact me at (512) 239-5487.

Sincerely,

D. A. Chris Ekoh, Staff Attorney
Environmental Law Division

TCEQ Docket Numbers
2007-0903-MIS-U (UD 06-11006/Freestone Central Appraisal District)
2007-0911-MIS-U (UD 06-11021/Freestone Central Appraisal District)
2007-0963-MIS-U (UD 06-11009/Rusk County Appraisal District)

APPEAL OF THE EXECUTIVE DIRECTOR'S USE DETERMINATIONS ISSUED TO ENERGY TRANSFER FUEL, APPLICATION NUMBERS 06-11006, 06-11021 & 06-11009	**§**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE BRIEF TO FREESTONE CENTRAL APPRAISAL AND RUSK COUNTY APPRAISAL DISTRICTS' APPEAL OF THE EXECUTIVE DIRECTOR'S USE DETERMINATIONS ISSUED TO ENERGY TRANSFER FUEL

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to the Appeals of the Executive Director's Use Determinations Issued to Energy Transfer Fuel. The appeals were submitted by Bud Black, Chief Appraiser, Freestone Central Appraisal District, and Terry W. Decker, Chief Appraiser, Rusk County Appraisal District.

For the reasons described below, the ED respectfully requests that the Commission deny the appeals relating to use determination numbers 06-11006 and 06-11009 and affirm the 20% positive use determinations for the lean-burn gas-fired compressor engines, and 100% positive use determinations for the dielectric coating, automatic line leak detectors, and surface impoundments/storm water controls.

With respect to use determination number 06-11021 (electric driver compressor engines), the ED recommends that the Commission sustain the appeal by Freestone Central Appraisal District and grant Energy Transfer Fuel a 100% Tier II positive use determination for the cost difference between the new electric motor and the standard fuel-powered compressor motor of similar horsepower instead of the full cost as previously approved.

PROGRAM BACKGROUND

These appeals of the ED's use determinations are filed pursuant to H.B. 3121 (77th Tex. Legislature, 2001) establishing an appeals process for use determinations and the Commission rules implementing the legislation. See TEX. TAX CODE § 11.31 and 30 TEX. ADMIN. CODE § 17.25.

In 1993, the citizens of Texas voted to adopt a tax measure called Proposition 2. Proposition 2 was implemented when Article VIII, § 1-1 was added to the Texas

Constitution on November 2, 1993. The amendment allowed the legislature to "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."

The Texas Legislature codified the constitutional amendment in 1993 as TEX. TAX CODE § 11.31 (effective January 1, 1994). The statutory language in the codified version mirrored the language of Article VIII, § 1-1. In 2001, the legislature amended Section 11.31 when it passed H.B. 3121 (effective September 1, 2001). This bill added several new procedural requirements to § 11.31, including a provision requiring the establishment and implementation of a process to appeal use determinations. See TEX. TAX CODE § 11.31(e). The amendment also required the Commission to adopt new rules establishing specific standards for the Executive Director to follow in making use determinations for property that qualified for either full or partial determinations. See TEX. TAX CODE § 11.31(g).

Appeals under 30 TEX. ADMIN. CODE § 17.25 may be filed by either the applicant seeking the determination, or by the chief appraiser of the tax appraisal district affected by the determination. TEX. TAX CODE § 11.31(e); and 30 TEX. ADMIN. CODE § 17.25(a)(2). Appellant is required by 30 TEX. ADMIN. CODE § 17.25(b)(5) to explain the basis for the appeal. Under § 11.31(i), "the chief appraiser shall accept a final determination by the executive director as conclusive evidence that the facility, device, or method is used wholly or partly as pollution control property."

PROCEDURAL BACKGROUND

Use Determination Number 06-11009:

On May 10, 2007, Energy Transfer Fuel filed a Tier I application with the ED, seeking a use determination under Section 11.31 of the Texas Tax Code for (1) dielectric coating (cathotic protection), (2) automatic line leak detectors (PIG launcher/receiver equipment,) and (3) surface impoundments used for storm water controls associated with natural gas pipelines. All three categories of equipment under use determination number 06-11009 are located in Rusk County, Texas.

Use Determination Number 06-11006:

On May 10, 2007, Energy Transfer Fuel filed a Tier I application with the ED, seeking a use determination under Section 11.31 of the Texas Tax Code for (1) lean-burn gas-fired compressor drivers, (2) dielectric coating (cathotic protection), (3) automatic line leak detectors (PIG launcher/receiver equipment,) and (4) surface impoundments used for storm water controls associated with natural gas pipelines. All four categories of equipment under use determination number 06-11006 are located in Freestone County, Texas.

Use determination numbers 06-11006 and 06-11009 were declared administratively complete on May 11, 2007. The ED completed a technical review of the applications on May 18, 2007, and issued positive use determinations of 20% for the lean-burn gas-fired compressor drivers, and positive use determinations of 100% for the dielectric coatings, automatic line leak detectors, and surface impoundments used for storm water controls.

On June 8, 2007, TCEQ received a notice of appeal of the ED's positive use determinations for the lean-burn gas-fired compressor drivers, dielectric coatings, automatic line leak detectors, and surface impoundments from Freestone Central Appraisal District.

On June 13, 2007, TCEQ received a notice of appeal of the ED's positive use determinations for the dielectric coatings, automatic line leak detectors, and surface impoundments from Rusk County Appraisal District.

Use Determination Number 06-11021:

On May 10, 2007, Energy Transfer Fuel filed a Tier II application with the ED, seeking a use determination under Section 11.31 of the Texas Tax Code for electric driver compressor engines located in Freestone Central Appraisal District. The application was declared administratively complete on May 14, 2007. The ED completed a technical review of the application on May 21, 2007, and issued a positive use determination of 100% for the cost of the electric driver compressor engines. On June 11, 2007, TCEQ received a notice of appeal of the ED's positive use determination for the electric driver compressor engines from Freestone Central Appraisal District.

DESCRIPTION OF THE POLLUTION CONTROL PROPERTIES[1]

Energy Transfer Fuel transmits natural gas through pipelines located in Freestone and Rusk counties respectively. Energy Transfer Fuel filed use determination applications seeking pollution tax exemption for the following pieces of equipment:

- Lean-Burn Gas-Fired Compressor Engines: Energy Transfer Fuel stated in its use determination applications that this is a state-of-the-art lean-burn gas-fired compressor driver employing advanced mechanical design and electronic combustion controls to reduce nitrogen oxides emissions from compressor station operation for natural gas pipeline transmission and storage activities. This equipment is not included in the use determination application submitted for equipment located in Rusk County.

- Dielectric Coatings (cathodic protection): Energy Transfer Fuel represented in its applications for use determination that this equipment is installed to reduce or slow metal dissolution through the application of cathodic current. The

[1] Note that Appellants did not challenge the validity of the description provided by Energy Transfer Fuel for each of the pollution control equipment listed in the use determination applications at issue in this case.

equipment is used to control and/or prevent the degradation of metal piping thus forestalling the inadvertent release of process product, process water, wastewater, or an effluent into surface or subsurface waters in the State.

- Automatic Line Leak Detectors: Energy Transfer Fuel represented in its use determination applications that this equipment consisting of pipeline inspection gauges or "Pigs" are used to detect pipeline breach and wear. Pigs provide inspection of the condition of the pipeline walls. The leak detectors prevent inadvertent product releases to surface and subsurface water as a result of damages to pipelines.

- Surface Impoundments: Energy Transfer Fuel represented in its use determination applications that surface impoundments, erosion, and sedimentation controls such as silt fence structures, diking formations, bales, etc., in the form of perimeter barriers for sediment and runoff control at the edge of disturbed areas prevent construction site runoff from moving offsite and polluting surface water in the State. Erosion during and after construction activities can contribute large amounts of sediment and silt to runoff waters which can deteriorate water quality and lead to fish kills and other ecological concerns. Required runoff controls are essential to prevent polluted construction water from reaching surface water.

- Electric Driver/Compressor Engines: Energy Transfer Fuel stated in its use determination application that this equipment utilizes a state-of-the-art electric drive compressor technology in nonattainment areas for NOx. The installation supposedly eliminates NOx emissions from compressor station operation for natural gas transmission and storage activities. The new installations replace the use of gas-driven compressor engines thereby reducing or preventing NOx emissions. This equipment is not included in the use determination application submitted for equipment located in Rusk County.

APPELLANTS' CLAIMS

The Appellants (Rusk County and Freestone Central Appraisal Districts) contend that: (1) the dielectric coatings (cathodic protection) and pig launcher/receiver equipment identified in Energy Transfer Fuel's use determination applications are installed for production and/or safety purposes, and as such are not pollution control properties primarily used to satisfy environmental regulations; (2) that the inclusion of cathodic protection on TCEQ Predetermined Equipment List (PEL) was originally intended to apply to gasoline storage tanks at service stations, therefore the exemption does not apply to Energy Transfer Fuel; and (3) Freestone Central Appraisal District contends that electric drive compressor engines "remove 100% pollution from a particular site but the energy for this drive still produces pollution at the generator site which is still in Texas." Freestone further contends that an electric drive compressor is similar to lean-burn-gas-engine which is listed on the PEL with a 20% positive use determination.

LEGAL ANALYSIS

1. **The Appellants' claims that lean-burn gas-fired compressor drivers, dielectric coatings (cathotic protection), automatic line leak detectors (PIG launcher/receiver equipment,) and surface impoundments do not qualify for property tax exemption must fail because these pieces of equipment are deemed pollution control equipment listed in the predetermined equipment list.**

The ED urges the Commission to reject the Appellants' claims that lean-burn gas-fired compressor drivers, dielectric coatings, automatic line leak detectors, and surface impoundments are production equipment that do not qualify for tax exemption as pollution control property; deny the instant appeals; and affirm the positive use determination as each of the referenced equipment for which the positive use determination was issued is listed on the Predetermined Equipment List (PEL). See TCEQ Predetermined Equipment List (attached herein as **ED's Exhibit 1**). The PEL contains equipment that has been deemed pollution control equipment. Section 17.4 of the Commission rules requires the Executive Director to "maintain a predetermined equipment list of property that is predetermined to qualify, either wholly or partially, as pollution control property." The ED in conjunction with an external working group developed the PEL. The list is periodically updated based upon sound science, experience, and technical expertise. Percentages are assigned to different types of equipment, delineating whether the equipment is used wholly or partially for pollution control.

> "The specific types of equipment that are less than 100% were analyzed by TCEQ staff to determine the appropriate percentages. Most of the property contained on the list is used entirely for pollution control and is listed at 100%. Once a percentage has been established, that percentage is fixed for Tier I applications. Anyone seeking to obtain a different percentage must apply for a Tier III determination."

See Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, p. 7, December 2006 (attached herein as **ED's Exhibit 2**).

- Lean-burn gas-fired compressor engines are listed under "Control of Nitrogen Oxides" on the PEL. Under the PEL, the owner of a lean-burn gas-fired compressor engine is entitled to a tax abatement of 20% of the cost of the engine.[2]

[2] See Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, Appendix A, No. A-57, Page A-3, December 2006 (An excerpt of the PEL is attached as **ED's Exhibit 1**).

- Dielectric coatings are listed under "Cathodic Protection" on the PEL. Under the PEL, the owner of tanks and/or piping with dielectric coating is entitled to a tax abatement of 100% of the cost of the coating.[3]

- Automatic line leak detectors are listed under "Release Detection for Tanks and Piping" on the PEL. Under the PEL, the owner of automatic line detectors is entitled to a tax abatement of 100% of the cost of the automatic line detectors.[4]

- Surface impoundments and ancillary equipment are listed under "Solid Waste Management Pollution Control Equipment" on the PEL. Under the PEL, the owner of a surface impoundment is entitled to a tax abatement of 100% of the cost of the surface impoundment and its ancillary equipment.[5]

As previously noted, the PEL is the product of significant scientific and technical expertise. The list is periodically scrutinized and adjusted. This allows for the incorporation of recent advances in pollution control technology, and the reevaluation of pollution control property currently listed. The Appellants have not offered any reasons why the determinations made in the PEL are incorrect and should be disregarded. The PEL is an accumulation of judgments made by the ED and a working group consisting of stakeholders, engineers, and other technical experts. As such, the PEL is entitled to deference by the Commission.

2. In Union Drilling Texas, LP, the Commission rejected a similar attack (production versus pollution control) on items listed in the predetermined equipment list.

The Appellants are asking the Commission to reconsider the safety and production aspects of the deemed pollution control equipment listed in the PEL. The Commission was confronted with, and rejected a similar argument in Union Drilling Texas, LP appeals. In Union Drilling, the Commission sustained the validity and applicability of the PEL in use determination evaluations. The Commission however, crafted a solution by directing the Executive Director to "establish a stakeholder advisory group representative of all interested persons to assist the Executive Director Staff with regard to periodic reviews of the Predetermined Equipment List."[6] Pursuant to this Commission

---

[3] See Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, Appendix A, No. T-32, Page A-14, December 2006 (An excerpt of the PEL is attached as **ED's Exhibit 1**).

[4] See Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, Appendix A, No. T-24, Page A-14, December 2006 (An excerpt of the PEL is attached as **ED's Exhibit 1**).

[5] See Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, Appendix A, No. S-20, Page A-11 (also No. W-57, Page A-7) December 2006 (An excerpt of the PEL is attached as **ED's Exhibit 1**).

[6] See Commission Order in "Appeals filed by the Chief Appraisers for Erath, Mitchell, Parker, Runnels, and Wise Counties with regard to the Executive Director's Positive Use Determination for Union Drilling

request, the Executive Director established a stakeholder group which has completed the initial review of the PEL and made recommendations to the Executive Director. The representative for Freestone Central Appraisal District and Rusk County Appraisal District (C. Wayne Frazell with Pritchard & Abbott) was actively involved in the stakeholder advisory group meetings. All the categories of equipment referenced in this section were retained in the revised PEL. The PEL including the recommendations accepted by the Executive Director are part of a rule making proposal which was approved by the Commission for publication in the Texas Register at the September 19, 2007 Agenda Meeting. The comment period for the proposed rulemaking is between October 5, 2007 and November 5, 2007. The Appellants are invited to comment on the PEL. The Executive Director will review all comments and provide responses to significant and material comments.

3. **Appellants are statutorily required to accept the ED's use determination as conclusive evidence that the facility, installation, device or method is used wholly or partly as a pollution control property.**

Section 11.31(i) of the Texas Tax Code directs the chief appraiser to accept the ED's final use determination "as conclusive evidence that the facility, device, or method is used wholly or partly as pollution control property. The appeals by Freestone and Rusk counties delve into an area that the statute specifically reserved for the ED. The ED is authorized to determine whether a piece of equipment is used solely or partly as pollution control property and the chief appraiser "shall accept" the ED's determination as conclusive evidence that the equipment is used solely or partly as pollution control property. The ED's 20% positive use determination for the lean-burn gas-fired compressor drivers and 100% positive use determinations for the dielectric coatings, automatic line leak detectors, and surface impoundments should be sustained as it is within the permissible statutory authority accorded the Executive Director. Id. Most importantly, the ED has the technical expertise and experience to judge what constitutes pollution control property for purposes of Section 11.31 of the Texas Tax Code and the Commission rules implementing the statutes. See 30 TAC, Chapter 17.

4. **The ED's determinations that the equipment listed in Energy Transfer Fuel's applications met or exceeded an adopted environmental rule, law, or regulation, and provided environmental benefit at the site are entitled to deference by the Commission.**

TCEQ rules mandate that the ED use the "Prop 2 Decision Flow Chart" (Flow Chart) set forth at 30 TEX. ADMIN. CODE § 17.15 when making use determinations. See Prop 2 Decision Flow Chart, (attached herein as **ED's Exhibit 3**).

Texas, LP Application Nos. 05-9441 through 05-9443, 05-9446 through 05-9449 and 05-9452; TCEQ Docket No. 2006-0535-MIS-U; 2006-0547-MIS-U; 2006-0588-MIS-U through 2006-0590-MIS-U; 2006-1369-MIS-U; and 2006-1395MIS-U," February 26, 2007.

> "The Prop 2 Decision Flow Chart shall be used for each item of pollution control property or process to determine whether the particular equipment item will qualify as pollution control property. The executive director ***shall*** apply the standards in the Prop 2 Decision Flow Chart when acting on a use determination application."

Id., (emphasis added). In order to receive a positive use determination each piece of equipment or process change must generate positive answers to questions three and four in the Flow Chart. The ED determined that the lean-burn gas-fired compressor drivers, dielectric coatings, automatic line leak detectors, and surface impoundments met the requirements for the issuance of a "Tier I" positive use determination. In reaching this decision, the ED followed the statutory mandate required by the Flow Chart. The ED's decision is therefore entitled to deference by the Commission.

The ED also determined that the electric driver compressor engines met the requirements for the issuance of a "Tier II" positive use determination. However, the ED has reevaluated the percentage assigned to this equipment and come to a different conclusion that 100% positive use determination for the cost of the equipment is not warranted in this case. Since this equipment is intended as a replacement or substitute for a gas-fired compressor, the ED recommends that Energy Transfer Fuel be given a positive use determination for the cost difference between the new electric driver compressor engine and the standard fuel-powered compressor motor of similar horsepower. In reaching this decision, the ED followed the statutory mandate required by the Flow Chart. The ED's decision is therefore entitled to deference by the Commission.

The ED is satisfied that the use determinations being challenged here met the requirements in steps three and four of the Flow Chart. Question three in the Flow Chart requires the ED to consider whether "the installation of the equipment allow[s] the company to meet or exceed an adopted environmental rule, law, or regulation?" Id. Question four requires the ED to determine whether the installation of the equipment produced an "environmental benefit at the site." Id.

a. **Lean-burn gas-fired compressor engines are entitled to a Tier I, 20% positive use determination because they are installed partly to control emissions of nitrogen oxides.**

The lean-burn gas-fired compressor engines are entitled to a Tier I, 20% positive use determination. Lean-burn gas-fired engines are generally installed to control nitrogen oxide. Nitrogen dioxide is a criteria pollutant.[7] The Commission rules regulating emission of nitrogen compounds are set forth at 30 TAC Chapter 117. Section 117.3300 deals specifically with the control of pollution from nitrogen compounds in East Texas. Freestone County is specifically designated in the rules as an affected county subject to the control of nitrogen compounds. Id. Lean-burn gas-fired engines are generally recognized as having environmental benefit. In the East Texas combustion region, lean-

[7] *See* 40 C.F.R. § 50.11; PPG Industries, Inc. v. Harrison, 660 F.2d 628, 630 (5th Circuit 1981); and EPA, National Ambient Air Quality Standards (NAAQS), http://www.epa.gov/air/criteria.html.

burn gas-fired engines are not subject to the nitrogen compounds control requirements. *See* 30 TEX. ADMIN. CODE § 117.3303(10). The installation of lean-burn gas-fired compressor engines in Freestone County allowed Energy Transfer Fuel to meet or exceed the Commission's environmental regulations contained in 30 TAC Chapter 117. The environmental benefit provided at the site is the reduced nitrogen oxide emissions from the engines.

b. **Dielectric coatings or cathodic protection are entitled to Tier I, 100% positive use determination because they are installed to meet or exceed the Texas Water Quality laws.**

Dielectric coatings are installed to prevent corrosion and any pollution associated with underground pipeline systems. The protective coatings prevent the deterioration of metal piping to assure the integrity of the pipes to prevent the inadvertent discharge of "process product, process water, wastewater," and other pollutants into surface and ground water in the state. The coatings slow or reduce the metal dissolution of pipes "through the application of cathodic current." Unauthorized discharge of industrial and other wastes into waters in the state is prohibited. TEX. WATER CODE § 26.121. Industrial waste includes "waterborne liquid, gaseous or solid substances that result from any" industrial process, trade or business. TEX. WATER CODE § 26.001(11). Dielectric coatings also prevent the discharge or spill of chemicals and other substances into surface and subsurface waters in the state. The Commission rules regulating discharges and spills can be found at 30 TAC Chapter 327. Discharge or spill is defined as an "act or omission by which oil, hazardous substances, waste, or other substances are spilled, leaked, pumped, poured, emitted, entered, or dumped onto or into waters in the State of Texas or by which those substances are deposited where, unless controlled or removed, they may drain, seep, run, or otherwise enter water in the State of Texas." See 30 TEX. ADMIN. CODE § 327.2(3). Pipe or pipeline is recognized as a "facility" from which a discharge or spill may occur. See 30 TEX. ADMIN. CODE § 327.2(6). Pipe corrosion can result in an explosion, leak, or spill from a pipeline into the environment. Equipment such as dielectric coatings installed to prevent the inadvertent release of pollutants into surface or subsurface water provide pollution control benefit and should be entitled to pollution tax exemption. The Executive Director's determination that the equipment is entitled to a Tier I, 100% positive use determination should be upheld.

c. **Automatic line leak detectors are entitled to Tier 1, 100% positive use determinations as they are installed to detect pipeline leaks and therefore prevent the release or spill of harmful contaminants into the environment.**

Energy Transfer Fuel described the automatic line leak detectors as follows: "Pipeline inspection gauges or 'Pigs' are tools that are sent down a pipeline and propelled by the pressure of the product in the pipeline to detect pipeline breach and wear. Pigs provide inspection of the condition of pipeline walls . . . . These additions control and/or prevent the inadvertent product release, through damage/leak in the pipe into surface waters and ground waters in the State." To the extent these pieces of equipment are installed to

prevent releases of contaminants into surface or ground waters, they are entitled to pollution tax exemption.

d. **Surface impoundments**

Energy Transfer Fuel stated in its application that surface impoundments, erosion, and sedimentation controls such as silt fence structures, diking formations, bales, etc., in the form of perimeter barriers for sediment and runoff control at the edge of disturbed areas prevent construction site runoff from moving offsite and polluting surface water of the State. Energy Transfer Fuel further stated that erosion during and after construction activities can contribute large amounts of sediment and silt to runoff waters which can deteriorate water quality and lead to fish kills and other ecological concerns. Required runoff controls are essential to prevent polluted construction water from reaching surface water. Storm water controls are regulated by the United States Environmental Protection Agency (EPA). The EPA regulations dealing with storm water can be found at 40 C.F.R, Part 122. The Commission rules adopting EPA regulations relating to storm water are codified at 30 TAC Chapter 281. The Commission rules require a permit for the discharge of storm water. 30 TEX. ADMIN. CODE § 281.25(a)(4). See also 40 C.F.R. § 122.26.

The Commission is authorized to issue a general permit for the discharge of storm water into or adjacent to waters in the state. See TEX. WATER CODE § 26.040(a). TCEQ General Permit TXR150000 regulates storm water discharges for large construction activities, i.e. construction activities which disturb five or more acres, or are part of a larger common plan of development that will disturb five or more acres. See Texas Pollutant Discharge Elimination Systems (TPDES) General Permit No. TXR 150000, May 5, 2003 (attached herein as **ED's Exhibit 4**). As part of TCEQ General Permit No. TXR150000, an applicant wishing to conduct large construction activities is required to develop and implement a Surface Water Pollution Prevention Plan that covers either the entire site or all portions of the site for which the applicant is the operator prior to commencing construction activities. Id. at 13. The operator is required to adopt Best Management Practices with regard to erosion and sediment controls. Id. at 22-23. "Erosion and sediment controls must be designed to retain sediment on-site to the maximum extent practicable with consideration for local topography and rainfall. Controls must also be designed to limit off-site transport of suspended sediments and other pollutants if it is necessary to pump or channel standing water from the site. Examples of erosion controls include hay bales, silt fences, swales, mulch filter berms, rock berms, and vegetative filter strips."[8] The surface impoundments and ancillary equipment identified in Houston Pipeline's application met or exceeded the requirements of 30 TEX. ADMIN. CODE § 281.25(a)(4) and the general permit (TXR150000) issued by the Commission. The surface impoundments and ancillary equipment provide an environmental benefit at the site by preventing storm water contaminated with pollutants associated with construction such as sediment, debris, and chemicals from moving off-site and degrading surface water in the state.

[8] See Texas Pollutant Discharge Elimination Systems (TPDES) Construction Storm Water General Permit (TXR 150000) Storm Water Prevention Plan Worksheet Instructions, December 2, 2003.

e. **Electric driver compressor engines are entitled to a Tier II, 100% positive use determination for the cost difference between a fuel-driven compressor and an electric driven compressor of comparable horsepower because they are installed partly to control emissions of nitrogen oxides.**

Electric driver/compressor engines are generally installed either as a replacement or a substitute for a fuel-driven compressor in nonattainment areas to control nitrogen oxides. Nitrogen dioxide is a criteria pollutant.[9] The Commission rules regulating emission of nitrogen compounds are set forth at 30 TAC Chapter 117. Section 117.3300 deals specifically with the control of pollution from nitrogen compounds in East Texas. Freestone County is specifically designated in the rules as an affected county subject to the control of nitrogen compounds. Id. The installation of electric driver compressor engines in Freestone County allowed Energy Transfer Fuel to meet or exceed the Commission's environmental regulations contained in 30 TAC Chapter 117. The environmental benefit provided at the site is the reduced nitrogen oxides emissions from the engines.

Freestone Central Appraisal District (Appellant) concedes that electric driver compressor engines eliminate "100% pollution from a particular site."[10] To be eligible for tax exemption, an installation of a pollution control property must result in an environmental benefit at the site. A use determination applicant is required to document the "anticipated environmental benefits from the installation of the facility, device, or method for the control of air, water or land pollution."[11] Finally, the Commission rules require the ED to consider whether there is an environmental benefit at the site as a result of the installation of the pollution control property.[12] Neither the statute nor the regulations require the ED to off-set the environmental benefit at the site with the off-site collateral detriment generated by a particular piece of equipment.

As stated earlier, the ED has reevaluated this equipment and arrived at the same conclusion that the equipment provide pollution control benefit at the site. The ED received useful comments from the stakeholder group about the uses and pollution control aspects of this equipment. Since the equipment is intended as a replacement or substitute for a gas-fired compressor, the ED recommends that Energy Transfer Fuel be given a 100% positive use determination for the cost difference between the new electric driver compressor engine and the standard fuel-powered compressor engine of similar horsepower. This option will more fully account for the pollution control benefit derived from not using the gas-driven compressor engine.

---

[9] *See* 40 C.F.R. § 50.11; PPG Industries, Inc. v. Harrison, 660 F.2d 628, 630 (5th Circuit 1981); and EPA, National Ambient Air Quality Standards (NAAQS), http://www.epa.gov/air/criteria.html.

[10] See Notice of Appeal of use determination number 06-11021 filed by Freestone Central Appraisal District dated June 6, 2007.

[11] See TEX. TAX CODE § 11.31(c)(1).

[12] See 30 TEX. ADMIN. CODE § 17.15.

CONCLUSION

After careful consideration of the appeals filed by the Appellants on use determination numbers 06-11006 and 06-11009, the ED concludes that the original 20% Tier I positive use determination for the lean-burn gas-fired compressor engines, and 100% Tier I positive use determinations for the dielectric coating, automatic line leak detectors, and surface impoundments issued to Energy Transfer Fuel were **not** issued in error. With respect to use determination number 06-11021, the ED further recommends that Energy Transfer Fuel be given a 100% positive use determination for the cost difference between the new electric driver compressor engine and the standard fuel-powered compressor engine of similar horsepower. The Appellants failed to provide any factual or legal basis upon which the Commission should reverse the ED's positive use determinations in this case. Except for the recommendation on use determination number 06-11021, the allegations propounded by the Appellants do not alter the findings and the final positive use determinations issued by the ED. The ED's use determinations and recommendation in this case are consistent with the terms and mandates set forth in the relevant statutes and rules.

Accordingly, the ED respectfully requests that the Commission deny the instant appeals and affirm the 20% Tier I positive use determination for the lean-burn gas-fired compressor engines; 100% Tier I positive use determination for the dielectric coatings, automatic line leak detectors, and surface impoundments; and 100% Tier II positive use determination for the cost difference between the new electric driver compressor engine and the standard fuel-powered compressor engine of similar horsepower issued to Energy Transfer Fuel.

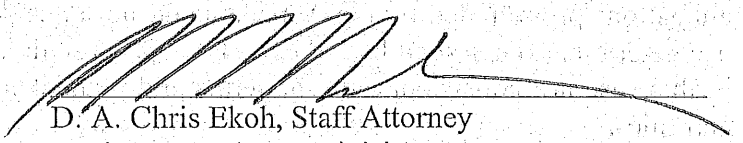
Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL QULAITY

Glenn Shankle, Executive Director

Robert Martinez, Director
Environmental Law Division

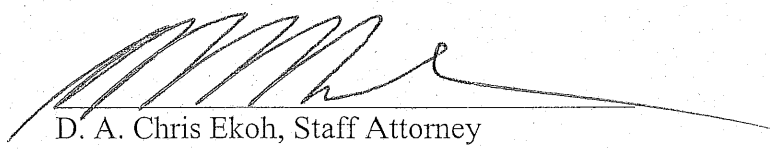
Guy Henry, Senior Attorney
Environmental Law Division



D. A. Chris Ekoh, Staff Attorney
Environmental Law Division
Texas Bar No. 06507015
Timothy Reidy, Staff Attorney
Environmental Law Division
Texas Bar No. 24058069
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Telephone No. (512) 239-5487
Facsimile No. (512) 239-0606
REPRESENTING THE EXECUTIVE DIRECTOR, TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on October 5, 2007, the original and 11 copies of the Executive Director's Response Brief to Freestone Central Appraisal District's and Rusk County Appraisal District's Appeals of the Executive Director's positive use determinations issued to Energy Transfer Fuel was filed with the Office of the Chief Clerk, Texas Commission on Environmental Quality, and was served by first-class mail, agency mail, or facsimile to all persons on the attached mailing list.



D. A. Chris Ekoh, Staff Attorney
Environmental Law Division
Texas Commission on Environmental Quality

MAILING LIST
Energy Transfer Fuel
2007-0903-MIS-U (UD 06-11006/Freestone Central Appraisal District)
2007-0911-MIS-U (UD 06-11021/Freestone Central Appraisal District)
2007-0963-MIS-U (UD 06-11009/Rusk County Appraisal District)

Terry W. Decker
Chief Appraiser
Rusk County Appraisal District
P. O. Box 7
Henderson, Texas 75653-0007
903/657-3578 Fax 903/657-9073

Mr. Bud Black
Chief Appraiser
Freestone Central Appraisal District
218 North Mount
Fairfield, Texas 75840
(903) 389-5510 Fax (903) 389-5955

Mr. Greg Maxim
Duff & Phelps, LLC
111 Congress, 4th Floor
Austin, Texas 78701
(512) 391-4984 Fax (512) 391-6814

Energy Transfer Fuel
800 E. Sonterra Blvd., Suite 400
San Antonio, Texas 78258

Mr. Guy Henry
TCEQ Office of Legal Services
Environmental Law Division MC 173
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-6259 Fax (512) 239-0606

Ms. Bridget Bohac
TCEQ Office of Public Assistance MC 108
P. O. Box 13087
Austin, Texas 78711-3087
(512) 239-4000 Fax (512) 239-4007

Mr. Ronald L. Hatlett
TCEQ, Small Business and Environmental Assistance
MC 112
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-6348 Fax (512) 239-3165

Ms. LaDonna Castañuela, Chief Clerk
TCEQ, Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3300 Fax (512) 239-3311

Mr. Garrett Arthur
TCEQ, Office of Public Interest Counsel MC 103
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-5757 Fax (512) 239-6377

Mr. D.A. Chris Ekoh &
Mr. Timothy Reidy
TCEQ Office of Legal Services
Environmental Law Division MC 173
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-5487 Fax (512) 239-0606

Mr. Kyle Lucas
TCEQ Alternative Dispute Resolution Program
(MC 222)
P. O. Box 13087
Austin, Texas 78711-3087
(512) 239-0687 Fax (512) 239-4015

Exhibit 1

Pre-Determined Equipment List

Air Pollution Control Equipment

No.	Media	Equipment	Description	Percent
Particulate Control Devices				
A-1	Air	Baghouses (not used for product collection)	Baghouses, filters, blowers, piping — used to remove particulate matter from air/gas streams	100%
A-2	Air	Demisters	Mesh pads or cartridges — used to remove entrained liquid droplets from exhaust gas streams	100%
A-3	Air	Electrostatic Precipitator	Wet or dry particulate collection by creating an electric field between positive and negative electrodes.	100%
A-4	Air	Cyclone (not used for product collection)	Cyclone, blowers, piping, etc. — used to remove particulate matter from exhaust gas streams	100%
A-5	Air	Scrubbers (not used for product collection)	Scrubber, circulation pumps, piping, etc. — used to remove particulates from exhaust gas stream	100%
A-6	Air	Water/Chemical Sprays and Enclosures for Particulate Suppression	Spray nozzles, conveyor and chute covers, windshields, piping, pumps, etc. — used to reduce particulate emissions	100%
A-7	Air	Smokeless Ignitors	Installed on electric generating units in order to control particulate emissions and opacity on start-up.	100%
Combustion Control Devices				
A-12	Air	Thermal Oxidizers	Thermal destruction of VOCs by direct flame combustion.	100%
A-13	Air	Catalytic Oxidizer	Oxidation or destruction of VOCs by use of a catalyst.	100%
A-14	Air	Flare/Vapor Combustor	Stack, burner, flare tip, blowers, etc. — used to destroy air contaminants in a vent gas stream	100%
Non-VOC Gaseous Control Devices				
A-21	Air	Molecular Sieve	Used to remove H_2S	100%
A-23	Air	Strippers Used in Conjunction with Final Control Device	Stripper, pumps, piping — used to remove contaminants from a gas or liquid stream	100%
A-24	Air	Sorbent Injection Systems	Multiple-pollutant, SO_x, or NO_x	100%
A-25	Air	CFC Replacement Projects. All necessary equipment needed to replace the CFC and achieve the same level of cooling capacity.	Projects to replace one CFC with an alternative CFC or other refrigerant where there is no increase in the cooling capacity or the efficiency of the unit.	100%

No.	Media	Equipment	Description	Percent
A-26	Air	Refrigerant Recycling Equipment	Equipment used to recover and recycle CFC's and halocarbons.	50%
Monitoring and Sampling Equipment				
A-31	Air	Fugitive Emission Monitors	Organic vapor analyzers — used to discover leaking piping components	100%
A-32	Air	Continuous Emission Monitors	Specific for NO_x, CO, SO_2, opacity, THCs, and VOCs, respectively	100%
A-33	Air	Monitoring Equipment on Final Control Devices	Temperature monitor or controller, flow-meter, pH meter, etc. for a pollution control device. Monitoring of production equipment or processes is not included.	100%
A-34	Air	Ambient Air Monitoring Facilities	Towers, structures, analytical equipment, sample collectors, monitors, power supplies, etc.	100%
A-35	Air	Noncontinuous Emission Monitors	Monitors, analyzers, buildings, air conditioning equipment, etc. constituting a monitoring system required to demonstrate compliance with emission limitations.	100%
A-36		Automotive Dynamometers	Automotive dynamometers used for in-house emissions testing in order to reduce vehicle emissions. Automotive dynamometers installed for the purpose of testing vehicles which are not part of the company's fleet do not qualify for a positive use determination.	100%
A-37	Air	Noncontinuous Emission Monitors, Portable	Monitors, analyzers, structures, trailers, air conditioning equipment, etc.	100%
A-38	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used to calculate or determine compliance with emission limitations.	100%
Control of Nitrogen Oxides				
A-50	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors — used to reduce NO_x emissions from engines/boilers	100%
A-51	Air	Catalytic Converters for Stationary Sources	Used to reduce NO_x emissions from internal combustion engines	100%
A-52	Air	Air/Fuel Ratio Controllers for Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO_x formation for fuel injected, naturally aspirated, or	100%

No.	Media	Equipment	Description	Percent
			turbocharged engines.	
A-53	Air	Flue Gas Recirculation	Ductwork, blowers, etc. — used to redirect part of the flue gas back to the combustion chamber for reduction of NO_x formation. May include flyash collection in coal fired units.	100%
A-54	Air	Water/Steam Injection	Piping, nozzles, pumps, etc. to inject water or steam into the burner flame of utility or industrial boilers or the atomizer ports for gas turbines, used to reduce NO_x formation.	100%
A-55	Air	Over Fire Air Systems	Advanced over-fire air for NO_x	100%
A-56	Air	Burners Out of Service	Staging of burner firing by not firing specific burners within a combustion unit for the purpose of eliminating hot spots to reduce NO_x emissions.	100%
A-57	Air	Lean-Burn Gas-Fired Compressor Engines	Gas-fired engines, which utilize lean-burn technology, that are used for the compression of natural gas for the purpose of storage or transmission.	20%
A-58	Air	Low-NO_x Burners	Replacement of existing incinerator, furnace or boiler burners with low-NO_x burners for pollution control purposes (does not include electrical power generation burners).	100%
A-59	Air	Low Emissions Conversion Kit for IC compressor engines	Existing internal combustion engines used to drive natural gas compressors that install conversion kits to reduce NOx emissions. These kits include ignitor cells or assemblies that ignite a fuel rich mixture in a pre-combustion chamber and forcing it into the power cylinder while still burning. Additional components consist of pilot gas system that delivers rich fuel to the ignitor cell and power cylinders, power pistons, and power cylinder heads to replace the existing cylinders, pistons and heads.	100%
A-60	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate	100%

No.	Media	Equipment	Description	Percent
			hot spots; thereby reducing NO_x formation.	
A-61	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing NOx including directly related equipment.	100%
A-62	Air	High-Pressure Fuel Injection System	Retrofit technology for large bore natural gas fired internal combustion engines to reduce NOx and CO emissions. System includes injectors, fuel lines, and electronic controls.	40%
VOC Control				
A-70	Air	Activated Carbon Systems	Carbon beds or liquid-jacketed systems, blowers, piping, condensers — used to remove VOCs or odors from exhaust gas streams	100%
A-71	Air	Storage Tank Secondary Seals and Internal Floating Roofs	Used to reduce evaporation losses from storage tanks	100%
A-73	Air	Stage I or Stage II Vapor Recovery	Includes pressure/vacuum vent relief valves, vapor return piping, stage 2 nozzles, coaxial hoses, vapor processing units, and vacuum-assist units.	100%
A-74	Air	Replacement of existing pumps, valves, or seals in piping service	Replacement of these parts for the sole purpose of eliminating fugitive emissions of volatile organic compounds. New systems do not qualify for this item.	100%
A-75	Air	Welding of pipe joints in VOC service	Welding of piping joints rather than using threaded or flanged fittings to eliminate fugitive emission leaks.	100%
A-77	Air	Carbon Absorber	Preventive abatement equipment absorbs VOCs, Freon and emission streams by using carbons atoms to combine with organic chemicals	100%
Miscellaneous Control Equipment				
A-90	Air	Hoods and Collection Systems for Final Control Devices	Piping, headers, pumps, hoods, ducts, etc. — used to collect air contaminants and route them to a control device	100%
A-91	Air	Stacks and Stack Modifications	Construction of new exhaust stacks, stack extensions, and stack repairs.	100%
A-92	Air	Vapor/Liquid Recovery	Hoods or other enclosures including	100%

No.	Media	Equipment	Description	Percent
		Equipment for Fugitive Emissions	piping and pumps or fans used to capture fugitive emissions from process equipment. The captured vapors are condensed or extracted for reuse or sold as product.	
A-93	Air	Vapor/Liquid Recovery Equipment (for venting to a control device)	Piping, blowers, vacuum pumps, compressors, etc. - used to capture a waste gas or liquid stream and vent to a control device. VOC & nonVOC. Including those used to eliminate emissions associated with loading tank trucks, rail cars, and barges	100%
A-94	Air	Paint Spray Booth Attached to Final Control Device	Booth, piping, etc. — used to contain and control over spray. Includes water curtain, filters, or other devices to capture paint fumes.	100%
A-96	Air/ Water	Preparation Room	A room designed for mixing paint, cleaning tools, and preparation of painting equipment	100%
A-98	Air	Powder Coating System	All equipment such as booths, powder recovery devices associated with a Powder Coating System. Ovens are not included.	100%
A-99	Air	Ultra-violet Electron Beam Infrared (E-Coat) Coating System	All equipment such as booths and ovens associated with an E-Coating System	70%
A-100	Air	Blast Cleaning Booth Vented to Control Device	Enclosed cabinet for blast cleaning of metal parts that includes a particulate control device	50%
Dry Cleaning Related Equipment				
A-110	Air	Perchloroethylene (Perc) Closed-Loop Dry Cleaning Machines	Dry-to-dry closed loop technology sealed during the entire dry cleaning sequence to eliminate solvent emissions and minimize hazardous waste disposal.	60%
A-111	Air	Cartridge and Spin Disc Filtration Systems	A control device used to lessen emissions of VOC for naphtha cleaning systems.	40%
A-112	Air	Petroleum Dry-to-Dry Cleaning Machines	Closed loop system using naphtha instead of perchloroethylene.	60%
A-113	Air	Petroleum Re-claimers	A unit used to collect VOC emissions in the drying process.	60%
A-114	Air	Refrigerated Vapor Condenser	A device that uses refrigerants to condense vapors to liquids.	90%

No.	Media	Equipment	Description	Percent
			Associated with dry cleaners, degreasers, or recovery of solvents from cleaning inside bulk containers or process vessels.	
A-115	Air	Secondary Containment	External structure or liner used to collect liquids released from dry cleaning equipment or chemical storage devices.	100%
A-116	Air	Direct Coupled Solvent Delivery Systems	Replacement of solvent delivery systems at existing dry cleaning facilities.	100%

Wastewater Pollution Control Equipment

No.	Media	Equipment	Description	Percent
Solid Separation and De-watering				
W-1	Wastewater	API Separator	Mechanical oil, water, and solids separator	100%
W-2	Wastewater	CPI Separator	Mechanical oil, water, and solids separator	100%
W-3	Wastewater	Dissolved Air Flotation	Mechanical oil, water, and solids separator	100%
W-4	Wastewater	Skimmer	Hydrocarbon	100%
W-5	Wastewater	Decanter	Used to decant hydrocarbon from process wastewater	100%
W-6	Wastewater	Belt Press, Filter Press, Plate and Frame, etc.	Mechanical de-watering devices	100%
W-7	Wastewater	Centrifuge	Separation of liquid and solid waste by centrifugal force, typically a rotating drum.	100%
W-8	Wastewater	Settling Basin	Simple tank or basin for gravity separation of suspended solids.	100%
W-9	Wastewater	Equalization	Tank, sump, or headbox used to settle solids and equilibrate process wastewater streams	100%
W-10	Wastewater	Clarifier	Circular settling basins usually containing surface skimmers and sludge removal rakes.	100%
Disinfection				
W-20	Wastewater	Chlorination	Wastewater disinfection treatment using chlorine	100%
W-21	Wastewater	De-chlorination	Chlorine removal equipment	100%
W-22	Wastewater	Electrolytic Disinfection	Disinfect water without use of chemicals	100%
W-23	Wastewater	Ozonization	Wastewater disinfection treatment	100%

No.	Media	Equipment	Description	Percent
W-24	Wastewater	Ultraviolet	Wastewater disinfection treatment	100%
W-25	Wastewater	Mixed Oxidant Solution	Solution of chlorine, chlorine dioxide, and ozone to replace chlorine for disinfection	100%
Biological Systems				
W-30	Wastewater	Activated Sludge	Biological treatment used to remove pollutants	100%
W-31	Wastewater	Adsorption	Used in conjunction with biological treatment to remove pollutants	100%
W-32	Wastewater	Aeration	Aeration equipment used in activated sludge treatment	100%
W-33	Wastewater	Rotary Biological Contractor	Biological treatment used to remove pollutants	100%
W-35	Wastewater	Trickling Filter	Biological treatment used to remove pollutants	100%
W-36	Wastewater	Wetlands and Lagoons (artificial)	Biological treatment used to remove pollutants	100%
W-37	Wastewater	Digester	Biological treatment used in conjunction to solids management and removal of pollutants	100%
Other Equipment				
W-50	Wastewater	Irrigation	Equipment used to irrigate and disburse treated wastewater	100%
W-51	Wastewater	Outfall Diffuser	Device used to diffuse effluent discharge from an outfall	100%
W-52	Wastewater	Activated Carbon Treatment	Treatment used to remove pollutants and polish effluent	100%
W-53	Wastewater	Oxidation Ditches and Ponds	Technology used to remove pollutants and polish effluent	100%
W-54	Wastewater	Filters: Sand, Gravel, Microbial	Treatment used to remove pollutants and polish effluent	100%
W-55	Wastewater	Chemical Precipitation	Process used to remove heavy metals from wastewater	100%
W-56	Wastewater	Ultra-filtration	Mechanical device used to remove solids	100%
W-57	Wastewater	Conveyances, Pumps, Sumps, Tanks, Basins	Used to segregate storm water from process water, control storm water runoff, or convey contaminated process water	100%
W-58	Wastewater	Water Conservation Systems	Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater in order to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water	100%

No.	Media	Equipment	Description	Percent
W-59	Wastewater	Wastewater Treatment Facility/Plant	New wastewater treatment facilities constructed to process wastewater generated on-site	100%
W-60	Wastewater	High-Pressure Reverse Osmosis	The passing of a contaminated water stream over a permeable membrane at high pressure to collect contaminants	100%
W-61	Wastewater	Hydro-cyclone Vapor Extraction	An air-sparged hydro-cyclone for the removal of VOCs from a wastewater stream	100%
W-62	Wastewater	Recycled Water Cleaning System	A high-pressure water system for cleaning equipment and pavement that is able to collect and recycle the cleaning water	100%
W-63	Wastewater	Chemical Oxidation	Use of hydrogen peroxide or other oxidants for wastewater treatment	100%
W-65	Wastewater	Storm-water Containment Systems	Structures or liners used for containment of runoff from rainfall	100%
W-66	Wastewater	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation	100%
Control/Monitoring Equipment				
W-70	Wastewater	pH Meter, Dissolved Oxygen Meter, Chart Recorder, etc.	Used for operations control and monthly reporting requirements	100%
W-71	Wastewater	On-line Analyzer	Used for operations control	100%
W-72	Wastewater	Neutralization	Control equipment used to adjust pH	100%
W-73	Wastewater	Respirometer	Monitor microbial respiration rates	100%
W-74	Wastewater	Diversion	Structures used for control of storm water and process wastewater or emergency diversion of process material	100%
W-76	Wastewater	Building	Used for housing control and monitoring equipment	100%
W-77	Wastewater	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam	100%
W-78		Double-Walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed in order to prevent unauthorized discharges.	100%

Solid Waste Management Pollution Control Equipment

No.	Media	Equipment	Description	Percent
Solid Waste Management				
S-1	Land/ Water	Stationary Mixing and Sizing Equipment	Immobile equipment used for solidification, stabilization, grinding, etc. of self generated waste material for the purpose of disposal or in-house recycling.	100%
S-2	Land/ Water	Decontamination Equipment	Equipment used to remove waste contamination or residues from mobile sources	100%
S-3	Land/ Water	Solid Waste Incinerator (not used for energy recovery and export or material recovery)	Solid waste incinerators, feed systems, ash handling systems, controls, etc.	100%
S-4	Land/ Water/ Air	Monitoring and Control Equipment	Alarms, indicators, controllers, etc., for high liquid level, pH, temperature, flow, etc. (Does not include fire alarms)	100%
S-5	Land/ Water	Solid Waste Treatment Vessels (not used for product recovery)	Any vessel used for waste treatment	100%
S-6	Land/ Water	Secondary Containment	External structure or liner used to collect liquids released from a primary containment device and/or ancillary equipment	100%
S-7	Land/ Water	Liners	A continuous layer or layers of natural and/or man-made materials that restrict downward or lateral escape of wastes or leachate in an impoundment, landfill, etc.	100%
S-8	Land/ Water	Leachate Collection and Removal Systems	A system capable of collecting leachate or liquids, including suspended solids, generated from percolation through or drainage from a waste. Systems for removal of leachate may include sumps, pumps, piping, etc.	100%
S-9	Land/ Water	Leak Detection Systems	A system capable of detecting the failure of a primary or secondary containment structure or the presence of a liquid or waste in a containment structure	100%
S-10	Land/	Final Cover Systems for	A system of liners and materials	100%

No.	Media	Equipment	Description	Percent
	Water	Landfills	to provide drainage, erosion prevention, infiltration minimization, gas venting, biotic barrier, etc.	
S-11	Land/ Water	Lysimeters	An unsaturated zone monitoring device used to monitor soil-pore liquid quality at a waste management unit (e.g., below the treatment zone of a land treatment unit, etc.)	100%
S-12	Water	Groundwater Monitoring Well and Systems	A groundwater well or system of wells designed to monitor the quality of groundwater at a waste management unit (e.g., detection monitoring systems, compliance monitoring systems)	100%
S-13	Air	Continuous/Noncontinuous Emission Monitors	Carbon monoxide monitor, oxygen monitor, total hydrocarbon monitors, etc.	100%
S-14	Air	Fugitive Emission Monitors	A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment	100%
S-15	Land/ Water	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize lateral migration of pollutants in soils and ground water	100%
S-16	Water	Groundwater Recovery or Remediation System	A groundwater remediation system used to remove or treat pollutants in contaminated groundwater or to contain pollutants (e.g., pump-and-treat systems, etc.)	100%
S-17	Water	Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment	Injection well, pumps, collection tanks and piping, pretreatment equipment, monitoring equipment, etc.	100%
S-18	Land/ Water	Noncommercial Landfills and Ancillary Equipment	Excavation, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, waste hauling equipment, decontamination facilities, security systems, and equipment	100%

No.	Media	Equipment	Description	Percent
			used to manage the disposal of waste in the landfill	
S-19	Land/ Water	RCRA Containment Buildings	Pads, structures, solid waste treatment equipment used to meet the requirements of Subchapter O - Land Disposal Restrictions (30 TAC 335.431).	100%
S-20	Land/ Water	Surface Impoundments and Ancillary Equipment (Including Brine Storage Ponds)	Excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, pumps, etc.	100%
S-21	Land/ Water	Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal (e.g., RCRA Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities, etc.)	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, vent controls, etc.	100%
S-22	Air	Fugitive Emission Containment Structures	Structures or equipment used to contain or reduce fugitive emissions or releases from waste management activities (e.g., coverings for conveyors, chutes, enclosed areas for processing equipment, enclosed areas for loading and unloading activities, etc.)	100%
S-23	Water	Double Hulled Barge	Double hulled to reduce chance of leakage. (Incremental cost difference between a single hulled barge and a double hulled barge.)	30%
S-24	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not included commercial composting facilities)	100%
S-25	Land	Compost Application Equipment	Equipment used to apply compost which has been generated on-site.	100%
S-26	Land	Vegetated Compost Socks	Put in place as part of a facilities permanent BMP.	100%

Miscellaneous Pollution Control Equipment

No.	Media	Equipment	Description	%
M-1	Air/ Land/ Water	Spill Response/Cleanup Equipment Pre-positioned and Stored for Addressing Future Emergencies	Boats, barges, booms, skimmers, trawls, pumps, power units, packaging materials and containers, safety equipment, vacuum trailers, storage sheds, diversion basins, tankage, dispersants, etc.	100%
M-2	Air/ Land	HEPA Vacuum Equipment, Negative Air Pressure Enclosures, Glove Bags, Personal Protection, Disposal	RCF/Asbestos abatement — required removal of asbestos contaminated material	100%
M-3	Air/ Land/ Water	Vacuum Trucks, Street Sweepers and Watering Trucks	Mobile Surface Cleaning Equipment — used exclusively to control particulate matter on plant roads	100%
M-4	Land	Compactors, Barrel Crushers, Balers, Shredders	Compactors and similar equipment used to change the physical format of waste material for recycling/reuse purposes or on-site disposal of facility-generated waste	100%
M-5	Land/ Air/ Water	Distillation Recycling Systems	Used to remove hazardous content from solvents and paints by heat, vaporization, and condensation	100%
M-6	Land/ Water	Boxes, Bins, Carts, Barrels, Storage Bunkers	Collection/storage containers for source-separation of materials to be recycled	100%
M-7	Water	Potable Water Systems	Tanks, pumps, and associated equipment necessary to provide potable water	100%
M-8	Air/ Land/ Water	Environmental Paving	Paving of parking lots, roadways, or plant areas in order to meet or exceed an adopted environmental rule, regulation or law.	100%
M-9	Air/ Land/ Water	Sampling Equipment	Equipment used to collect samples of exhaust gas, waste water, soil, or other solid waste to be analyzed for specific contaminants or pollutants.	100%
M-10	Water	Dry Stack Building for Poultry Litter	A pole-barn type structure used to temporarily store poultry litter in an environmentally safe manner	100%
M-11	Land/Water	Poultry Incinerator	Incinerators used to disposal of poultry carcasses.	100%
M-12	Land/W	Structures, Enclosures,	Required in order 'no contact'	100%

No.	Media	Equipment	Description	%
	ater	Containment Areas, Pads	stormwater regulations.	
M-13	Air	Methane Capture Equipment	Equipment used to capture methane generated by the decomposition of site generated waste material.	100%
M-14	Air	Methane Fueled Equipment for Power or Heat Generation	Equipment which burns site generated methane for the purpose of heating or generation of electric power.	50%

Underground and Above-ground Storage Tanks

No.	Media	Equipment	Description	Percent
Spill and Overfill Prevention Equipment				
T-1	Water	Tight Fill Fittings	Liquid tight connections between the delivery hose and fill pipe.	100%
T-2	Water	Spill Containers	Spill containment manholes equipped with either a bottom drain valve to return liquids to the tank, or a hand pump for liquid removal.	100%
T-3	Water	Automatic Shut-off Valves	Flapper valves installed in the fill pipe to automatically stop the flow of product.	100%
T-4	Water	Overfill Alarms	External signaling device attached to an automatic tank gauging system.	100%
T-5	Water	Vent Restriction Devices	Float vent valves or ball float valves	100%
Secondary Containment				
T-11	Water	Double-walled Tanks	Tanks equipped with a double wall or jacketed liner.	50%
T-12	Water	Double-walled Piping	Piping equipped with a double wall to contain leakages that may occur from the primary pipe wall.	50%
T-13	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100%
T-14	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100%
T-15	Water	Sensing Devices	Installed to monitor for product accumulation in secondary	100%

			containment sumps.	
Release Detection for Tanks and Piping				
T-21	Water	Automatic Tank Gauging	Includes tank gauging probe and control console.	100%
T-22	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation	100%
T-23	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping.	100%
T-24	Water	Automatic Line Leak Detectors	Mechanical and electronic devices are acceptable.	100%
T-25	Water	Under Pump Check Valve	This device is only used on suction pump piping systems.	100%
T-26	Water	Tightness Testing Equipment	Equipment purchased to comply with tank and/or piping tightness testing requirements.	100%
Cathodic Protection				
T-30	Water	Isolation Fittings	Dielectric bushings and fittings to separate underground piping from above ground tanks and piping.	100%
T-31	Water	Sacrificial Anodes	Magnesium or zinc anodes packaged in low resistivity backfill to provide galvanic protection.	100%
T-32	Water	Dielectric Coatings	Factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. Field installed coatings limited to exposed threads, fittings, and damaged surface areas.	100%

Exhibit 2

December 2006

Property Tax Exemptions for Pollution Control Property

Draft Guidelines Document for Preparation of Use Determination Applications

Tax Relief for Pollution Control Property Program
Small Business and Environmental Assistance Division
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

DISCLAIMER

This document is intended to assist persons in applying for a use determination, pursuant to Title 30 Texas Administrative Code Chapter 17 (30 TAC 17). Conformance with these guidelines is expected to result in applications that meet the regulatory standards required by the Texas Commission on Environmental Quality (TCEQ). However, the TCEQ will not in all cases limit its approval of applications to those that correspond with the guidelines in this document. These guidelines are not regulation and should not be used as such. Personnel should exercise discretion in using this guidelines document. It should be used along with other relevant information when developing an application.

TABLE OF CONTENTS

INTRODUCTION

Purpose of This Document

This document provides information explaining how to apply for a property tax exemption for capital expenditures for pollution control property. The term *pollution control property* means a facility, device, or method for control of air, water, or land pollution. Under the Texas Tax Code (Tax Code), a person or business may obtain an exemption from ad valorem property taxes for equipment installed to comply with environmental laws or rules. This document explains how to determine whether you have equipment that qualifies for a tax exemption and how to apply to the Texas Commission on Environmental Quality (TCEQ) to ultimately obtain the exemption. The document issued by TCEQ that authorizes the tax exemption is referred to as a use determination.

Legislative Background

On November 2, 1993, Texas voters approved a constitutional amendment(Proposition 2) providing an exemption from property taxation for pollution control property. This amendment added Section (§) 1-1 to Article VIII of the Texas Constitution. Legislation to implement the amendment was approved in House Bill 1920 during the regular session of the 73rd Legislature. This legislation added §11.31 to Chapter 11 of the Tax Code and §26.045 to Chapter 26 of the Tax Code. Copies of Tax Code §11.31, §26.045, and §1-1 of Article VIII of the Texas Constitution are located in Appendix E of this document. The intent of the constitutional amendment was to ensure that capital expenditures undertaken to comply with environmental rules did not raise a facility's property taxes.

In 2001, the 77th Legislature amended the §11.31 of the Tax Code, to require the Commission to adopt specific standards for evaluating applications and provide a formal procedure to allow an applicant or an appraisal district to appeal a ruling by TCEQ.

The TCEQ adopted Chapter 17 under Title 30 of the Texas Administrative Code to establish the procedures and mechanisms for obtaining a use determination. A copy of the program rules is located in Appendix E of this document.

The legislation established a two-step process for securing an exemption from property taxes for pollution control property:

1. A facility must first receive from the TCEQ a determination that the property is used for pollution control purposes.

2. The applicant then submits this use determination to the local appraisal district to obtain the property tax exemption.

Benefit to Taxpayers

The filing of an exemption request, with a positive use determination, reduces a facilities appraised value by the value of the pollution control property. A lower appraised value results in lower property taxes.

ELIGIBILITY AND EXCLUSIONS

Effective Date

To be eligible for a positive use determination the property must have been purchased, acquired, constructed, installed, replaced or reconstructed after January 1, 1994, in order to meet or exceed an adopted federal, state, or local environmental law, rule, or regulation. Property or equipment that existed prior to that date will not be eligible

Eligible Property

Property that is installed wholly or partly for pollution control purposes is eligible for a positive use determination. It is the responsibility of the applicant to demonstrate that the equipment or property is used for pollution control purposes. The applicant must show that the property was installed to meet or exceed environmental regulations of the United States, the State of Texas, or political subdivisions of Texas. For partial determinations, i.e., property used *partly* for pollution control, the applicant must perform a cost analysis to determine the percentage of the capital cost that qualifies. This requires using the Cost Analysis Procedure that is described later in this document.

A. Dedicated Purpose Vehicles

Vehicles that are used solely for pollution control purposes, such as vacuum trucks, street sweepers, surface watering trucks, and spill response vehicles are eligible for a positive determination.

B. Qualifying Land

Land may be eligible for a positive determination, but it is restricted to land that actually contains pollution control property. Examples include the actual square footage of land that contains a bag-house, scrubber, settling pond, or waste water containment. The land must have been acquired after January 1, 1994.

C. Used Equipment

Property purchased from another owner is eligible for a positive use determination if it meets the following criteria:

1. It must have been acquired, constructed, or installed by the new owner after January 1, 1994.

2. It will be used wholly or partly as pollution control property.

3. It has not been taxable by any taxing unit in which the property is located.

Property Excluded from the Exemption

The law specifies that the following classifications of property may not receive the exemption:

- motor vehicles, except as explained above;
- residential property;
- property used for recreational, park, or scenic uses, which includes sporting activities, camping, scenic areas and historical, archeological, or scientific sites ; and
- property subject to a tax abatement agreement executed before January 1, 1994, except for property that is acquired, constructed, or installed after the abatement agreement has expired.

A. Commercial Waste Management Facilities

The statute does not allow property to receive the exemption solely because the facility manufactures or produces a product that is used in pollution control or provides a service that monitors, controls, or reduces pollution. For example, suppose that a company operates a hazardous waste incinerator and contracts with other companies to dispose of their hazardous waste. The incinerator would be considered commercial waste disposal equipment and would not be eligible for a positive use determination. However, pollution control equipment, such as bag-houses or scrubbers as needed to comply with environmental regulations, would be eligible. If a company installed and operated a non-commercial incinerator to dispose of its own waste then it would be eligible for a positive use determination.

B. Buffer Zones

The language in the statute includes land as being eligible for a use determination; however, only that part of the land that actually contains pollution control property or is used as pollution control property will be considered. Property used solely as a buffer zone is not eligible.

COMPLETING AN APPLICATION

Application Submission Requirements

Any application that is submitted to the TCEQ must meet the following requirements:

- Timing Deadline: Applications must be postmarked by January 31 for property constructed or installed during the previous calendar year. This deadline was established to allow sufficient time for TCEQ to complete review of all applications and issue a use determination prior to May 1. The county tax appraisal districts have a May 1 deadline for businesses to submit their tax appraisal information. TCEQ will review the applications in the order received. The agency will make every effort to issue a determination prior to May 1 for all applications received.
- Single Facility Extending into Two Counties: If the property listed on an application is located in more than one appraisal district, each affected appraisal district must be listed on the application. Separate applications are not required.

- Multiple Plant Sites in One County: A company that installs identical or similar equipment at more than one location within a single appraisal district may submit a single application for all such equipment. The application must list the address of each location and the specific property installed at each location. It is permissible to file separate applications for each plant site. However, a separate application fee is required for each application.

  Example: A company that installs Stage II vapor recovery equipment at a number of gasoline service stations within the same county may submit one application to cover all of the stations. Site information including the physical location, street address, and a description of the pollution control property should be provided for each site.

- Multiple Projects at One Site: A separate application must be submitted for each project that involves a separate production unit at a facility. If such multiple projects are filed as a single application, it will be returned to the applicant with no determination. It is acceptable to separate your projects by media type. This would allow you to place all of your air related projects at a production unit on one application.

  Example: A project to upgrade stormwater control at a facility would only require one application. Installing identical stormwater control equipment at multiple sites within the same county would also require only one application. However, a project to reduce emissions or discharges at several different production units located at a single plant or facility would require separate applications for each unit.

- Applications Submitted After the First Year of Eligibility: Positive use determinations will be issued only for property that would first become taxable during the tax year in which the use determination application is submitted. Alternatively, pollution control property that became taxable after January 1, 1994, but for which no positive use determination has been issued would also be eligible for a positive use determination. However, the tax exemption would not be retroactive for the taxable years prior to issuance of the use determination.

- Eligible Property Must Have Capital Expenditures Incurred: Positive use determinations will not be issued on a prospective basis. Upon request, the TCEQ will review proposed future projects or purchases and issue a letter stating which specific equipment or parts of a project may be eligible for a positive determination at the time of construction or purchase. In order to receive a positive use determination the requestor will still need to submit a use determination application in the year that the property would first become taxable.

- Inclusion of Fee with Applications: As stated in the rules, an applicant whose application is not accompanied with the proper fee payment will be mailed a deficiency letter. Review of the application will not commence until the proper fee is received.

Preparing the Application

If a company has installed equipment or made process changes that were intended to control, reduce or prevent air, water, or land pollution, and that either met or exceeded an adopted environmental regulation, then such equipment or process changes may be eligible for a full or partial use determination. A Decision Flow Chart has been developed to assist applicants in preparing use

determination applications. The Decision Flow Chart is to be used by all applicants to determine if each device or equipment item qualifies as pollution control property.

An application form and instructions are provided in Appendix B of this document. Applicants are allowed to use a copy or similar reproduction of the TCEQ application form. All applications must be made using the most recent version of the application form. An electronic version of the application form is available to be downloaded from the TCEQ Web page. Instructions for downloading forms can be found in the section **Obtaining Publications** within this document.

Appendix D of this document contains a list of frequently asked questions related to the tax exemption program and the corresponding answers.

Application Tier Levels

There are 3 different tiers, or levels, of applications that can be submitted for a use determination. The Decision Flow Chart is used to determine what tier is applicable to your property.

Tier I

This is for property that is on the TCEQ's Predetermined Equipment List (PEL), which is located in Appendix A of this document. The PEL consists of specific equipment that the TCEQ has "predetermined" to be pollution control property. Tier I applications have a $150 fee. In order for the application to be considered Tier I, **all** items listed on the application must be located on the PEL or must be necessary for the installation or operation of property located on the PEL.

Tier II

This is for property that is 100 percent pollution control property but is not on the PEL. Tier II applications have a $1,000 fee.

Tier III

This is for property that is partially used for pollution control and is not on the PEL. Tier III applications have a $2,500 fee. Tier III applications have both environmental benefits and process improvements or benefits.

If an application includes property for more than one tier, it can all be submitted as a single application. The appropriate application fee will be for the highest tier level for which equipment is included in the application. For example, if the application contains PEL equipment (Tier I), 100% pollution control property not on the PEL (Tier II), and partial determinations (Tier III), then the appropriate fee would be $2,500. It is acceptable to submit separate applications for Tier I, Tier II, and Tier III equipment, but this is not required and will increase the amount of application fees.

The fees were developed with the intent of recovering the costs to administer the program. Fees are higher for the second and third tiers because there are greater administrative costs involved in reviewing applications for property that has not already been determined to be pollution control property.

Applicant Decision Flow Chart

Applicants must use the Decision Flow Chart for each item of pollution control property or process change. You must proceed step-by-step through the chart to determine "how" and "if" the particular equipment item will qualify as pollution control property.

Note: The numbers in the chart and instructions listed here do not match exactly with the Decision Flow Chart as adopted in Chapter 17. These instructions are intended to explain, in more detail, the process of using the chart in preparing a tax exemption application.

The following instructions should be used with the flow chart. **The numbered items below do not correspond to the box numbers in the flow chart.**

1. Prepare a list of all process equipment and pollution control equipment that is considered to be pollution control property (Box 1).

2. Each item on the list must be run through the flow chart separately (Box 2). Some items will likely end at different points on the flow chart.

3. Determine whether the item is required to meet or exceed a specific state, local, or federal environmental regulation, rule or law (Box 3). If no specific rule citation can be made, then this item does not qualify as pollution control property (Box 4).

4. Determine if there is an environmental benefit at the site where the equipment is installed (Box 5). A yes answer to this question is needed to continue evaluating the equipment. If the answer is no, then the equipment does not qualify (Box 4).

5. Determine whether the equipment is listed on the Predetermined Equipment List (PEL) (Box 6). If so, then determine the reference number for that item (Box 7).

6. Include all PEL equipment for the project in a single list that is included with the application.

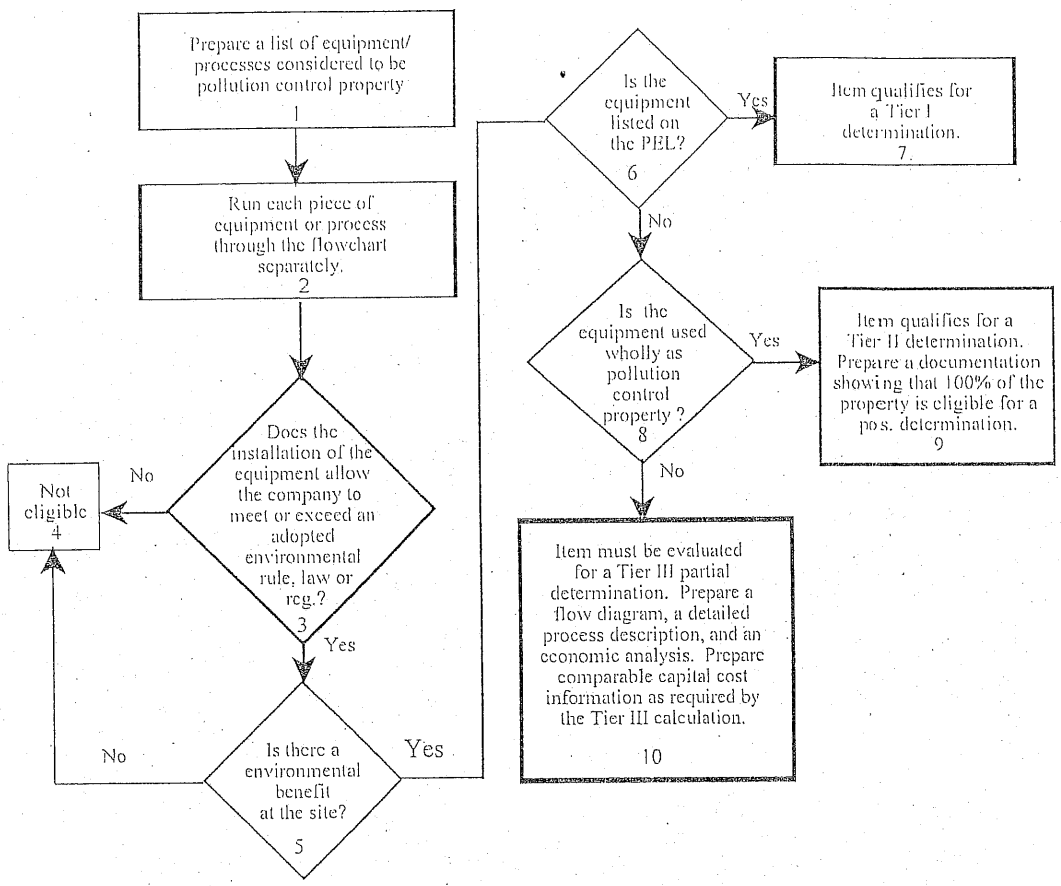
7. If the equipment is not on the PEL, then determine whether the equipment is used wholly for pollution control, i.e., the equipment is not production related and/or does not increase production or improve product quality (Box 8).

8. If it is wholly for pollution control, then the equipment may qualify as 100% pollution control property (Box 9). The applicant must provide sufficient written documentation and justification to prove that it qualifies.

9. If the equipment has both environmental and production elements, then the equipment must be evaluated as a partial determination (Box 10). The applicant must provide a detailed capital cost analysis following the procedures established in the Partial Determination section of this document. The results of these calculations will determine the partial use percentage.

Tax Relief Decision Flow Chart

Applicants must use this flowchart for each piece of equipment or process. In order for a piece of equipment or process to be eligible for a positive use determination the item must generate 'yes' answers to the questions asked in boxes 3 and 5.



TIER I - PREDETERMINATIONS

The TCEQ has developed a list of equipment that it has determined to be pollution control property. The PEL is located in Appendix A of this document. The most current version of this list may be obtained by contacting the TCEQ Tax Relief for Pollution Control Property Program (Tax Relief) or by accessing the TCEQ Web page. Follow the instructions in the section **Obtaining Publications** in this document.

The list contains property that is both wholly and partially pollution control. The specific types of equipment that are less than 100% were analyzed by TCEQ staff to determine the appropriate percentages. Most of the property contained on the list is used entirely for pollution control and is listed at 100%. Once a percentage has been established, that percentage is fixed for Tier I applications. Anyone seeking to obtain a different percentage must apply for a Tier III determination. The PEL is generic in nature and will not specify brand names.

The PEL will be periodically updated by the TCEQ. Generally, for Tier II and Tier III property approved as pollution control property, that property, if it is considered by the TCEQ to have general applicability, may be placed on the PEL. In addition, the staff of the TCEQ from time to time will add, remove, or revise items from the PEL.

Outside parties may propose additions to the PEL by submitting a written request to the Tax Relief program. The request must provide a description of the equipment and justification for adding it to the PEL. The Tax Relief program will provide a determination after reviewing the request.

TIER II - 100% NON-PREDETERMINED PROPERTY

The predetermined equipment list contains property items that TCEQ has reviewed and "predetermined" to qualify as pollution control property. It is not practical to include all possible types of qualifying property on the list. For property that an applicant believes is 100% pollution control property but is not contained on the PEL, a Tier II application should be prepared. The applicant has the burden of demonstrating that the property is indeed "100% pollution control property". The applicant must provide financial or other information to prove that the property has no production benefits and serves entirely for pollution control.

TIER III - PARTIAL DETERMINATIONS

This section addresses property for which a Tier III application is required. This is property that is not on the PEL and that is not used wholly for pollution control. It includes new or modified process equipment that has both environmental and production elements. An example would be replacement of a reactor vessel with a new reactor that has improved mixing and reduces waste. Since the reactor is essential to production but also has environmental benefits, the equipment would be considered partial pollution control property.

If there are one or more parts of the property that both control pollution and are essential to the manufacturing process, the applicant is asked to specify the proportion of the property used for pollution control purposes. In order to make a partial determination, the applicant must use the Cost Analysis Procedure described below. This procedure requires the use of cost accounting principles to calculate the percentage of the project that qualifies for a positive use determination as pollution control property. Detailed examples of how to calculate the partial percentages are shown in Appendix C. If an applicant needs assistance in determining a partial percentage, please contact the program at (512) 239-6348 or (512) 239-1917.

Cost Analysis Procedure

The following procedure must be used to determine the creditable partial percentage for a Tier III application:

$$\text{Partial Use Determination} = \frac{[(PCF \times CCN) - CCO - BP]}{CCN} \times 100$$

Production Capacity Factor (PCF): This is calculated by dividing the capacity of the existing

equipment or process by the capacity of the new equipment or process.

$$PCF = \frac{\text{Production Capacity of Existing Equipment or Process}}{\text{Production Capacity of New Equipment or Process}}$$

When there is an increase in production capacity, PCF is used to adjust the capacity of the new equipment or process to the capacity of the existing equipment or process. When there is a decrease in production capacity, PCF is used to adjust the capacity of the existing equipment or process to the production capacity of the new equipment or process. In this case, the method of calculation is modified so that PCF is applied to Capital Cost Old rather than Capital Cost New.

Capital Cost New (CCN): This is the estimated total capital cost of the new equipment or process.

Capital Cost Old (CCO): This is the cost of comparable equipment/process without the pollution control. The standards used for calculating CCO are as follows:

1. If comparable equipment without the pollution control feature is on the market in the U.S., then an average market price of the most recent generation of technology must be used.

2. If condition 1 above does not apply, and the company is replacing an existing unit, then the company shall index the original cost of the unit to today's dollars by using a published industry specific standard.

3. If neither conditions 1 nor 2 apply, and the company can obtain an estimate of the cost to manufacture the alternative equipment without the pollution control feature, then an average estimated cost to manufacture the unit must be used. The comparable unit must be the most recent generation of technology.

For all three methods, generally accepted accounting principles must be used.

Byproduct (BP): For property that generates a marketable byproduct, in addition to providing pollution control, the net present value of the byproduct is used to reduce the partial determination. The value of the byproduct is calculated by subtracting transportation and storage costs of the byproduct from the market value of the byproduct. This value is then used to calculate the NPV of the byproduct over the lifetime of the equipment. The equation for calculating BP is as follows:

$$BP = \sum_{t=1}^{n} \frac{\left[(\text{Byproduct Value}) - (\text{Storage \& Transport})\right]_t}{(1 + \text{Interest Rate})^t}$$

Byproduct Value: The retail value of the recovered byproduct for a one year period. Typically, use the most recent three-year average price of the material as sold on the open market. If the price varies from state-to-state, then calculate an average, and explain how the figures were determined.

Storage and Transport: These costs are the costs to store and transport the byproduct which will reduce the market value of the byproduct. Provide verification of how these costs were determined

and itemized.

n: This is the estimated useful life in years of the equipment that is being evaluated for a use determination.

Interest Rate: This is the current Prime Lending Rate that is in effect at the time the application is submitted. The Prime Lending Rate is defined by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. The Prime Lending Rate is posted daily in the Wall Street Journal and on most financial or investment web sites.

The statute requires that the applicant provide any information requested by the Executive Director. If an applicant is unable to provide the information required in order to use the formula, then a negative determination will be issued.

If the above procedure produces a negative number or a zero, then there is no creditable partial percentage for the project and the result is a negative use determination.

APPLICATION REVIEW

The Flow Chart for Obtaining a Use Determination in this section summarizes the use determination application process.

Administrative Review

The TCEQ has 30 days from the receipt of an application to determine whether the application is administratively complete. For an application to be administratively complete all of the required fields on the application form must have an entry. If some fields are left blank or incomplete, then a notice of deficiency (NOD) will be mailed by TCEQ within 30 days of receiving the application. This notice will specify the information that is needed to complete the application. The applicant then has 30 days to submit the requested information to the TCEQ. Failure to respond in the allotted time will result in termination of the review of the application and forfeiture of the fee. The applicant may then reapply, but it will be considered as a new application requiring payment of a new application fee.

Once an application has been declared to be administratively complete, letters will be sent to the applicant and the appraisal district.

Technical Review

Once the application is determined to be administratively complete, the technical review will commence. The technical review consists of a detailed review of the information provided in Sections 7, 8, and 9 of the application. The TCEQ has 60 days from the date that an application has been declared administratively complete to conduct the technical review. If the application is deemed incomplete, a technical NOD explaining the specific deficiencies will be sent to the applicant. The applicant has 30 calendar days from receipt of the NOD to address the deficiencies and reply to the TCEQ. A maximum of three technical NODs will be issued. If the final response does not answer all of the deficiencies, the application will be returned to the applicant. If the applicant chooses to refile

the application, it will be treated as a new application and will require the payment of the appropriate fee. All technical reviews will be documented with copies of the documents being mailed to the applicant and the appropriate appraisal district at the completion of the review.

Use Determination

Once the technical review has been completed, the applicant will receive a use determination letter and the use determination. The executive director may not make a determination that the property is pollution control property unless the property meets the standards established under Chapter 17. If a positive use determination is made, the applicant must then submit the use determination, along with the appropriate exemption request form, to the appraisal district in order to receive the tax exemption. Exemption request forms can be obtained from the appraisal district. If a negative use determination is made, the applicant will be provided with the reason(s) for the denial.

Obtaining the Tax Exemption

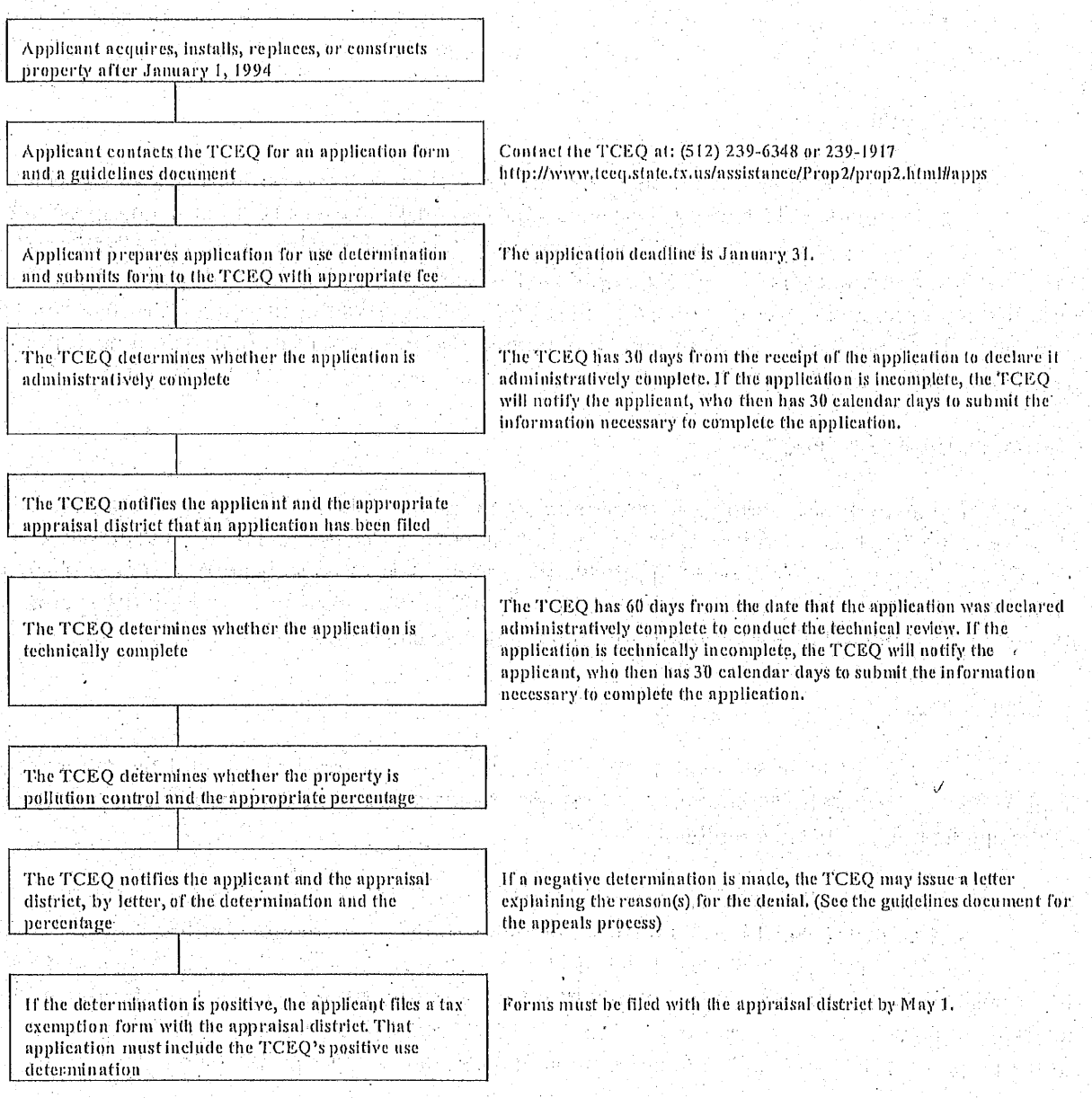
The appraisal districts have a filing deadline for exemption requests of May 1 for each tax year. The chief appraiser has the authority to disallow exemption requests that are not filed by the deadline. The TCEQ provides written notice to the appraisal district when a use determination is filed and a copy of the final determination. However, it is the responsibility of the applicant to submit the exemption request to the appraisal district in order to obtain the tax exemption.

Return of Fees

Fees shall be forfeited for applications which are denied or returned. Fees will be refunded for applications withdrawn by the applicant if a written refund request is filed before the technical review of the application has been completed.

As per the statute, it is the applicants burden to supply the TCEQ with the information necessary to make a use determination. If the applicant is unable to provide the required information, then the application will be returned to the applicant. If the TCEQ determines that the property is not eligible for a positive determination a negative determination will be issued. For Tier III applications if alternative equipment is not currently available on the market or if it is not possible to develop a cost of the property without the pollution control feature, then no partial will be issued.

FLOWCHART FOR OBTAINING A USE DETERMINATION



APPEALS PROCESS

A use determination may be appealed by the applicant or the chief appraiser of the county where the property is located. A written appeal request must be received by the TCEQ Chief Clerk within 20 days after receipt of the use determination letter. The applicant is presumed to have received the letter 3 working days after is was mailed.

The appeal request must contain the following information:

1. Name, address, and daytime telephone of the person requesting the appeal.
2. Name and address of the applicant receiving the use determination.

3. The use determination application number assigned by TCEQ.
4. A description of what is being appealed.
5. An explanation of the basis for the appeal.

Upon receipt of the appeal, the chief clerk will forward a copy to the executive director and schedule the appeal for the next commission meeting for which adequate notice can be given. The chief clerk will also mail a copy of the appeal to whichever party did not request the appeal, either the applicant or the appraisal district.

Both the applicant and the chief appraiser may testify at the commission meeting that is scheduled to hear the appeal. The commission may either deny the appeal or remand the matter back to the executive director. If it is remanded, the executive director must conduct a new technical review of the application and issue a new use determination. The new determination may then be appealed using the same procedures as for the initial appeal.

Contact information for the Office of the Chief Clerk is:

U.S. Mail Address
Office of the Chief Clerk
TCEQ MC 105
PO Box 13087
Austin, TX. 78711-3087

Physical Address
Office of the Chief Clerk
TCEQ MC 105
12100 Park 35 Circle
Austin, TX. 78758

CONFIDENTIAL MATERIAL

The agency suggests that the applicant **NOT** submit confidential information as part of the use determination application. However, if this cannot be avoided, a general description should be provided in nonconfidential terms as part of the application. A separate document containing the confidential information should be submitted as an attachment to the application. Each page of the confidential information should be conspicuously marked "CONFIDENTIAL."

Reasons for confidentiality include the concept of trade secrecy and other related legal concepts that give a business the right to preserve the confidentiality of business information to obtain or retain advantages resulting from the content of the information. The TCEQ will maintain information marked as being confidential in a separate file.

OBTAINING PUBLICATIONS

The most current versions of the Application and Instructions for Use Determination for Pollution Control Property and Predetermined Equipment List and the Technical Guidelines Document can be obtained by contacting the TCEQ Tax Relief program at (512) 239-6348 or (512) 239-1917.

Current copies of these documents may also be downloaded from the TCEQ web sire. The URL is www.tceq.state.tx.us for the main web page. Click on the Subject Index link, next the letter T, and then click on the link for Tax Exemptions for Pollution Control which will connect to the Tax Relief web page. From there, click on the link for Application Forms and Guidance Documents. All of the

available forms and instructions can be downloaded from that link.

CONTACTING THE PROGRAM

Questions relating to this program can be sent by U.S. mail to the following address:

TCEQ - MC-110
Attention: Tax Relief Program
PO Box 13087
Austin TX 78711-3087

or by electronic mail to the following address: txrelief@tceq.state.tx.us

or by fax to the following telephone number: (512) 239-3165 or (512) 239-6763

or by telephone to the following program staff: (512) 239-6348 or (512) 239-1917

APPLICATION FILING

Filing Information

Send the completed applications to:

U.S. Mail

TCEQ - Cashiers Office MC-214
Tax Relief Program
PO Box 13088
Austin Texas 78711-3088

Physical Address

TCEQ – Cashiers Office MC-214
Building A
12100 Park 35 Circle
Austin, TX 78753

each application must include a signature page with an original signature and the proper fee payment.

DELINQUENT FEE/PENALTY PROTOCOL

This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol.(Effective September 1, 2006)

Appendix A

PREDETERMINED EQUIPMENT LIST

Pre-Determined Equipment List

Air Pollution Control Equipment

No.	Media	Equipment	Description	Percent
Particulate Control Devices				
A-1	Air	Baghouses (not used for product collection)	Baghouses, filters, blowers, piping — used to remove particulate matter from air/gas streams	100%
A-2	Air	Demisters	Mesh pads or cartridges — used to remove entrained liquid droplets from exhaust gas streams	100%
A-3	Air	Electrostatic Precipitator	Wet or dry particulate collection by creating an electric field between positive and negative electrodes.	100%
A-4	Air	Cyclone (not used for product collection)	Cyclone, blowers, piping, etc. — used to remove particulate matter from exhaust gas streams	100%
A-5	Air	Scrubbers (not used for product collection)	Scrubber, circulation pumps, piping, etc. — used to remove particulates from exhaust gas stream	100%
A-6	Air	Water/Chemical Sprays and Enclosures for Particulate Suppression	Spray nozzles, conveyor and chute covers, windshields, piping, pumps, etc. — used to reduce particulate emissions	100%
A-7	Air	Smokeless Ignitors	Installed on electric generating units in order to control particulate emissions and opacity on start-up.	100%
Combustion Control Devices				
A-12	Air	Thermal Oxidizers	Thermal destruction of VOCs by direct flame combustion.	100%
A-13	Air	Catalytic Oxidizer	Oxidation or destruction of VOCs by use of a catalyst.	100%
A-14	Air	Flare/Vapor Combustor	Stack, burner, flare tip, blowers, etc. — used to destroy air contaminants in a vent gas stream	100%
Non-VOC Gaseous Control Devices				
A-21	Air	Molecular Sieve	Used to remove H_2S	100%
A-23	Air	Strippers Used in Conjunction with Final Control Device	Stripper, pumps, piping — used to remove contaminants from a gas or liquid stream	100%
A-24	Air	Sorbent Injection Systems	Multiple-pollutant, SO_x, or NO_x	100%
A-25	Air	CFC Replacement Projects. All necessary equipment needed to replace the CFC and achieve the same level of cooling capacity.	Projects to replace one CFC with an alternative CFC or other refrigerant where there is no increase in the cooling capacity or the efficiency of the unit.	100%

No.	Media	Equipment	Description	Percent
A-26	Air	Refrigerant Recycling Equipment	Equipment used to recover and recycle CFC's and halocarbons.	50%
		Monitoring and Sampling Equipment		
A-31	Air	Fugitive Emission Monitors	Organic vapor analyzers — used to discover leaking piping components	100%
A-32	Air	Continuous Emission Monitors	Specific for NO_x, CO, SO_2, opacity, THCs, and VOCs, respectively	100%
A-33	Air	Monitoring Equipment on Final Control Devices	Temperature monitor or controller, flow-meter, pH meter, etc. for a pollution control device. Monitoring of production equipment or processes is not included.	100%
A-34	Air	Ambient Air Monitoring Facilities	Towers, structures, analytical equipment, sample collectors, monitors, power supplies, etc.	100%
A-35	Air	Noncontinuous Emission Monitors	Monitors, analyzers, buildings, air conditioning equipment, etc. constituting a monitoring system required to demonstrate compliance with emission limitations.	100%
A-36		Automotive Dynamometers	Automotive dynamometers used for in-house emissions testing in order to reduce vehicle emissions. Automotive dynamometers installed for the purpose of testing vehicles which are not part of the company's fleet do not qualify for a positive use determination.	100%
A-37	Air	Noncontinuous Emission Monitors, Portable	Monitors, analyzers, structures, trailers, air conditioning equipment, etc.	100%
A-38	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used to calculate or determine compliance with emission limitations.	100%
		Control of Nitrogen Oxides		
A-50	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors — used to reduce NO_x emissions from engines/boilers	100%
A-51	Air	Catalytic Converters for Stationary Sources	Used to reduce NO_x emissions from internal combustion engines	100%
A-52	Air	Air/Fuel Ratio Controllers for Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO_x formation for fuel injected, naturally aspirated, or	100%

No.	Media	Equipment	Description	Percent
			turbocharged engines.	
A-53	Air	Flue Gas Recirculation	Ductwork, blowers, etc. — used to redirect part of the flue gas back to the combustion chamber for reduction of NO_x formation. May include flyash collection in coal fired units.	100%
A-54	Air	Water/Steam Injection	Piping, nozzles, pumps, etc. to inject water or steam into the burner flame of utility or industrial boilers or the atomizer ports for gas turbines, used to reduce NO_x formation.	100%
A-55	Air	Over Fire Air Systems	Advanced over-fire air for NO_x	100%
A-56	Air	Burners Out of Service	Staging of burner firing by not firing specific burners within a combustion unit for the purpose of eliminating hot spots to reduce NO_x emissions.	100%
A-57	Air	Lean-Burn Gas-Fired Compressor Engines	Gas-fired engines, which utilize lean-burn technology, that are used for the compression of natural gas for the purpose of storage or transmission.	20%
A-58	Air	Low-NO_x Burners	Replacement of existing incinerator, furnace or boiler burners with low-NO_x burners for pollution control purposes (does not include electrical power generation burners).	100%
A-59	Air	Low Emissions Conversion Kit for IC compressor engines	Existing internal combustion engines used to drive natural gas compressors that install conversion kits to reduce NOx emissions. These kits include ignitor cells or assemblies that ignite a fuel rich mixture in a pre-combustion chamber and forcing it into the power cylinder while still burning. Additional components consist of pilot gas system that delivers rich fuel to the ignitor cell and power cylinders, power pistons, and power cylinder heads to replace the existing cylinders, pistons and heads.	100%
A-60	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate	100%

No.	Media	Equipment	Description	Percent
			hot spots; thereby reducing NO_x formation.	
A-61	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing NOx including directly related equipment.	100%
A-62	Air	High-Pressure Fuel Injection System	Retrofit technology for large bore natural gas fired internal combustion engines to reduce NOx and CO emissions. System includes injectors, fuel lines, and electronic controls.	40%
VOC Control				
A-70	Air	Activated Carbon Systems	Carbon beds or liquid-jacketed systems, blowers, piping, condensers — used to remove VOCs or odors from exhaust gas streams	100%
A-71	Air	Storage Tank Secondary Seals and Internal Floating Roofs	Used to reduce evaporation losses from storage tanks	100%
A-73	Air	Stage I or Stage II Vapor Recovery	Includes pressure/vacuum vent relief valves, vapor return piping, stage 2 nozzles, coaxial hoses, vapor processing units, and vacuum-assist units.	100%
A-74	Air	Replacement of existing pumps, valves, or seals in piping service	Replacement of these parts for the sole purpose of eliminating fugitive emissions of volatile organic compounds. New systems do not qualify for this item.	100%
A-75	Air	Welding of pipe joints in VOC service	Welding of piping joints rather than using threaded or flanged fittings to eliminate fugitive emission leaks.	100%
A-77	Air	Carbon Absorber	Preventive abatement equipment absorbs VOCs, Freon and emission streams by using carbons atoms to combine with organic chemicals	100%
Miscellaneous Control Equipment				
A-90	Air	Hoods and Collection Systems for Final Control Devices	Piping, headers, pumps, hoods, ducts, etc. — used to collect air contaminants and route them to a control device	100%
A-91	Air	Stacks and Stack Modifications	Construction of new exhaust stacks, stack extensions, and stack repairs.	100%
A-92	Air	Vapor/Liquid Recovery	Hoods or other enclosures including	100%

No.	Media	Equipment	Description	Percent
		Equipment for Fugitive Emissions	piping and pumps or fans used to capture fugitive emissions from process equipment. The captured vapors are condensed or extracted for reuse or sold as product.	
A-93	Air	Vapor/Liquid Recovery Equipment (for venting to a control device)	Piping, blowers, vacuum pumps, compressors, etc. - used to capture a waste gas or liquid stream and vent to a control device. VOC & nonVOC. Including those used to eliminate emissions associated with loading tank trucks, rail cars, and barges	100%
A-94	Air	Paint Spray Booth Attached to Final Control Device	Booth, piping, etc. — used to contain and control over spray. Includes water curtain, filters, or other devices to capture paint fumes.	100%
A-96	Air/ Water	Preparation Room	A room designed for mixing paint, cleaning tools, and preparation of painting equipment	100%
A-98	Air	Powder Coating System	All equipment such as booths, powder recovery devices associated with a Powder Coating System. Ovens are not included.	100%
A-99	Air	Ultra-violet Electron Beam Infrared (E-Coat) Coating System	All equipment such as booths and ovens associated with an E-Coating System	70%
A-100	Air	Blast Cleaning Booth Vented to Control Device	Enclosed cabinet for blast cleaning of metal parts that includes a particulate control device	50%
Dry Cleaning Related Equipment				
A-110	Air	Perchloroethylene (Perc) Closed-Loop Dry Cleaning Machines	Dry-to-dry closed loop technology sealed during the entire dry cleaning sequence to eliminate solvent emissions and minimize hazardous waste disposal.	60%
A-111	Air	Cartridge and Spin Disc Filtration Systems	A control device used to lessen emissions of VOC for naphtha cleaning systems.	40%
A-112	Air	Petroleum Dry-to-Dry Cleaning Machines	Closed loop system using naphtha instead of perchloroethylene.	60%
A-113	Air	Petroleum Re-claimers	A unit used to collect VOC emissions in the drying process.	60%
A-114	Air	Refrigerated Vapor Condenser	A device that uses refrigerants to condense vapors to liquids.	90%

No.	Media	Equipment	Description	Percent
			Associated with dry cleaners, degreasers, or recovery of solvents from cleaning inside bulk containers or process vessels.	
A-115	Air	Secondary Containment	External structure or liner used to collect liquids released from dry cleaning equipment or chemical storage devices.	100%
A-116	Air	Direct Coupled Solvent Delivery Systems	Replacement of solvent delivery systems at existing dry cleaning facilities.	100%

Wastewater Pollution Control Equipment

No.	Media	Equipment	Description	Percent
Solid Separation and De-watering				
W-1	Wastewater	API Separator	Mechanical oil, water, and solids separator	100%
W-2	Wastewater	CPI Separator	Mechanical oil, water, and solids separator	100%
W-3	Wastewater	Dissolved Air Flotation	Mechanical oil, water, and solids separator	100%
W-4	Wastewater	Skimmer	Hydrocarbon	100%
W-5	Wastewater	Decanter	Used to decant hydrocarbon from process wastewater	100%
W-6	Wastewater	Belt Press, Filter Press, Plate and Frame, etc.	Mechanical de-watering devices	100%
W-7	Wastewater	Centrifuge	Separation of liquid and solid waste by centrifugal force, typically a rotating drum.	100%
W-8	Wastewater	Settling Basin	Simple tank or basin for gravity separation of suspended solids.	100%
W-9	Wastewater	Equalization	Tank, sump, or headbox used to settle solids and equilibrate process wastewater streams	100%
W-10	Wastewater	Clarifier	Circular settling basins usually containing surface skimmers and sludge removal rakes.	100%
Disinfection				
W-20	Wastewater	Chlorination	Wastewater disinfection treatment using chlorine	100%
W-21	Wastewater	De-chlorination	Chlorine removal equipment	100%
W-22	Wastewater	Electrolytic Disinfection	Disinfect water without use of chemicals	100%
W-23	Wastewater	Ozonization	Wastewater disinfection treatment	100%

No.	Media	Equipment	Description	Percent
W-24	Wastewater	Ultraviolet	Wastewater disinfection treatment	100%
W-25	Wastewater	Mixed Oxidant Solution	Solution of chlorine, chlorine dioxide, and ozone to replace chlorine for disinfection	100%
Biological Systems				
W-30	Wastewater	Activated Sludge	Biological treatment used to remove pollutants	100%
W-31	Wastewater	Adsorption	Used in conjunction with biological treatment to remove pollutants	100%
W-32	Wastewater	Aeration	Aeration equipment used in activated sludge treatment	100%
W-33	Wastewater	Rotary Biological Contractor	Biological treatment used to remove pollutants	100%
W-35	Wastewater	Trickling Filter	Biological treatment used to remove pollutants	100%
W-36	Wastewater	Wetlands and Lagoons (artificial)	Biological treatment used to remove pollutants	100%
W-37	Wastewater	Digester	Biological treatment used in conjunction to solids management and removal of pollutants	100%
Other Equipment				
W-50	Wastewater	Irrigation	Equipment used to irrigate and disburse treated wastewater	100%
W-51	Wastewater	Outfall Diffuser	Device used to diffuse effluent discharge from an outfall	100%
W-52	Wastewater	Activated Carbon Treatment	Treatment used to remove pollutants and polish effluent	100%
W-53	Wastewater	Oxidation Ditches and Ponds	Technology used to remove pollutants and polish effluent	100%
W-54	Wastewater	Filters: Sand, Gravel, Microbial	Treatment used to remove pollutants and polish effluent	100%
W-55	Wastewater	Chemical Precipitation	Process used to remove heavy metals from wastewater	100%
W-56	Wastewater	Ultra-filtration	Mechanical device used to remove solids	100%
W-57	Wastewater	Conveyances, Pumps, Sumps, Tanks, Basins	Used to segregate storm water from process water, control storm water runoff, or convey contaminated process water	100%
W-58	Wastewater	Water Conservation Systems	Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater in order to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water	100%

No.	Media	Equipment	Description	Percent
W-59	Wastewater	Wastewater Treatment Facility/Plant	New wastewater treatment facilities constructed to process wastewater generated on-site	100%
W-60	Wastewater	High-Pressure Reverse Osmosis	The passing of a contaminated water stream over a permeable membrane at high pressure to collect contaminants	100%
W-61	Wastewater	Hydro-cyclone Vapor Extraction	An air-sparged hydro-cyclone for the removal of VOCs from a wastewater stream	100%
W-62	Wastewater	Recycled Water Cleaning System	A high-pressure water system for cleaning equipment and pavement that is able to collect and recycle the cleaning water	100%
W-63	Wastewater	Chemical Oxidation	Use of hydrogen peroxide or other oxidants for wastewater treatment	100%
W-65	Wastewater	Storm-water Containment Systems	Structures or liners used for containment of runoff from rainfall	100%
W-66	Wastewater	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation	100%
Control/Monitoring Equipment				
W-70	Wastewater	pH Meter, Dissolved Oxygen Meter, Chart Recorder, etc.	Used for operations control and monthly reporting requirements	100%
W-71	Wastewater	On-line Analyzer	Used for operations control	100%
W-72	Wastewater	Neutralization	Control equipment used to adjust pH	100%
W-73	Wastewater	Respirometer	Monitor microbial respiration rates	100%
W-74	Wastewater	Diversion	Structures used for control of storm water and process wastewater or emergency diversion of process material	100%
W-76	Wastewater	Building	Used for housing control and monitoring equipment	100%
W-77	Wastewater	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam	100%
W-78		Double-Walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed in order to prevent unauthorized discharges.	100%

Solid Waste Management Pollution Control Equipment

No.	Media	Equipment	Description	Percent
Solid Waste Management				
S-1	Land/ Water	Stationary Mixing and Sizing Equipment	Immobile equipment used for solidification, stabilization, grinding, etc. of self generated waste material for the purpose of disposal or in-house recycling.	100%
S-2	Land/ Water	Decontamination Equipment	Equipment used to remove waste contamination or residues from mobile sources	100%
S-3	Land/ Water	Solid Waste Incinerator (not used for energy recovery and export or material recovery)	Solid waste incinerators, feed systems, ash handling systems, controls, etc.	100%
S-4	Land/ Water/ Air	Monitoring and Control Equipment	Alarms, indicators, controllers, etc., for high liquid level, pH, temperature, flow, etc. (Does not include fire alarms)	100%
S-5	Land/ Water	Solid Waste Treatment Vessels (not used for product recovery)	Any vessel used for waste treatment	100%
S-6	Land/ Water	Secondary Containment	External structure or liner used to collect liquids released from a primary containment device and/or ancillary equipment	100%
S-7	Land/ Water	Liners	A continuous layer or layers of natural and/or man-made materials that restrict downward or lateral escape of wastes or leachate in an impoundment, landfill, etc.	100%
S-8	Land/ Water	Leachate Collection and Removal Systems	A system capable of collecting leachate or liquids, including suspended solids, generated from percolation through or drainage from a waste. Systems for removal of leachate may include sumps, pumps, piping, etc.	100%
S-9	Land/ Water	Leak Detection Systems	A system capable of detecting the failure of a primary or secondary containment structure or the presence of a liquid or waste in a containment structure	100%
S-10	Land/	Final Cover Systems for	A system of liners and materials	100%

No.	Media	Equipment	Description	Percent
	Water	Landfills	to provide drainage, erosion prevention, infiltration minimization, gas venting, biotic barrier, etc.	
S-11	Land/ Water	Lysimeters	An unsaturated zone monitoring device used to monitor soil-pore liquid quality at a waste management unit (e.g., below the treatment zone of a land treatment unit, etc.)	100%
S-12	Water	Groundwater Monitoring Well and Systems	A groundwater well or system of wells designed to monitor the quality of groundwater at a waste management unit (e.g., detection monitoring systems, compliance monitoring systems)	100%
S-13	Air	Continuous/Noncontinuous Emission Monitors	Carbon monoxide monitor, oxygen monitor, total hydrocarbon monitors, etc.	100%
S-14	Air	Fugitive Emission Monitors	A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment	100%
S-15	Land/ Water	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize lateral migration of pollutants in soils and ground water	100%
S-16	Water	Groundwater Recovery or Remediation System	A groundwater remediation system used to remove or treat pollutants in contaminated groundwater or to contain pollutants (e.g., pump-and-treat systems, etc.)	100%
S-17	Water	Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment	Injection well, pumps, collection tanks and piping, pretreatment equipment, monitoring equipment, etc.	100%
S-18	Land/ Water	Noncommercial Landfills and Ancillary Equipment	Excavation, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, waste hauling equipment, decontamination facilities, security systems, and equipment	100%

No.	Media	Equipment	Description	Percent
			used to manage the disposal of waste in the landfill	
S-19	Land/ Water	RCRA Containment Buildings	Pads, structures, solid waste treatment equipment used to meet the requirements of Subchapter O - Land Disposal Restrictions (30 TAC 335.431).	100%
S-20	Land/ Water	Surface Impoundments and Ancillary Equipment (Including Brine Storage Ponds)	Excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, pumps, etc.	100%
S-21	Land/ Water	Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal (e.g., RCRA Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities, etc.)	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, vent controls, etc.	100%
S-22	Air	Fugitive Emission Containment Structures	Structures or equipment used to contain or reduce fugitive emissions or releases from waste management activities (e.g., coverings for conveyors, chutes, enclosed areas for processing equipment, enclosed areas for loading and unloading activities, etc.)	100%
S-23	Water	Double Hulled Barge	Double hulled to reduce chance of leakage. (Incremental cost difference between a single hulled barge and a double hulled barge.)	30%
S-24	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not included commercial composting facilities)	100%
S-25	Land	Compost Application Equipment	Equipment used to apply compost which has been generated on-site.	100%
S-26	Land	Vegetated Compost Socks	Put in place as part of a facilities permanent BMP.	100%

Miscellaneous Pollution Control Equipment

No.	Media	Equipment	Description	%
M-1	Air/ Land/ Water	Spill Response/Cleanup Equipment Pre-positioned and Stored for Addressing Future Emergencies	Boats, barges, booms, skimmers, trawls, pumps, power units, packaging materials and containers, safety equipment, vacuum trailers, storage sheds, diversion basins, tankage, dispersants, etc.	100%
M-2	Air/ Land	HEPA Vacuum Equipment, Negative Air Pressure Enclosures, Glove Bags, Personal Protection, Disposal	RCF/Asbestos abatement — required removal of asbestos contaminated material	100%
M-3	Air/ Land/ Water	Vacuum Trucks, Street Sweepers and Watering Trucks	Mobile Surface Cleaning Equipment — used exclusively to control particulate matter on plant roads	100%
M-4	Land	Compactors, Barrel Crushers, Balers, Shredders	Compactors and similar equipment used to change the physical format of waste material for recycling/reuse purposes or on-site disposal of facility-generated waste	100%
M-5	Land/ Air/ Water	Distillation Recycling Systems	Used to remove hazardous content from solvents and paints by heat, vaporization, and condensation	100%
M-6	Land/ Water	Boxes, Bins, Carts, Barrels, Storage Bunkers	Collection/storage containers for source-separation of materials to be recycled	100%
M-7	Water	Potable Water Systems	Tanks, pumps, and associated equipment necessary to provide potable water	100%
M-8	Air/ Land/ Water	Environmental Paving	Paving of parking lots, roadways, or plant areas in order to meet or exceed an adopted environmental rule, regulation or law.	100%
M-9	Air/ Land/ Water	Sampling Equipment	Equipment used to collect samples of exhaust gas, waste water, soil, or other solid waste to be analyzed for specific contaminants or pollutants.	100%
M-10	Water	Dry Stack Building for Poultry Litter	A pole-barn type structure used to temporarily store poultry litter in an environmentally safe manner	100%
M-11	Land/Water	Poultry Incinerator	Incinerators used to disposal of poultry carcasses.	100%
M-12	Land/W	Structures, Enclosures,	Required in order 'no contact'	100%

No.	Media	Equipment	Description	%
	ater	Containment Areas, Pads	stormwater regulations.	
M-13	Air	Methane Capture Equipment	Equipment used to capture methane generated by the decomposition of site generated waste material.	100%
M-14	Air	Methane Fueled Equipment for Power or Heat Generation	Equipment which burns site generated methane for the purpose of heating or generation of electric power.	50%

Underground and Above-ground Storage Tanks

No.	Media	Equipment	Description	Percent
Spill and Overfill Prevention Equipment				
T-1	Water	Tight Fill Fittings	Liquid tight connections between the delivery hose and fill pipe.	100%
T-2	Water	Spill Containers	Spill containment manholes equipped with either a bottom drain valve to return liquids to the tank, or a hand pump for liquid removal.	100%
T-3	Water	Automatic Shut-off Valves	Flapper valves installed in the fill pipe to automatically stop the flow of product.	100%
T-4	Water	Overfill Alarms	External signaling device attached to an automatic tank gauging system.	100%
T-5	Water	Vent Restriction Devices	Float vent valves or ball float valves	100%
Secondary Containment				
T-11	Water	Double-walled Tanks	Tanks equipped with a double wall or jacketed liner.	50%
T-12	Water	Double-walled Piping	Piping equipped with a double wall to contain leakages that may occur from the primary pipe wall.	50%
T-13	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100%
T-14	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100%
T-15	Water	Sensing Devices	Installed to monitor for product accumulation in secondary	100%

			containment sumps.	
Release Detection for Tanks and Piping				
T-21	Water	Automatic Tank Gauging	Includes tank gauging probe and control console.	100%
T-22	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation	100%
T-23	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping.	100%
T-24	Water	Automatic Line Leak Detectors	Mechanical and electronic devices are acceptable	100%
T-25	Water	Under Pump Check Valve	This device is only used on suction pump piping systems.	100%
T-26	Water	Tightness Testing Equipment	Equipment purchased to comply with tank and/or piping tightness testing requirements.	100%
Cathodic Protection				
T-30	Water	Isolation Fittings	Dielectric bushings and fittings to separate underground piping from above ground tanks and piping.	100%
T-31	Water	Sacrificial Anodes	Magnesium or zinc anodes packaged in low resistivity backfill to provide galvanic protection.	100%
T-32	Water	Dielectric Coatings	Factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. Field installed coatings limited to exposed threads, fittings, and damaged surface areas.	100%

Appendix B

APPLICATION FORM AND INSTRUCTIONS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
APPLICATION FOR USE DETERMINATION
FOR POLLUTION CONTROL PROPERTY

The Texas Commission on Environmental Quality (TCEQ) has the responsibility to determine whether a property is a pollution control property. A person or political subdivision seeking a use determination for pollution control property must complete the attached application or use a copy or similar reproduction. For assistance in completing this form refer to the TCEQ guidelines document, *Property Tax Exemptions for Pollution Control Property*, as well as 30 TAC §17, rules governing this program. For additional assistance please contact the TCEQ Tax Relief for Pollution Control Property Program at (512) 239-6348 or (512)239-1917. The application should be completed and mailed, with the appropriate fee, to: TCEQ MC-214, Cashiers Office, P.O. Box 13088, Austin, Texas 78711-3088.

1. GENERAL INFORMATION

A. What is the type of ownership of this facility:

[ ] Corporation
[ ] Partnership
[ ] Limited Partnership
[ ] Sole Proprietor
[ ] Utility
[ ] Other _____

B. Size of company: Number of Employees

[ ] 1 to 99
[ ] 100 to 499
[ ] 500 to 999
[ ] 1,000 to 1,999
[ ] 2,000 or more

C. Business Description: (Provide a brief description of the type of business or activity at the facility)

2. TYPE OF APPLICATION

A. [ ] **Tier I** $150 Application Fee.
B. [ ] **Tier II** $1,000 Application Fee.
C. [ ] **Tier III** $2,500 Application Fee.

NOTE: Enclose a check or money order to the TCEQ along with the application to cover the required fee.

3. NAME OF APPLICANT

A. Company Name: _____
B. Mailing Address (Street or P.O. Box): _____
C. City, State, ZIP: _____

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

A. Name of Facility or Unit: _____
B. Type of Mfg. Process or Service: _____
C. Street Address: _____
D. City, State, ZIP: _____
E. Tracking Number Assigned by Applicant: _____
F. Company Number or Registration Number: _____

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

A. Name of Appraisal District: _____

B. Appraisal District Account Number: _____

6. CONTACT NAME (must be provided)

A. Company/Organization Name: _____

B. Name of Individual to Contact: _____

C. Mailing Address: _____

D. City, State, ZIP: _____

E. Telephone number and fax number: _____

F. E-Mail address (if available): _____

7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION

For each of the pollution control properties listed on this application, select the type of medium or media (air, water, waste) for which the property or device is required. Use the second column to cite the **specific** environmental rule, regulation, and/or law that is being met or exceeded by the installation of this property. The citation should be specific and should include the section and/or subsection of the rule, regulation, and/or law. Do not list permit numbers or registration numbers in this table. If the property or equipment was installed or constructed in response to an agreed order, **do not** list the order — list the rule, regulation, or law that requires the installation or construction of the property.

MEDIUM	RULE/REGULATION/LAW
Air	
Water	
Waste	

8. DESCRIPTION OF PROPERTY (Complete for all applications)

Provide a description and purpose of the property for which this application is being filed. This description **must include** the anticipated environmental benefits for the prevention, monitoring, control, or reduction of air, water, or land pollution that will be realized by the installation of the property. **Do not simply repeat the description from the predetermined equipment list.** Instead describe the property and how it will be used at your facility. Include sketches of the equipment and flow diagrams of the processes where appropriate.

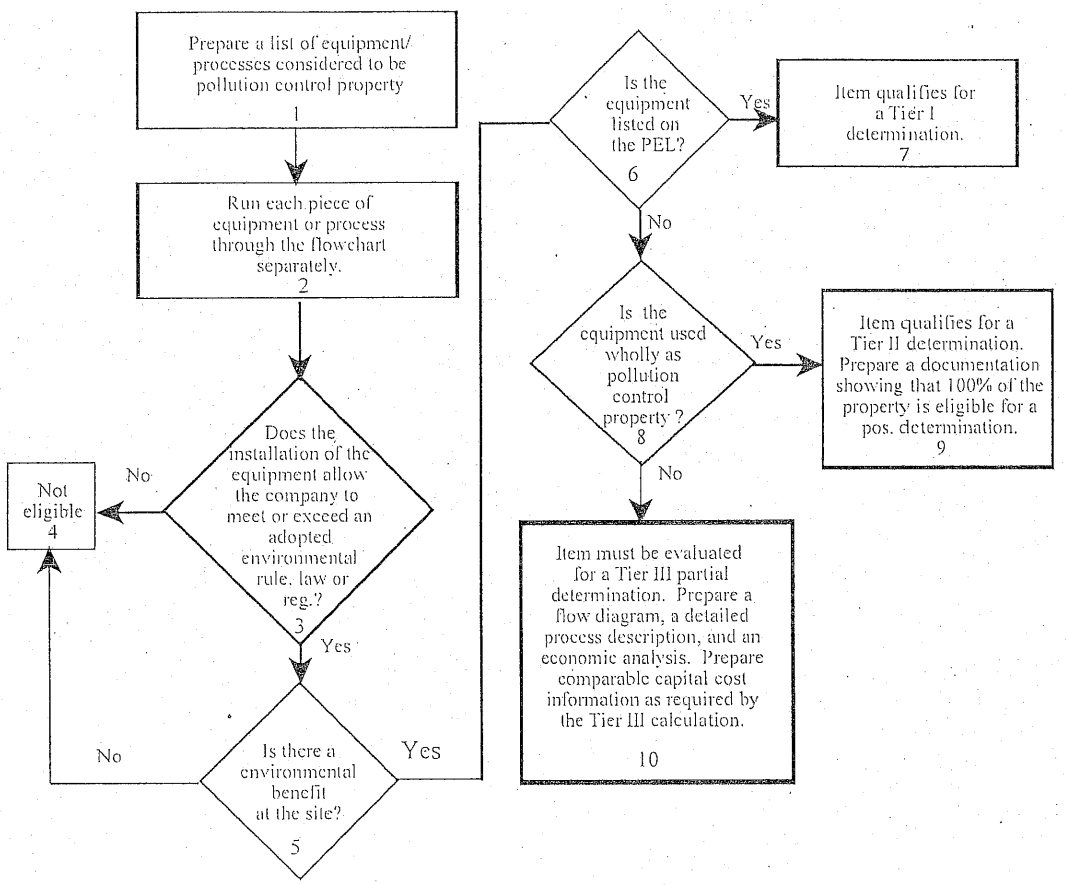
Land: If a use determination is being requested for land, provide a legal description and an accurate drawing of the property in question. Only that land which was purchased after January 1, 1994, and which is actually used for pollution control purposes or that houses pollution control property is eligible for a positive use determination.

9. DECISION FLOWCHART

Each piece of equipment or process change must be processed through the Decision Flow Chart. Each item of property listed on the application must result in a yes answer to boxes 3 and 5. Use the table in section 11 to document which box (7, 9 or 10) was the final destination of each piece of equipment. Instructions for completing this section are located in the instruction section of this document.

Tax Relief Decision Flow Chart

Applicants must use this flowchart for each piece of equipment or process. In order for a piece of equipment or process to be eligible for a positive use determination the item must generate 'yes' answers to the questions asked in boxes 3 and 5.



10. PARTIAL PERCENTAGE CALCULATION

This section is to be completed only for Tier III applications. Process changes or construction of new process equipment that results in pollution control may result in a partial determination. On one or more separate sheets of paper, explain how the partial percentage was determined using the Cost Analysis Procedure that is described in the attached *Instructions for Completing Application Form*. Include financial data that demonstrates how this percentage was calculated. Provide as detailed information as possible, since the

information provided will be used by the TCEQ to evaluate the use percentage requested in the application. Attach sketches and/or flow diagrams showing the property and its function. Examples of partial determinations are shown in Appendix C of the technical guidelines document.

11. PROPERTY CATEGORIES AND COSTS

Identify the category and the estimated purchase cost of the property listed in Section 8. List each control device or system for which a use determination is being sought. If the application is for property that is listed on the predetermined equipment list, list the appropriate item number(s) in the PEL column. Place an "N" in the second column to certify that the property was not taxable on or before January 1, 1994. Failure to answer this question for each piece of property will result in the issuance of a notice of deficiency letter and the possible rejection of the application. List the which box, (7, 9, or 10), was the final destination of each piece of property. List the estimated or actual purchase cost of the property. If the property is not wholly used for the purpose of pollution control, list the estimated percentage of pollution control calculated using the Partial Determination Cost Analysis Procedure.

Property	Property Taxable on or before 1/01/94	Decision Flow Chart Box 7, 9, or 10	PEL Number	Estimated Purchase Cost	Partial Percentage
Land					
Property					
Totals					

12. EMISSION REDUCTION INCENTIVE GRANT

Will an application for an Emission Reduction Incentive Grant be filed for this property/project:

[ ] Yes [ ] No

13. APPLICATION DEFICIENCIES

After an initial review of the application, the TCEQ may determine that the information provided with the application is not sufficient to make a use determination. The TCEQ may send a notice of deficiency, requesting additional information that must be provided within 30 days of the written notice.

14. FORMAL REQUEST FOR SIGNATURE

By signing this application, you certify that this information is true to the best of your knowledge and belief.

NAME:_____ DATE:_____

TITLE:_____

COMPANY:_____

Under Texas Penal Code, Section 37.10, if you make a false statement on this application, you could receive a jail term of up to one year and a fine up to $2,000, or a prison term of two to 10 years and a fine of up to $5,000.

15. DELINQUENT FEE/PENALTY PROTOCOL

This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol.(Effective September 1, 2006)

INSTRUCTIONS FOR COMPLETING APPLICATION FORM

The following instructions are intended to provide assistance in completing the TCEQ *Application for Use Determination for Pollution Control Property.*

GENERAL INFORMATION

If you have questions or require additional clarification or assistance please contact the Tax Relief Program at (512) 239-6348 or (512)239-1917, or by email at: txrelief@tceq.state.tx.us

The TCEQ may request additional information by mailing a deficiency letter. This additional information must be provided within 30 days of receipt of the written request or the application will be returned to the applicant.

Applications not accompanied with the proper fee payment will be mailed a deficiency letter. Review of the application will not begin until the proper fee is received.

OBTAINING COPIES OF THE APPLICATION FORM AND OTHER DOCUMENTS

A copy of the official application form is located in Appendix B of the guidelines document. It is also available on the TCEQ Web page. The predetermined equipment list is located in Appendix A of the guidelines document. The most current version of the PEL may be obtained by contacting the TCEQ Tax Relief for Pollution Control Property Program at the phone number or address listed below or by accessing the TCEQ Web page. The documents can be downloaded from the link titled Application Forms and Guidance Documents. The URL is:

http://www.tceq.state.tx.us/assistance/Prop2/prop2.html#apps

Filing Information

Send the completed applications to:

U.S. Mail

TCEQ - Cashiers Office MC-214
Tax Relief Program
PO Box 13088
Austin Texas 78711-3088

Physical Address

TCEQ – Cashiers Office MC-214
Building A
12100 Park 35 Circle
Austin, TX 78753

Other Information

All other written correspondence should be sent to: TCEQ - MC-110, Attention: Tax Relief for Pollution Control Property Program, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-3165. The telephone numbers for direct contact are (512) 239-6348 or (512) 239-1917.

APPLICATION INSTRUCTIONS

1. General Information

This section is used to provide general information about your company. The TCEQ does not use this information as part of the use determination review process. This information will be used by the TCEQ to compile a statistical analysis of use determinations processed by the agency.

Select the type of ownership of the facility by placing an "X" in the appropriate space. If "Other" is selected, use the space provided to explain.

Complete the "Size of Company" section by selecting the appropriate spaces for the number of employees for the entire company, not just the facility covered by the application.

Complete the "Business Description" section by providing a brief description of the nature of the business or activity that occurs at this facility.

2. Type of Application

Place an X on the proper line to identify the type of application being filed (Tier I, Tier II, Tier III). If a project includes the installation of both PEL-listed and non-PEL-listed equipment, the PEL-listed equipment may be listed on the Tier II or Tier III application along with the non-listed equipment. It is not necessary to file two applications.

The types of applications for pollution control property are:

Tier I–This is for property that is on the PEL and for which the application seeks no variance from that determination. Tier I requires a payment of $150. A Tier I application must only include items that are on the PEL or are necessary for the installation or operation of property located on the PEL.

Tier II–This is for property that is not on the PEL but is still considered to be 100% pollution control. Tier II requires a payment of $1,000.

Tier III–This is for property that is partially used for pollution control and that is not on the PEL. Tier III requires a payment of $2,500.

3. Name of Applicant

Provide the name, mailing address, and telephone number of the owner of the facility for which this application is being filed.

4. Physical Location of Property Requesting a Tax Exemption

Provide the name of the facility, the type of facility, and the physical address of the facility. The facility address should be the address used by the local appraisal district to identify this facility. Provide the name of the county in which the facility is located.

5. Name of Appraisal District with Taxing Authority over Property

Provide the name of the appraisal district(s) in which the property is located. This information is required and will be used by the TCEQ to notify the appropriate appraisal district(s) that an application for use determination has been filed. Provide the facility's or the company's Appraisal District Account Number. If the property is located in more than one appraisal district list all of the appraisal districts and the associated account numbers.

6. Contact Name

Provide the company name, contact name, mailing address, telephone number, e-mail address, and fax number of the person whom the TCEQ is to contact in case of questions relating to this use determination application. **All correspondence relating to this application will be directed to this person.**

7. Relevant Rule, Regulation, or Statutory Provision

For each of the pollution control properties listed on this application, select the type of medium or media (air, water, waste) for which this property or device is required. Use the second column to cite the specific environmental rule, regulation, and/or law that is being met or exceeded by the installation of this property. The citation should be specific and should include the section and/or subsection of the rule, regulation, and/or law.

In order to receive a positive use determination, the application must list a rule, regulation, or statutory provision that has been adopted by an environmental protection agency of the United States, the state of Texas, or a political subdivision. Regulations adopted by health and safety agencies, such as Occupational Safety and Health Administration requirements, do not meet this criterion.

If the applicant is uncertain of a specific rule to list in this section, there are many sources available on the World Wide Web as references. Most, if not all, of the applicable environmental rules should be located in the Texas Environmental Code, Title 30 or in the Code of Federal Regulations, Title 40. The following sites may be helpful:

Title 40 CFR Chapter Index.	URL is www.epa.gov/epahome/cfr40.htm
Code of Federal Regulations:	URL is www.gpoaccess.gov/cfr/index.html
TCEQ Rules (Chapter 30):	URL is http://www.sos.state.tx.us/tac/index.shtml

8. Description of Property

Do not simply repeat the description from the predetermined equipment list. In stead describe the property and how it will be used at your facility. Equipment should be listed at the control device or process change level. If you install a control device, such as a scrubber, you need only to list the scrubber. You do not need to list each individual piece of the scrubber. If necessary, please attach sketches and/or flow diagrams to assist agency staff with the review process.

Land: provide a legal description and an accurate plot plan of the land in question. Only that land which is actually used for pollution control purposes or which houses a pollution control device is

eligible.

Used Equipment: If the property identified above has been purchased from another owner who previously used the property as pollution control property. Provide information that shows that the property was not taxable on or before January 1, 1994, by any taxing unit in which the property is now located.

Example of a Property Description:

Installed internal floating roofs in storage tanks T-01 and T-02. Each roof consists of an internal steel pontoon with a mechanical shoe seal. The installation will reduce evaporation and VOC emissions.

9. Decision Flow Chart

Each piece of equipment or process change must be processed through the Decision Flow Chart. Each item of property listed on the application must result in a yes answer to boxes 3 and 5. Use the table in section 10 to document which box (7, 9 or 10) was the final destination of each piece of equipment.

The following instructions should be used with the flow chart. **The numbered items below do not correspond to the box numbers in the flow chart.**

1. Prepare a list of all process equipment and pollution control equipment that is considered to be pollution control property.

2. Each item on the list must be run through the flow chart separately. Some items will likely end at different points on the flow chart.

3. Determine whether the item is required to meet or exceed a state, local, or federal environmental regulation, rule or law. If no specific rule citation can be made, then this item does not qualify as pollution control property (Box 4).

4. Determine if there is an environmental benefit at the site where the equipment item is installed. A yes answer to this question is needed to continue evaluating the equipment. If the answer is no, then the equipment does not qualify (Box 4).

5. If the equipment is listed on the Predetermined Equipment List (PEL), then it qualifies as Tier I (Box 7). Determine the appropriate PEL number for each item.

6. Specify all PEL equipment for the project in a single list that is included with the application.

7. If the equipment is not on the PEL, then determine whether the equipment is used wholly for pollution control, i.e., the equipment is not production related and/or does not increase production or improve product quality.

8. If it is wholly for pollution control, then the equipment may qualify as 100% pollution

control property under Tier II(Box 9). The applicant must provide sufficient written documentation and justification to prove that it qualifies.

9. If the equipment has both environmental and production elements, then the equipment must be evaluated as a Tier III partial determination (Box 10). The applicant must provide a detailed capital cost analysis following the procedures established in the Partial Determinations section of this document. The results of these calculations will determine the partial use percentage.

10. Partial Percentage Calculation

The variables used in the equations in this section are defined as follows:

Capital Cost New - the estimated total capital cost of the equipment or process.

Capital Cost Old - the cost of comparable equipment or process without the pollution control. The standards used for calculating Capitol Cost Old are as follows:

- If comparable equipment without the pollution control feature is on the market in the United States, then an average market price of the most recent generation of technology must be used.
- If the conditions in variable 3.1 of §17.17(b) do not apply and the company is replacing an existing unit, then the company shall convert the original cost of the unit to today's dollars by using a published industry specific standard. If the production capacity of the new equipment or process is lower than the production capacity of the old equipment or process CCO is divided by the PCF in order to reduce CCO to reflect the same capacity as CCN.
- If the conditions in variables 3.1 and 3.2 of §17.17(b) do not apply, and the company can obtain an estimate of the cost to manufacture the alternative equipment without the pollution control feature, then an average estimated cost to manufacture the unit must be used. The comparable unit must be the most recent generation of technology.

Production Capacity Factor - a calculated value used to adjust the value of a partial use determination to reflect the capacity of the original property or process. It is calculated by dividing the capacity of the existing equipment or process by the capacity of the new equipment or process. The Production Capacity Factor is only used when there is an increase in production capacity.

Byproduct (BP) - for property that generates a marketable byproduct, the net present value of the byproduct is used to reduce the partial determination. The value of the byproduct is calculated by subtracting the transportation and storage of the byproduct from the market value of the byproduct. This value is then used to calculate the net present value (NPV) of the byproduct over the lifetime of the equipment.

Byproduct Value - the retail value of the recovered byproduct for a one year period. Typically, the most recent three-year average price of the material as sold on the open market should be used in the calculation. If the price varies from state-to-state, the applicant shall calculate an average, and explain how the figures were determined.

Storage and Transport - these costs are the costs to store and transport the byproduct. These costs will reduce the market value of the byproduct. The applicant shall provide verification of how these costs were determined and itemized.

N - This is the estimated useful life in years of the equipment that is being evaluated for a use determination.

Interest rate - This is the current Prime Lending Rate that is in effect at the time the application is submitted. The Prime Lending Rate is defined by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. The Prime Lending Rate is posted daily in the Wall Street Journal and on most financial or investment web sites.

In order to receive a partial determination you must use the cost analysis procedure as detailed in 30 TAC 17.17. The cost analysis procedure requires the use of the following equation:

$$\frac{[(Production\ Capacity\ Factor \times Capital\ Cost\ New) - Capital\ Cost\ Old - Byproduct]}{Capital\ Cost\ New} \times 100$$

On a separate piece of paper provide a response for each of the following sections:

1. Production Capacity Factor – Provide a description of the process and explain if there is an increase in capacity related to the installation of this property. If there is a capacity increase use the following equation to calculate the Production Capacity Factor:

$$Production\ Capacity\ Factor = \frac{Production\ Capacity\ of\ Old\ Property}{Production\ Capacity\ of\ New\ Property}$$

2. Capital Cost New – Provide a description of how the estimated dollar value was calculated.

3. Capital Cost Old – Provide a description of how the estimated dollar value was calculated. Explain which of the three options was used to determine the capital cost old.

4. Byproduct: Does the installation of this property result in the creation of a byproduct. If the answer is yes, provide a description of the byproduct. Use the following equation to calculate the value of the byproduct. Explain how each variable of the equation was determined. Show the calculation.

$$BP = \sum_{t=1}^{n} \frac{\left[(ByproductValue) - (Storage\&Transport)\right]_t}{(1 + InterestRate)^t}$$

5. Calculation of partial percentage – show the equation and the calculated partial percentage.

11. Property Categories and Costs

The first column of this table is for categorizing the type of property. There are two category types, *Land* and *Property*. In the property section, list the property or equipment that was described in section 8 of this application.

The second column is used to certify that the property listed in the first column was not taxable on or before January 1, 1994. Enter "No" in this column to show that the property was not purchased, constructed, or installed on or before January 1, 1994. If the answer is "Yes", then the property is not eligible for a tax exemption.

The third column is used to record which box on the Decision Flow Chart was the final destination of the property – 7, 9, or 10.

The fourth column is used for property that is listed on the predetermined equipment list (PEL). Place the appropriate PEL item numbers in this column.

The fifth column is used to record the estimated or actual purchase cost of the property listed in the first column.

The sixth column is used to list the partial use determination percentage. For property that is not used wholly for pollution control, enter the estimated pollution control percentage calculated above in section 10 or the percentage listed on the PEL.

12. Emission Reduction Incentive Grant

Senate Bill 5, 77th Legislative Session, established the Texas Emission Reduction Program(TERP). The TERP program is authorized to provide incentive grants fro certain emission reduction activities. The amount of the grant is reduced by the amount of any additional financial incentives received for the property/project. A tax exemption granted under this program is considered to be a financial incentive.

Place an X in either the Yes or No box. More information about the TERP program may be obtained by calling 512/239-4900 or by e-mailing: terp@tceq.state.tx.us.

13. Application Deficiencies (provided for informational purposes only)

14. Formal Request for Signature

To be considered complete, the application must be signed and dated. The application should be signed by either the applicant/owner or by their designated representative. By signing this application, you certify that the information provided is true to the best of your knowledge and belief.

15. Delinquent Fee/Penalty Protocol

This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol.(Effective September 1, 2006)

Appendix C

SAMPLE CALCULATIONS FOR DETERMINATION OF TIER III PARTIAL PERCENTAGES

CALCULATION OF PARTIAL USE DETERMINATION PERCENTAGE
Example 1

Type of facility:
Sulfur recovery unit at a petroleum refinery

Analysis:
A new sulfur recovery unit was constructed consisting of the following:

200-ton/day Claus unit	$10,000,000
Amine recovery unit	$18,000,000
Tail gas incinerator	$8,000,000
Sour water stripper	$7,000,000

The tail gas incinerator and the sour water stripper serve no purpose and have no benefit other than pollution control. Therefore, these units are 100 percent pollution control, and no further analysis is needed. However, the amine unit and Claus unit are interdependent and have a benefit to the company of generating a marketable product: sulfur. This means that each of these units must be evaluated to determine the partial percentage creditable as pollution control property. The capital costs of the amine unit and the Claus unit may be combined and evaluated as one system, because the amine unit is a necessary component of the sulfur recovery unit.

Capital cost of amine and Claus units: $10,000,000 + $18,000,000 = $28,000,000

Product value from sulfur sales: based on average sale price of sulfur of $25 per ton
(Average sulfur price) × (Design sulfur production rate) × (Days per year operated) =
($25/ton) × (200 tons/day) × (365 days/year) = $1,800,000

Storage and transportation costs per year: $500,000

By-product value of sulfur: based on 10 year life of equipment (t=10)and 10% interest rate (Interest rate = 0.10)

$$BP = \sum \frac{(Byproduct\,Value) - (Storage\,\&\,Transport)}{(1 + InterestRate)^t} = \sum \frac{\$1,800,000 - 500,000}{(1 + 0.1)^{10}}$$

BP = $8,000,000

Partial exemption percentage:
CF = 1 CCN = $28,000,000 CCO = 0

Partial Percentage = $\frac{(1 \times 28,000,000) - 0 - 8,000,000}{28,000,000} = 0.71 = 71\%$

Thus, 71% of the capital cost of the Claus Unit and the Amine Unit would be eligible for a partial determination. In addition, 100% of the capital cost of the Tail Gas Incinerator and the Sour Water Stripper would be eligible.

CALCULATION OF PARTIAL USE DETERMINATION PERCENTAGE
Example 2

Type of facility:
Ground Support Equipment Replacement

Analysis:
In order to meet the requirements of the state implementation plan, an airline located in a nonattainment area is required to reduce NOx emissions related to their use of ground service equipment (gse). The airline decides to replace their tugs which are powered by internal combustion gasoline engines with electric tugs. Tugs are the vehicles used to move luggage carts and tow aircraft. Due to duty cycle limitations the airline must purchase 3 electric tugs to replace every two existing tugs. The airline has 20 tugs at this airport. The cost for an electric tug is $31,800. The cost the same model gasoline tug is $18,500.

Capacity factor = 1 (No increase in capacity)

Cap. Cost New = $31,800/tug × 30 tugs = $954,000
Cap. Cost Old = $18,500/tug × 20 tugs = $370,000
By-Product = 0

$$\text{Partial Determination} = \frac{[(PCF \times CCN) - CCO - BP]}{CCN} \times 100$$

$$\text{Partial determination} = \frac{(1.0 \times 954{,}000) - 370{,}000 - 0}{954{,}000} = 0.61 = 61\%$$

A positive use determination of 61% for the electric tugs.

Appendix D

FREQUENTLY ASKED QUESTIONS

FREQUENTLY ASKED QUESTIONS

Question: What is the benefit to my company?

Answer: A positive use determination will allow your company to apply for a property tax exemption for the property listed on the use determination application. This will lower the appraised value of the facility and thereby lower the amount of property tax due.

Question: What costs qualify?

Answer: The rule defines facility, device, or method for the control of air, water, or land pollution as 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 after that date. All costs associated with the property are eligible. This includes costs such as engineering, design, and overhead.

Question: Do I need to apply each year?

Answer: You need only apply with the TCEQ once. The positive use determination is good for the life of the property. The appraisal district may require that you refile your exemption request each year with their office, but they must notify you if this is the case.

Question: When do I apply if my project covers several years?

Answer: Each year you file an application with the local tax appraisal district for that portion of the project which has become taxable.

Question: What do I do if my facility is located in more than one county?

Answer: If the pollution control property is located in only one county, then list only that appraisal district on the application. If the pollution control property is located in more than one county, then list all of the appraisal districts on the application. You do not need to file separate applications with TCEQ; but you must file with each appraisal district for the portion of the property located within that district.

Question: What if my facility is taxed by more than one taxing authority within the appraisal district such as school districts?

Answer: Only one application would be filed with the appraisal district. The appraisal district will notify any other taxing authorities within the district.

Question: What if I install the same property at more than one facility?

Answer: If all of the facilities are located in the same county, you would need to file only one application. On this application, you would list the addresses of all of the facilities. If the facilities are located in different counties, you would file one application per county.

Question: What if my project includes both equipment that is listed on the predetermined equipment list (PEL) and nonlisted equipment?

Answer: If the project contains both PEL-listed equipment and nonlisted equipment, then the application would be filed at the appropriate tier level (II or III) for the nonlisted equipment. The PEL-listed items would be included on this application. It is acceptable to submit separate applications for each tier level if desired, but the appropriate fee would be required for each application.

Question: What do I do if I disagree with the final use determination?

Answer: There is a formal appeals process specified in Chapter 17, Section 17.25. It is also explained in this guidelines document.

Question: Where do I send the application?

Answer:

United States Mail:	Physical Address:
TCEQ Cashiers Office MC-214	TCEQ Cashiers Office MC-214
Tax Relief Program	12100 Park 35 Circle
PO Box 13088	Building A
Austin TX 78711-3088	Austin, TX 78753

Question: How many checks do I need to send if I am sending multiple applications?

Answer: It is up to you. You may send one check for the total fee amount or a separate check for each application.

Question: What happens if I fail to file for a use determination during the year that the property was installed?

Answer: The property will be placed on the tax rolls and you will pay property taxes on it. You may file for a Use Determination in a subsequent year and have the property removed form the tax rolls. You will not receive a refund for the taxes which have been paid.

Question: Will an inspector come and look at my facility?

Answer: No, the filing of a use determination application will not trigger an inspection of your facility.

Question: My project is not complete. What dollar value do I use?

Answer: List the estimated capital cost of the project. The TCEQ does not use the capital cost in reaching a determination. You will need an actual dollar value when you file your exemption request with the appraisal district.

Question: I filed last year and have since incurred additional costs or added additional equipment. Do I need to refile?

Answer: Yes. A new application listing the additional equipment would need to be filed.

Question: Does a positive use determination guarantee a tax exemption?

Answer: No. This is a two-step process. The positive use determination obtained from the TCEQ is the first step. The second step requires that the applicant file a property tax exemption request with the appropriate appraisal district. By law, this request must be filed by May 1.

Question: Where do I find the relevant rule, regulation, or law?

Answer: If the facility is permitted, list the state or federal rule that requires the permit. For example, the requirements for a state air permit are contained in 30 TAC 116.111. State requirements for a permit exemption are contained in 30 TAC 116.211. If you still cannot find an appropriate rule, please contact the Tax Relief Program at (512) 239-6348 or (512) 239-1917 for help.

Question: How detailed should the property description be?

Answer: For a Tier I application, the description should be brief. Simply list the property and explain its environmental benefit. For Tier II and Tier III applications, the description must be more detailed. The description should include an explanation of how the property or equipment is used at the facility. It **must** list the anticipated environmental benefits which will occur from the use of the property or equipment. A sketch of the property or equipment or a flow diagram of the process is also helpful.

Question: How do I determine the partial percentage for a Tier III application?

Answer: You must use the cost analysis procedure to calculate the partial percentage. Appendix C contains examples to guide you through the procedure.

Question What if my application is filed after the January 31 filing deadline?

Answer: Applications are processed in the order in which they are received, with applications postmarked by the January 31 filing deadline being given priority.

Appendix E

Chapter 17: Tax Relief for Property Used for Environmental Protection
Texas Constitution: Article VIII, Section 1.1
Texas Tax Code: Sections 11.31 and 26.045

CHAPTER 17: TAX RELIEF FOR PROPERTY USED FOR ENVIRONMENTAL PROTECTION

§17.2. Definitions.

Unless specifically defined in the TCAA, the TSWDA, the Texas Water Code (TWC), or the Texas Health and Safety Code (THSC), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the fields of pollution control or property taxation. In addition to the terms which are defined by the TCAA, the TSWDA, TWC, and THSC, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Byproduct** - A chemical or material that would normally be considered a waste material requiring disposal or destruction, but due to pollution control property is now used as a raw material in a manufacturing process or as an end product. The pollution control property extracts, recovers, or processes the waste material so that it can be used in another manufacturing process or an end product.

(2) **Capital cost new** - The estimated total capital cost of the equipment or process.

(3) **Capital cost old** - This is the cost of comparable equipment or process without the pollution control feature.

(4) **Cost analysis procedure** - A procedure which uses cost accounting principles to calculate the percentage of a project or process that qualifies for a positive use determination as pollution control property.

(5) **Decision flow chart** - A flow chart which is used to determine if a property or process is eligible for a determination as pollution control property.

(6) **Installation** - The act of establishing, in a designated place, property that is put into place for use or service.

(7) **Partial Determination** - A determination that an item of property or a process is not used wholly as pollution control. This is property that is not on the predetermined equipment list (PEL) and that is not used wholly for pollution control.

(8) **Pollution control property** - A facility, device, or method for control of air, water, or land pollution as defined by Texas Tax Code, §11.31(b).

(9) **Predetermined equipment list** - A list of property that the executive director has determined is either wholly or partially for pollution control purposes.

(10) **Production capacity factor** - A calculated value used to adjust the value of a partial use determination to reflect capacity considerations.

(11) **Tier I** - An application which contains property that is on the PEL or that is

necessary for the installation or operation of property located on the PEL.

(12) **Tier II** - An application for property that is used wholly for the control of air, water, and/or land pollution, but not on the PEL.

(13) **Tier III** - An application for property used partially for the control of air, water, and/or land pollution.

(14) **Use determination** - A finding, either positive or negative, by the executive director that the property is used wholly or partially for pollution control purposes and listing the percentage of the property that is determined to be used for pollution control.

(15) **Use determination letter** - the letter sent to the applicant and the chief appraiser which includes the executive director's use determination. In addition to the use determination, the letter will also include at least the following information:

(A) the name of the applicant;
(B) the name and location of the facility;
(C) the property description;
(D) in the case of a Tier III application, a copy of the Cost Analysis Procedure worksheet; and
(E) any other information the executive director deems relevant to the use determination.

§17.4. Applicability.

(a) To obtain a positive use determination, the pollution control property must be used, constructed, acquired, or installed wholly or partly to meet or exceed laws, rules, or regulations adopted by any environmental protection agency of the United States, Texas, or a political subdivision of Texas, for the prevention, monitoring, control, or reduction of air, water, or land pollution. In addition, pollution control property must meet the following conditions.

(1) Property must have been constructed, acquired, or installed after January 1, 1994.

(2) Land must include only the portion of the land acquired after January 1, 1994, that actually contains pollution control property.

(3) Equipment, structures, buildings, or devices must not have been taxable by any taxing unit in Texas on or before January 1, 1994, except that if construction of pollution control property was in progress on January 1, 1994, that portion of the property constructed, acquired, or installed after January 1, 1994, is eligible for a positive use determination.

(4) Property purchased from another owner is eligible for a positive use determination if it is acquired, constructed, or installed by the new owner after January 1, 1994, will be used as pollution control property, and was not taxable by any taxing unit in which the property is located on or before that date.

(b) The executive director shall determine the portion of the pollution control property

eligible for a positive use determination.

(c) The executive director shall maintain a predetermined equipment list of property that is predetermined to qualify, either wholly or partially, as pollution control property.

(d) The executive director may not make a determination that property is pollution control property unless all requirements of this section and the requirements of §17.15 and §17.17 of this title (relating to Review Standards and Partial Determination) have been met.

§17.10. Application for Use Determination.

(a) In order to be granted a use determination a person or political subdivision shall submit to the executive director:

(1) a Texas Natural Resource Conservation Commission application form or a similar reproduction; and

(2) the appropriate fee, under §17.20 of this title (relating to Application Fees).

(b) An application must be submitted for each unit of pollution control property or for each facility consisting of a group of integrated units which have been, or will be, installed for a common purpose.

(c) If the applicant, other than a political subdivision, desires to apply for a use determination for a specific tax year, the application must be postmarked no later than January 31 of the following year. Applications postmarked after this date will not be processed until after review of all applications postmarked by the due date is completed and without regard for any appraisal district deadlines.

(d) The application shall contain at least the following:

(1) the anticipated environmental benefits from the installation of the pollution control property for the control of air, water, or land pollution;

(2) the estimated cost of the pollution control property;

(3) the purpose of the installation of such facility, device, or method, and the proportion of the installation that is pollution control property;

(4) the specific law, rules, or regulations that are being met or exceeded by the use, installation, construction, or acquisition of the pollution control property;

(5) if the installation includes property that is not used wholly for the control of air, water, or land pollution, and is not on the predetermined equipment list, a worksheet showing the calculation of the Cost Analysis Procedure, §17.17 of this title (relating to Partial Determination), and explaining each of the variables;

(6) any information that the executive director deems reasonably necessary to

determine the eligibility of the application;

(7) if the property for which a use determination is sought has been purchased from another owner who previously used the property as pollution control property, a copy of the bill of sale or other information submitted by the person or political subdivision that demonstrates, to the satisfaction of the executive director, that the transaction involves a bona fide change in ownership of the property and is not a sham transaction for the purpose of avoiding tax liability;

(8) the name of the appraisal district for the county in which the property is located; and

(9) the Decision Flow Chart, §17.15 of this title (relating to Review Standards), showing how each piece of pollution control property flows through the diagram.

§17.12. Application Review Schedule.

Following submission of the information required by §17.10 of this title (relating to Application for Use Determination), the executive director shall determine whether the pollution control property is used wholly or partly for the control of air, water, or land pollution. If the determination is that the property is used partly for pollution control, the executive director shall determine the proportion of the property used for pollution control.

(1) As soon as practicable, the executive director shall send notice by regular mail to the chief appraiser of the appraisal district for the county in which the property is located that the person has applied for a use determination under this chapter.

(2) Within 30 days of receipt of an application for use determination, the executive director shall mail written notification informing the applicant that the application is administratively complete or that it is deficient.

(A) If the application is deficient, the notification shall specify the deficiencies, and allow the applicant 30 days to provide the requested information. If the applicant does not submit an adequate response, the application will be sent back to the applicant without further action by the executive director and the application fee will be forfeited under §17.20(b) of this title (relating to Application Fees).

(B) Additional technical information may be requested within 60 days of issuance of an administrative completeness letter. If the applicant does not provide the requested technical information within 30 days, the application will be sent back to the applicant without further action by the executive director and the application fee will be forfeited under §17.20(b) of this title.

(C) If an application is sent back to the applicant under subparagraphs (A) or (B) of this paragraph, the applicant may refile the application and pay the appropriate fee as required by §17.20 of this title.

(3) The executive director shall determine whether the property is used wholly or partly to control pollution. The executive director is authorized to grant positive use determinations for some or all of the property included in the application that is deemed pollution control property.

(A) If a positive use determination is made, the executive director shall issue a use determination letter to the applicant which describes the proportion of the property that is pollution control property.

(B) If a negative use determination is made, the executive director shall issue a denial letter explaining the reason for the denial.

(C) A letter enclosing a copy of the use determination shall be sent by regular mail to the chief appraiser of the appraisal district for the county in which the property is located.

§17.15. Review Standards.

The Prop 2 Decision Flow Chart shall be used for each item of pollution control property or process to determine whether the particular equipment item will qualify as pollution control property. The executive director shall apply the standards in the Prop 2 Decision Flow Chart when acting on a use determination application.

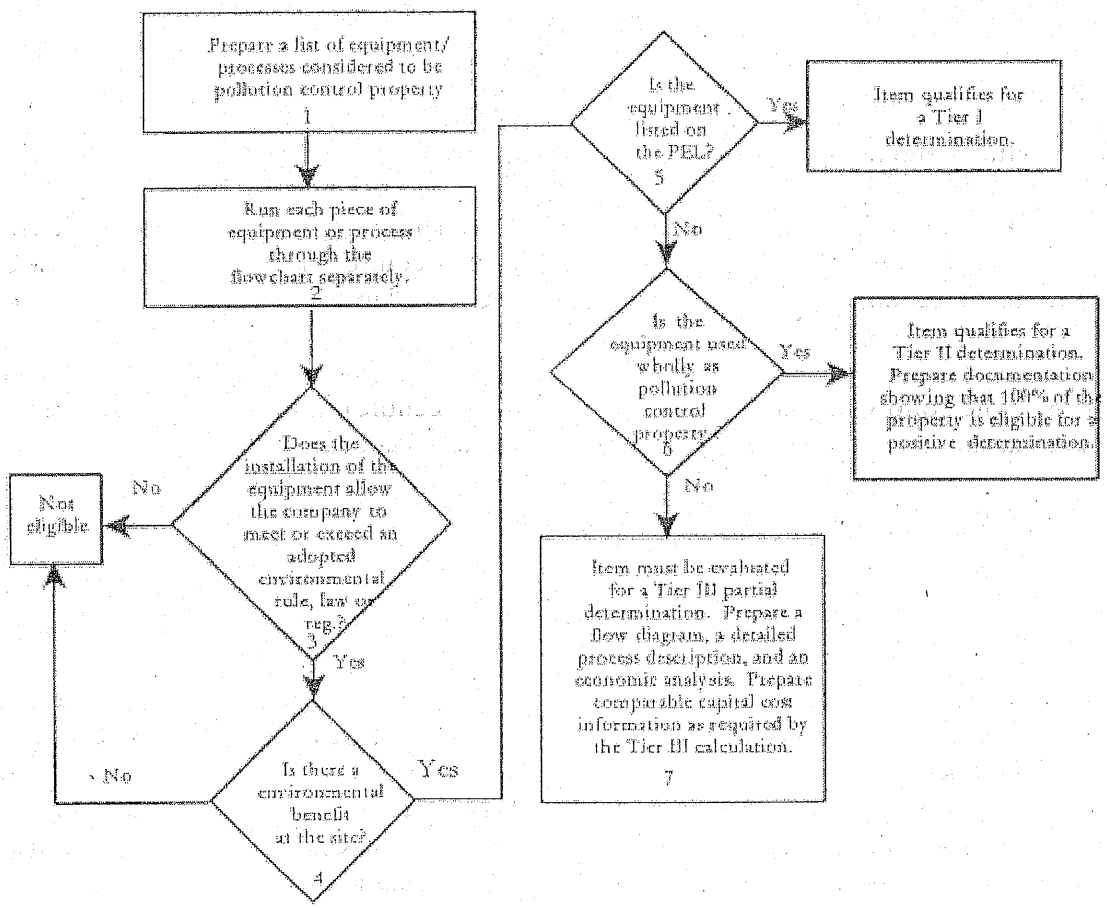


Figure: 30 TAC §17.15 (see above)

Where:

[1] Prepare a list of all property that is considered to be pollution control property.

[2] Process each item on the list through the flow chart separately.

[3] Determine the specific state, local, or federal environmental regulation, rule or law that is being met or exceeded by the use of this property. If an adopted state, local, or federal environmental regulation, rule or law can not be identified the property is not eligible for a positive use determination.

[4] Determine the environmental benefit that this property provides at the site where it is installed. If an environmental benefit at the site can not be identified, the property is not eligible for a positive use determination.

[5] If the equipment is listed on the Predetermined Equipment List (PEL), determine the reference number for that item. Include all PEL equipment for the project in a single list that is included with the application.

[6] If the equipment is not on the PEL, determine whether the equipment is used wholly for pollution control. If the equipment is used wholly for pollution control, the equipment shall qualify as 100% pollution control property.

[7] If the equipment is not used wholly for pollution control the equipment must be evaluated as a partial determination.

§17.17. Partial Determinations.

(a) A partial determination must be requested for all property that is not on the predetermined equipment list and that is not wholly used for pollution control. In order to calculate a partial determination percentage, the cost analysis procedure described in subsection (b) of this section must be used.

(b) The following calculation (cost analysis procedure) must be used to determine the creditable partial percentage for a property or project which is not used wholly for pollution control:

Figure: 30 TAC §17.17(b)

$$\frac{[(\text{Production Capacity Factor} \times \text{Capital Cost New}) - \text{Capital Cost Old} - \text{Byproduct}]}{\text{Capital Cost New}} \times 100$$

Where:

[1] The Production Capacity Factor (PCF) is calculated by dividing the capacity of the existing equipment or process by the capacity of the new equipment or process. When there is an increase in production capacity PCF is used to adjust the capacity of the new equipment or process to the capacity of the existing equipment or process. When there is a decrease in production capacity PCF is used to adjust the capacity of the existing equipment or process to the production capacity of the new equipment or process. In this case, the method of calculation shown in §17.17(b) is modified so that PCF is applied to Capital Cost Old rather than Capital Cost New.

[2] Capital Cost New is the estimated total capital cost of the new equipment or process.

[3] Capital Cost Old is the cost of comparable equipment or process without the pollution control. The standards used for calculating Capitol Cost Old are as follows:

[3.1] If comparable equipment without the pollution control feature is on the market in the United States, then an average market price of the most recent generation of technology must be used.

[3.2] If the conditions in variable 3.1 of §17.17(b) do not apply and the company is replacing an existing unit, then the company shall convert the original cost of the unit to today's dollars by using a published industry specific standard. If the production capacity of the new equipment or process is lower than the production capacity of the old equipment or process CCO is divided by the PCF in order to reduce CCO to reflect the same capacity as CCN.

[3.3] If the conditions in variables 3.1 and 3.2 of §17.17(b) do not apply, and the company can obtain an estimate of the cost to manufacture the alternative equipment without the pollution control feature, then an average estimated cost to manufacture the unit must be used. The comparable unit must be the most recent generation of technology.

(c) For property that generates a marketable byproduct (BP), the net present value of the BP is used to reduce the partial determination. The value of the BP is calculated by subtracting the transportation and storage of the BP from the market value of the BP. This value is then used to calculate the net present value (NPV) of the BP over the lifetime of the equipment. The equation for calculating BP is as follows:

Figure: 30 TAC §17.17(c)

$$BP = \sum_{t=1}^{n} \frac{\left[\left(Byproduct\ Value\right) - \left(Storage\ \&\ Transport\right)\right]_t}{\left(1 + Interest\ Rate\right)^t}$$

[i] **Byproduct Value** - The retail value of the recovered byproduct for a one year period. Typically, the most recent three-year average price of the material as sold on the open market should be used in the calculation. If the price varies from state-to-state, the applicant shall calculate an average, and explain how the figures were determined.

[ii] **Storage and Transport** - These costs are the costs to store and transport the byproduct. These costs will reduce the market value of the byproduct. The applicant shall provide verification of how these costs were determined and itemized.

[iii] **n** - This is the estimated useful life in years of the equipment that is being evaluated for a use determination.

[iv] **Interest rate** - This is the current Prime Lending Rate that is in effect at the time the application is submitted. The Prime Lending Rate is defined by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. The Prime Lending Rate is posted daily in the Wall Street Journal and on most financial or investment web sites.

(d) If the cost analysis procedure produces a negative number or a zero, the property is not eligible for a positive use determination.

§17.20. Application Fees.

(a) Fees shall be remitted with each application for a use determination as required in paragraphs (1) - (3) of this subsection.

(1) Tier I Application - A $150 fee shall be charged for applications for property that is on the predetermined equipment list, as long as the application seeks no variance from that use determination.

(2) Tier II Application - A $1,000 fee shall be charged for applications for property that is used wholly for the control of air, water, and/or land pollution, but not on the predetermined equipment list.

(3) Tier III Application - A $2,500 fee shall be charged for applications for property used partially for the control of air, water, and/or land pollution.

(b) Fees shall be forfeited for applications for use determination which are sent back under §17.12(2) of this title (relating to Application Review Schedule). An applicant who submits an insufficient fee will receive a deficiency notice in accordance with the procedures in §17.12(2) of this title. The fee must be remitted with the response to the deficiency notice before the application will be deemed complete.

(c) All fees shall be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission (TNRCC) and delivered with the application to the TNRCC, at the address listed on the application form.

§17.25. Appeals Process.

(a) Applicability.

(1) This subchapter applies to appeals of use determinations issued by the executive director for use determination applications that are declared administratively complete on or after September 1, 2001. A proceeding based upon an appeal filed under this subchapter is not a contested case for purposes of Texas Government Code, Chapter 2001.

(2) Persons who may appeal a determination by the executive director. The following persons may appeal a use determination issued by the executive director:

(A) the applicant seeking a use determination; and

(B) the chief appraiser of the appraisal district for the county in which the property for which a use determination is sought is located.

(b) Form and timing of appeal. An appeal must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk of the commission within 20 days after the receipt of the executive director's determination letter. A person is presumed to have been notified on the third regular business day after the date the notice of the executive directors action is mailed by first class mail. If an appeal meeting the requirements of this subsection is not filed within the time

period specified, the executive director's use determination is final. An appeal filed under this subchapter must:

(1) provide the name, address, and daytime telephone number of the person who files the appeal;

(2) give the name and address of the entity to which the use determination was issued;

(3) provide the use determination application number for the application for which the use determination was issued;

(4) request commission consideration of the use determination; and

(5) explain the basis for the appeal.

(c) Appeal processing. The chief clerk shall:

(1) deliver or mail to the executive director a copy of the appeal;

(2) deliver or mail a copy of the appeal to the applicant if the appeal was filed by the chief appraiser or to the chief appraiser if the appeal was filed by the applicant; and

(3) schedule the appeal for consideration at the next regularly scheduled commission meeting for which adequate notice can be given.

(d) Action by the commission.

(1) The person seeking the determination and the chief appraiser may testify at the commission meeting at which the appeal is considered.

(2) The commission may remand the matter to the executive director for a new determination or deny the appeal and affirm the executive director's use determination.

(3) If the commission denies the appeal and affirms the executive director's use determination, the commission's decision shall be final and appealable.

(e) Action by the executive director.

(1) If the commission remands a use determination to the executive director, the executive director shall:

(A) conduct a new technical review of the application which includes an evaluation of any information presented during the commission meeting; and

(B) upon completion of the technical review, issue a new determination. A copy of the new determination shall be mailed to both the applicant and the chief appraiser of the county in which the property is located.

(2) A new determination by the executive director may be appealed to the commission in the manner provided by this sub-chapter.

(f) Withdrawn appeals. An appeal may be withdrawn by the entity who requested the appeal. The withdrawal must be in writing, and give the name, address, and daytime telephone number of the person who files the withdrawal, and the withdrawal shall indicate the identification number of the use determination. The withdrawal must be filed by United States mail, facsimile, or hand delivery with the chief clerk of the commission.

Texas Tax Code § 11.31. POLLUTION CONTROL PROPERTY.

(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.

(c) In applying for an exemption under this section, a person seeking the exemption shall present in a permit application or permit exemption request to the executive director of the Texas Natural Resource Conservation Commission information detailing:

(1) the anticipated environmental benefits from the installation of the facility, device, or method for the control of air, water, or land pollution;

(2) the estimated cost of the pollution control facility, device, or method; and

(3) the purpose of the installation of such facility, device, or method, and the proportion of the installation that is pollution control property. If the installation includes property that is not used wholly for the control of air, water, or land pollution, the person seeking the exemption shall also present such financial or other data as the executive director requires by rule for the determination of the proportion of the installation that is pollution control property.

(d) Following submission of the information required by Subsection (c), the executive director of the Texas Natural Resource Conservation Commission shall determine if the facility, device, or method is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. As soon as practicable, the executive director shall send notice by regular mail to the chief appraiser of the appraisal district for the county in which the property is located that the person has applied for a determination under this subsection. The executive director shall issue a letter to the person stating the executive director's determination of whether the facility, device, or method is used wholly or partly to control pollution and, if applicable, the proportion of the property that is pollution

control property. The executive director shall send a copy of the letter by regular mail to the chief appraiser of the appraisal district for the county in which the property is located.

(e) Not later than the 20th day after the date of receipt of the letter issued by the executive director, the person seeking the exemption or the chief appraiser may appeal the executive director's determination to the Texas Natural Resource Conservation Commission. The commission shall consider the appeal at the next regularly scheduled meeting of the commission for which adequate notice may be given. The person seeking the determination and the chief appraiser may testify at the meeting. The commission may remand the matter to the executive director for a new determination or deny the appeal and affirm the executive director's determination. On issuance of a new determination, the executive director shall issue a letter to the person seeking the determination and provide a copy to the chief appraiser as provided by Subsection (d). A new determination of the executive director may be appealed to the commission in the manner provided by this subsection. A proceeding under this subsection is not a contested case for purposes of Chapter 2001, Government Code.

(f) The commission may charge a person seeking a determination that property is pollution control property an additional fee not to exceed its administrative costs for processing the information, making the determination, and issuing the letter required by this section.

(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.

(h) The executive director may not make a determination that property is pollution control property unless the property meets the standards established under rules adopted under this section.

(I) A person seeking an exemption under this section shall provide to the chief appraiser a copy of the letter issued by the executive director of the Texas Natural Resource Conservation Commission under Subsection (d) determining that the facility, device, or method is used wholly or partly as pollution control property. The chief appraiser shall accept a final determination by the executive director as conclusive evidence that the facility, device, or method is used wholly or partly as pollution control property.

(j) This section does not apply to a facility, device, or method for the control of air, water, or land pollution that was subject to a tax abatement agreement executed before January 1, 1994.

Texas Tax Code Sec.26.045. Rollback Relief for Pollution Control Requirements.

(a) The rollback tax rate for a political subdivision of this state is increased by the rate that, if applied to the total current value, would impose an amount of taxes equal to the amount the political subdivision will spend out of its maintenance and operation funds under Section 26.012(16), Tax Code, to pay for a facility, device, or method for the control of air, water, or land pollution that is necessary to meet the requirements of a permit issued by the Texas Natural Resource Conservation

Commission.

(b) In this section, "facility, device, or method for control of air, water, or land pollution" means any land, structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property, the 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 or this state for the prevention, monitoring, control, or reduction of air, water, or land pollution.

(1) the anticipated environmental benefits from the installation of the facility, device, or method for the control of air, water, or land pollution;

(2) the estimated cost of the pollution control facility, device, or method; and

(3) the purpose of the installation of the facility, device, or method, and the proportion of the installation that is pollution control property.

(d) Following submission of the information required by Subsection (c), the executive director of the Texas Natural Resource Conservation Commission shall determine if the facility, device, or method is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. If the executive director determines that the facility, device, or method is used wholly or partly to control pollution, the director shall issue a letter to the political subdivision stating that determination and the portion of the cost of the installation that is pollution control property.

(e) The Texas Natural Resource Conservation Commission may charge a political subdivision seeking a determination that property is pollution control property an additional fee not to exceed its administrative costs for processing the information, making the determination, and issuing the letter required by this section. The commission may adopt rules to implement this section.

(f) A political subdivision of the state seeking an adjustment in its rollback tax rate under this section shall provide to its tax assessor a copy of the letter issued by the executive director of the Texas Natural Resource Conservation Commission under Subsection (d). The tax assessor shall accept the copy of the letter from the executive director as conclusive evidence that the facility, device, or method is used wholly or partly as pollution control property and shall adjust the rollback tax rate for the political subdivision as provided for by Subsection (a).

THE TEXAS CONSTITUTION
Article 8 - TAXATION AND REVENUE
Section 1-l - 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.

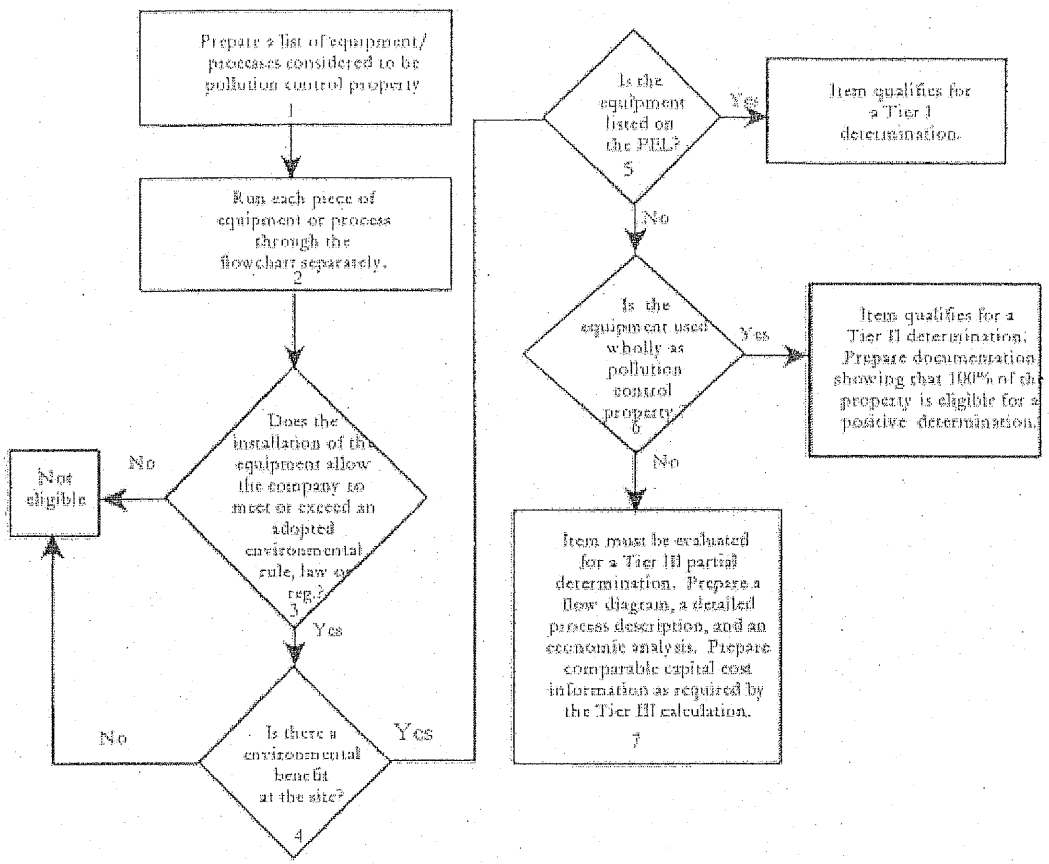
(c) This section does not authorize the exemption from ad valorem taxation of real or personal property that was subject to a tax abatement agreement executed before January 1, 1994. (Added Nov. 2, 1993.)

Exhibit 3

Figure: 30 TAC §17.15

Prop 2 Decision Flow Chart

Applicants must use this flowchart for each piece of equipment or process change. In order for a piece of equipment or process change to be eligible for a positive use determination the item must generate 'yes' answers to the questions asked in boxes 3 and 4.



Where:

[1] Prepare a list of all property that is considered to be pollution control property.

[2] Process each item on the list through the flow chart separately.

[3] Determine the specific state, local, or federal environmental regulation, rule or law that is being met or exceeded by the use of this property. If an adopted state, local, or federal environmental regulation, rule or law can not be identified the property is not eligible for a positive use determination.

[4] Determine the environmental benefit that this property provides at the site where it is installed. If an environmental benefit at the site can not be identified, the property is not eligible for a positive use determination.

[5] If the equipment is listed on the Predetermined Equipment List (PEL), determine the reference number for that item. Include all PEL equipment for the project in a single list that is included with the application.

[6] If the equipment is not on the PEL, determine whether the equipment is used wholly for pollution control. If the equipment is used wholly for pollution control, the equipment shall qualify as 100% pollution control property.

[7] If the equipment is not used wholly for pollution control the equipment must be evaluated as a partial determination.

Exhibit 4

TPDES General Permit
NO. TXR150000

This is a new general permit issued pursuant to Section 26.040 of the Texas Water Code and Section 402 of the Clean Water Act.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. BOX 13087
Austin, TX 78711-3087

GENERAL PERMIT TO DISCHARGE WASTE
under provisions of
Section 402 of the Clean Water Act
and Chapter 26 of the Texas Water Code

Construction sites located in the state of Texas

may discharge to surface water in the state

only according to effluent limitations, monitoring requirements and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this general permit does not grant to the permittee the right to use private or public property for conveyance of storm water and certain non-storm water discharges along the discharge route. This includes property belonging to but not limited to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit and the authorization contained herein shall expire at midnight five years after the date of issuance.

ISSUED AND EFFECTIVE DATE: MAR 05 2003

For the Commission

EXHIBIT
ED 4

Table of Contents

Part I. Definitions

Best Management Practices - (BMPs) Schedules of activities, prohibitions of practices, maintenance procedures, structural controls, local ordinances, and other management practices to prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures, and practices to control construction site runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

Commencement of Construction - The exposure of soils resulting from activities such as clearing, grading, and excavating.

Common Plan of Development - A construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development is identified by the documentation for the construction project that identifies the scope of the project, and may include plats, blueprints, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or other similar documentation and activities.

Facility or Activity - Any TPDES "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the TPDES program.

Final Stabilization - A construction site status where either of the following conditions are met:

(a) All soil disturbing activities at the site have been completed and a uniform (e.g, evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or goetextiles) have been employed.

(b) For individual lots in a residential construction site by either:

(1) the homebuilder completing final stabilization as specified in condition (a) above; or

(2) the homebuilder establishing temporary stabilization for an individual lot prior to the time of transfer of the ownership of the home to the buyer and after informing the homeowner of the need for, and benefits of, final stabilization.

(c) For construction activities on land used for agricultural purposes (e.g. pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to a surface water and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization conditions of condition (a) above.

Large Construction Activity - Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than five (5) acres of land. Large construction activity also includes the disturbance of less than five (5) acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than five (5) acres of land. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of a ditch, channel, or other similar storm water conveyance. Large construction activity does not include the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.

Municipal Separate Storm Sewer System (MS4) - A separate storm sewer system owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over the disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization.

Notice of Intent (NOI) - A written submission to the executive director from an applicant requesting coverage under a general permit.

Notice of Termination (NOT) - A written submission to the executive director from a permittee authorized under a general permit requesting termination of coverage.

Operator - The person or persons associated with a large or small construction activity that meets either of the following two criteria:

(a) the person or persons have operational control over construction plans and specifications to the extent necessary to meet the requirements and conditions of this general permit; or

(b) the person or persons have day-to-day operational control of those activities at a construction site which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions (e.g. they are authorized to direct workers at a site to carry out activities required by the Storm Water Pollution Prevention Plan or comply with other permit conditions).

Permittee - An operator authorized under this general permit. The authorization may be gained through submission of a notice of intent, by waiver, or by meeting the requirements for automatic coverage to discharge storm water runoff and certain non-storm water discharges.

Point Source - Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Pollutant - (from the Texas Water Code, Chapter 26) Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any surface water in the state. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

Pollution - (from the Texas Water Code, Chapter 26) The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Runoff Coefficient - The fraction of total rainfall that will appear at the conveyance as runoff.

Separate Storm Sewer System - A conveyance or system of conveyances (including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains), designed or used for collecting or conveying storm water; that is not a combined sewer, and that is not part of a publicly owned treatment works (POTW).

Small Construction Activity - Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre and less than five (5) acres of land. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one (1) and less than five (5) acres of land. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of a ditch, channel, or other similar storm water conveyance. Small construction activity does not include the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.

Storm Water - Storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Associated with Construction Activity - Storm water runoff from a construction activity where soil disturbing activities (including clearing, grading, excavating) result in the disturbance of one (1) or more acres of total land area, or are part of a larger common plan of development or sale that will result in disturbance of one (1) or more acres of total land area.

Structural Control (or Practice) - A pollution prevention practice that requires the construction of a device, or the use of a device, to capture or prevent pollution in storm water runoff. Structural controls and practices may include but are not limited to: silt fences, earthen dikes, drainage swales, sediment traps, check dams, subsurface drains, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins.

Surface Water in the State - Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits

of the state (from the mean high water mark (MHWM) out 10.36 miles into the Gulf), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems which are authorized by state or federal law, regulation, or permit, and which are created for the purpose of waste treatment are not considered to be water in the state.

Temporary Stabilization - A condition where exposed soils or disturbed areas are provided a protective cover, which may include temporary seeding, geotextiles, mulches, and other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place.

Waters of the United States - (from title 40, part 122, section 2 of the Code of Federal Regulations) Waters of the United States or waters of the U.S. means:

(a) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) all interstate waters, including interstate wetlands;

(c) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds that the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

  (1) which are or could be used by interstate or foreign travelers for recreational or other purposes;

  (2) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

  (3) which are used or could be used for industrial purposes by industries in interstate commerce;

(d) all impoundments of waters otherwise defined as waters of the United States under this definition;

(e) tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) the territorial sea; and

(g) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR § 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Part II. Permit Applicability and Coverage

Section A. Discharges Eligible for Authorization

1. Storm Water Associated with Construction Activity

Discharges of storm water runoff from small and large construction activities may be authorized under this general permit.

2. Discharges of Storm Water Associated with Construction Support Activities

Discharges of storm water runoff from construction support activities, including concrete batch plants, asphalt batch plants, equipment staging areas, material storage yards, material borrow areas, and excavated material disposal areas may be authorized under this general permit provided:

(a) the activity is located within a 1-mile distance from the boundary of the permitted construction site and directly supports the construction activity;

(b) the storm water pollution prevention plan is developed according to the provisions of this general permit and includes appropriate controls and measures to reduce erosion and discharge of pollutants in storm water runoff from the supporting industrial activity site; and

(c) the industrial activity either does not operate beyond the completion date of the construction activity or obtains separate TPDES authorization for discharges.

3. Non-storm Water Discharges

The following non-storm water discharges from sites authorized under this general permit are also eligible for authorization under this general permit:

(a) discharges from fire fighting activities;

(b) fire hydrant flushings;

(c) vehicle, external building, and pavement wash water where detergents and soaps are not used and where spills or leaks of toxic or hazardous materials have not occurred (unless spilled materials have been removed; and if local state, or federal regulations are applicable, the materials are removed according to those regulations), and where the purpose is to remove mud, dirt, an dust;

(d) water used to control dust;

(e) potable water sources including waterline flushings;

(f) air conditioning condensate;

(g) uncontaminated ground water or spring water, including foundation or footing drains where flows are not contaminated with industrial materials such as solvents.

4. Other Permitted Discharges

Any discharge authorized under a separate NPDES, TPDES, or TCEQ permit may be combined with discharges authorized by this permit.

Section B. Limitations on Permit Coverage

1. Post Construction Discharges.

Discharges that occur after construction activities have been completed, and after the construction site and any supporting activity site have undergone final stabilization, are not eligible for coverage under this general permit. Discharges originating from the sites are not authorized under this general permit following the submission of the notice of termination (NOT) for the construction activity.

2. Prohibition of Non-Storm Water Discharges

Except as provided in Part II. A.2., A3., and A4., all discharges authorized by this general permit must be composed entirely of storm water associated with construction activity.

3. Compliance With Water Quality Standards

Discharges to surface water in the state that would cause or contribute to a violation of water quality standards or that would fail to protect and maintain existing designated uses are not eligible for coverage under this general permit. The executive director may require an application for an individual permit or alternative

general permit (see Part II.G.3) to authorize discharges to surface water in the state from any activity that is determined to cause a violation of water quality standards or is found to cause, or contribute to, the loss of a designated use. The executive director may also require an application for an individual permit considering factors described in Part II. G.2.

4. Discharges to Water Quality-Impaired Receiving Waters.

New sources or new discharges of the constituents of concern to impaired waters are not authorized by this permit unless otherwise allowable under 30 TAC Chapter 305 and applicable state law. Impaired waters are those that do not meet applicable water quality standards and are listed on the EPA approved Clean Water Act Section 303(d) list. Constituents of concern are those for which the water body is listed as impaired.

Discharges of the constituents of concern to impaired water bodies for which there is a total maximum daily load (TMDL) implementation plan are not eligible for this permit unless they are consistent with the approved TMDL and the implementation plan. Permittees must incorporate the limitations, conditions, and requirements applicable to their discharges, including monitoring frequency and reporting required by TCEQ rules, into their storm water pollution prevention plan in order to be eligible for coverage under this general permit.

5. Discharges to the Edwards Aquifer Recharge Zone

Discharges cannot be authorized by this general permit where prohibited by 30 Texas Administrative Code (TAC) Chapter 213 (relating to Edwards Aquifer).

(a) For new discharges located within the Edwards Aquifer Recharge Zone, or within that area upstream from the recharge zone and defined as the Contributing Zone, operators must meet all applicable requirements of, and operate according to, 30 TAC Chapter 213 (Edwards Aquifer Rule) in addition to the provisions and requirements of this general permit.

(b) For existing discharges, the requirements of the agency-approved Water Pollution Abatement Plan under the Edwards Aquifer Rules are in addition to the requirements of this general permit. BMPs and maintenance schedules for structural storm water controls, for example, may be required as a provision of the rule. All applicable requirements of the Edwards Aquifer Rule for reductions of suspended solids in storm water runoff are in addition to the requirements in this general permit for this pollutant. For discharges from large construction activities located on the Edwards Aquifer contributing zone, applicants must also submit a copy of the NOI to the appropriate TCEQ regional office."

Counties:	Contact:
Comal, Bexar, Medina, Uvalde, and Kinney	TCEQ Water Program Manager San Antonio Regional Office 14250 Judson Rd. San Antonio, Texas (210) 490-3096
Williamson, Travis, and Hays	TCEQ Water Program Manager Austin Regional Office 1921 Cedar Bend Dr., Ste. 150 Austin, Texas (512) 339-2929.

6. Discharges to Specific Watersheds and Water Quality Areas

Discharges otherwise eligible for coverage cannot be authorized by this general permit where prohibited by 30 TAC Chapter 311 (relating to Watershed Protection) for water quality areas and watersheds.

7. Protection of Streams and Watersheds by Other Governmental Entities

This general permit does not limit the authority or ability of federal, other state, or local governmental entities from placing additional or more stringent requirements on construction activities or discharges from construction activities. For example, this permit does not limit the authority of a home-rule municipality provided by Section 401.002 of the Texas Local Government Code.

8. Indian Country Lands

Storm water runoff from construction activities occurring on Indian Country lands are not under the authority of the TCEQ and are not eligible for coverage under this general permit. If discharges of storm water require authorization under federal National Pollutant Discharge Elimination System (NPDES) regulations, authority for these discharges must be obtained from the U.S. Environmental Protection Agency (EPA).

9. Oil and Gas Production

Storm water runoff from construction activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline, are not under the authority of the TCEQ and are not eligible for coverage under this general permit. If discharges

of storm water require authorization under federal NPDES regulations, authority for these discharges must be obtained from the EPA.

10. Storm Water Discharges from Agricultural Activities

Storm water discharges from agricultural activities that are not point source discharges of storm water are not subject to TPDES permit requirements. These activities may include clearing and cultivating ground for crops, construction of fences to contain livestock, construction of stock ponds, and other similar agricultural activities.

Section C. Deadlines for Obtaining Authorization to Discharge

1. Large Construction Activities

(a) New Construction - Discharges from sites where the commencement of construction occurs on or after the issuance date of this general permit must be authorized, either under this general permit or a separate TPDES permit, prior to the commencement of those construction activities.

(b) Ongoing Construction - Operators of large construction activities continuing to operate after the issuance date of this permit, and authorized under NPDES general permit TXR100000 (issued July 6, 1998, FR 36490), must submit an NOI to obtain authorization under this general permit within 90 days of the issuance date of this general permit. During this interim period, as a requirement of this TPDES permit, the operator must continue to meet the conditions and requirements of the federal NPDES permit. If the construction activity is completed prior to this 90-day deadline, and the site would otherwise qualify for termination of coverage under that federal NPDES permit, the operator must notify the executive director of the TCEQ in writing within 30 days of that condition.

2. Small Construction Activities

(a) New Construction - Discharges from sites where the commencement of construction occurs on or after the issuance date of this general permit must be authorized, either under this general permit or a separate TPDES permit, prior to the commencement of those construction activities.

(b) Ongoing Construction - Discharges from ongoing small construction activities that commenced prior to March 10, 2003, and that would not meet the conditions to qualify for termination of this permit as described in Part II.E. of this general permit, must be authorized, either under this general permit or a separate TPDES permit, prior to March 10, 2003.

Section D. Obtaining Authorization to Discharge

1. Small construction activities are determined to occur during periods of low potential for erosion, and operators of these sites may be automatically authorized under this general permit and not required to develop a storm water pollution prevention plan or submit a notice of intent (NOI), provided:

   (a) the construction activity occurs in a county listed in Appendix A;

   (b) the construction activity is initiated and completed, including either final or temporary stabilization of all disturbed areas, within the time frame identified in Appendix A for the location of the construction site;

   (c) all temporary stabilization is adequately maintained to effectively reduce or prohibit erosion, final stabilization activities have been initiated and a condition, of final stabilization is completed no later than 30 days following the end date of the time frame identified in Appendix A for the location of the construction site;

   (d) the permittee signs a completed construction site notice (Attachment 1 of this general permit), including the certification statement;

   (e) a signed copy of the construction site notice is posted at the construction site in a location where it is readily available for viewing by the general public, local, state, and federal authorities prior to commencing construction activities, and maintained in that location until completion of the construction activity;

   (f) a copy of the signed and certified construction site notice is provided to the operator of any municipal separate storm sewer system receiving the discharge at least two days prior to commencement of construction activities; and

   (g) any supporting concrete batch plant or asphalt batch plant is separately authorized for discharges of storm water runoff or other non-storm water discharges under an individual TPDES permit, another TPDES general permit or under an individual TCEQ permit where storm water and non-storm water is disposed of by evaporation or irrigation (discharges are adjacent to water in the state).

2. Operators of small construction activities not described in Part II.D.1. above may be automatically authorized under this general permit, and operators of these sites are not required to submit an NOI provided they:

   (a) develop a SWP3 according to the provisions of this general permit, that covers either the entire site or all portions of the site for which the applicant

is the operator, and implement that plan prior to commencing construction activities;

(b) sign a completed construction site notice (Attachment 2 of this general permit);

(c) post a signed copy of the construction site notice at the construction site in a location where it is readily available for viewing by the general public, local, state, and federal authorities, prior to commencing construction activities, and maintain the notice in that location until completion of the construction activity; and

(d) provide a copy of the signed and certified construction site notice to the operator of any municipal separate storm sewer system receiving the discharge at least two days prior to commencement of construction activities.

3. Operators of all other construction activities that qualify for coverage under this general permit must:

(a) develop a SWP3 according to the provisions of this general permit, that covers either the entire site or all portions of the site for which the applicant is the operator, and implement that plan prior to commencing construction activities;

(b) submit a Notice of Intent (NOI), using a form provided by the executive director, at least 2 days prior to commencing construction activities; or

(c) if the operator changes, or an additional operator is added after the initial NOI is submitted, the new operator must submit an NOI at least two (2) days before assuming operational control;

(d) post a copy of the NOI at the construction site in a location where it is readily available for viewing prior to commencing construction activities, and maintain the notice in that location until completion of the construction activity;

(e) provide a copy of the signed NOI to the operator of any municipal separate storm sewer system receiving the discharge, at least two (2) days prior to commencing construction activities; and

(f) implement the SWP3 prior to beginning construction activities.

4. Effective Date of Coverage

(a) Operators of construction activities described in either Part II. D.1. or D.2. are authorized immediately following compliance with the conditions of Part II. D.1. or D.2. that are applicable to the construction activity.

(b) Operators of all other construction activities eligible for coverage under this general permit, unless otherwise notified by the executive director, are provisionally authorized two (2) days from the date that a completed NOI is postmarked for delivery to the TCEQ. If electronic submission of the NOI is provided, and unless otherwise notified by the executive director, operators are provisionally authorized 24 hours following confirmation of receipt of the NOI by the TCEQ. Authorization is non-provisional when the executive director finds the NOI is administratively complete and an authorization number is issued for the activity.

(c) Operators are not prohibited from submitting late NOIs or posting late notices to obtain authorization under this general permit. The TCEQ reserves the right to take appropriate enforcement actions for any unpermitted activities that may have occurred between the time construction commenced and authorization is obtained.

5. Notice of Change (NOC) Letter

If the operator becomes aware that it failed to submit any relevant facts, or submitted incorrect information in an NOI, the correct information must be provided to the executive director in a NOC letter within 14 days after discovery. If relevant information provided in the NOI changes, a NOC letter must be submitted within 14 days of the change. A copy of the NOC must be provided to the operator of any MS4 receiving the discharge.

6. Signatory Requirement for NOI Forms, Notice of Termination (NOT) Forms, NOC Letters, and Construction Site Notices

NOI forms, NOT forms, NOC letters, and Construction Site Notices must be signed according to 30 TAC § 305.44 (relating to Application for Permit).

7. Contents of the NOI

The NOI form shall require, at a minimum, the following information:

(a) the name, address, and telephone number of the operator filing the NOI for permit coverage;

(b) the name (or other identifier), address, county, and latitude/longitude of the construction project or site;

(c) number of acres that will be disturbed (estimated to the largest whole number);

(d) whether the project or site is located on Indian Country lands;

(e) confirmation that a SWP3 has been developed and that the SWP3 will be compliant with any applicable local sediment and erosion control plans; and

(f) name of the receiving water(s).

Section E. Application to Terminate Coverage

Each operator that has submitted an NOI for authorization under this general permit must apply to terminate that authorization following the conditions described in this section of the general permit. Authorization must be terminated by submitting a Notice of Termination (NOT) on a form supplied by the executive director. Authorization to discharge under this permit terminates at midnight on the day the NOT is postmarked for delivery to the TCEQ. If electronic submission of the NOT is provided, authorization to discharge under this permit terminates immediately following confirmation of receipt of the NOT by the TCEQ. Compliance with the conditions and requirements of this permit is required until an NOT is submitted.

1. Notice of Termination Required

The NOT must be submitted to TCEQ, and a copy of the NOT provided to the operator of any MS4 receiving the discharge, within thirty (30) days, after:

(a) final stabilization has been achieved on all portions of the site that is the responsibility of the permittee: or

(b) another permitted operator has assumed control over all areas of the site that have not been finally stabilized; and

(c) all silt fences and other temporary erosion controls have either been removed, scheduled for removal as defined in the SWP3, or transferred to a new operator if the new operator has sought permit coverage. Erosion controls that are designed to remain in place for an indefinite period, such as mulches and fiber mats, are not required to be removed or scheduled for removal.

2. Minimum Contents of the NOT

The NOT form shall require, at a minimum, the following information:

(a) if authorization was granted following submission of a NOI, the permittees site-specific TPDES general permit number for the construction site;

(b) an indication of whether the construction activity is completed or if the permittee is simply no longer an operator at the site;

(c) the name, address and telephone number of the permittee submitting the NOT;

(d) the name (or other identifier), address, county, and latitude/longitude of the construction project or site; and

(e) a signed certification that either all storm water discharges requiring authorization under this general permit will no longer occur, or that the applicant to terminate coverage is no longer the operator of the facility or construction site, and that all temporary structural erosion controls have either been removed, will be removed on a schedule defined in the SWP3, or transferred to a new operator if the new operator has applied for permit coverage. Erosion controls that are designed to remain in place for an indefinite period, such as mulches and fiber mats, are not required to be removed or scheduled for removal.

Section F. Waivers from Coverage

The executive director may waive the otherwise applicable requirements of this general permit for storm water discharges from small construction activities under the terms and conditions described in this section.

1. Waiver Applicability and Coverage

Operators of small construction activities may apply for and receive a waiver from the requirements to obtain authorization under this general permit where:

(a) the calculated rainfall erosivity R factor for the entire period of the construction project is less than five (5);

(b) the operator submits a signed waiver certification form, supplied by the executive director, certifying that the construction activity will commence and be completed within a period when the value of the calculated rainfall erosivity R factor is less than five (5); and

(c) the waiver certification form is submitted to the TCEQ at least two (2) days before construction activity begins.

2. Effective Date of Waiver

Operators of small construction activities are provisionally waived from the otherwise applicable requirements of this general permit two (2) days from the date that a completed waiver certification form is postmarked for delivery to TCEQ.

3. Activities Extending Beyond the Waiver Period

If a construction activity extends beyond the approved waiver period due to circumstances beyond the control of the operator, the operator must either:

(a) recalculate the rainfall erosivity factor R factor using the original start date and a new projected ending date, and if the R factor is still under five (5), submit a new waiver certification form at least two (2) days before the end of the original waiver period; or

(b) obtain authorization under this general permit according to the requirements delineated in either Part II.D.2. or Part II.D.3. at least two (2) days before the end of the approved waiver period.

Section G. Alternative TPDES Permit Coverage

1. Individual Permit Alternative

Any discharge eligible for coverage under this general permit may alternatively be authorized under an individual TPDES permit according to 30 TAC Chapter 305 (relating to Consolidated Permits). Applications for individual permit coverage should be submitted at least three hundred and thirty (330) days prior to commencement of construction activities to ensure timely issuance.

2. Individual Permit Required

The executive director may suspend an authorization or NOI in accordance with the procedures set forth in 30 TAC Chapter 205, including the requirement that the executive director provide written notice to the permittee. The executive director may require an operator of a construction site, otherwise eligible for authorization under this general permit, to apply for an individual TPDES permit because of:

(a) the conditions of an approved TMDL or TMDL implementation plan;

(b) the activity is determined to cause a violation of water quality standards or is found to cause, or contribute to, the loss of a designated use of surface water in the state: and

(c) any other considerations defined in 30 TAC Chapter 205 would include the provision at 30 TAC § 205.4(c)(3)(D), which allows TCEQ to deny authorization under the general permit and require an individual permit if a discharger "has been determined by the executive director to have been out of compliance with any rule, order, or permit of the commission, including non-payment of fees assessed by the executive director."

3. Any discharge eligible for authorization under this general permit may alternatively be authorized under a separate, applicable general permit according to 30 TAC Chapter 205 (relating to General Permits for Waste Discharges).

Section H. Permit Expiration

This general permit shall be issued for a term not to exceed five (5) years. Following public notice and comment, as provided by 30 TAC § 205.3 (relating to Public Notice, Public Meetings, and Public Comment), the commission may amend, revoke, cancel, or renew this general permit. If the TCEQ publishes a notice of its intent to renew or amend this general permit before the expiration date, the permit will remain in effect for existing, authorized, discharges until the commission takes final action on the permit. Upon issuance of a renewed or amended permit, permittees may be required to submit an NOI within 90 days following the effective date of the renewed or amended permit, unless that permit provides for an alternative method for obtaining authorization.

In the event that the general permit is not renewed, discharges that are authorized under the general permit must obtain either a TPDES individual permit or coverage under an alternative general permit.

Part III. Storm Water Pollution Prevention Plans (SWP3)

Storm water pollution prevention plans must be prepared for storm water discharges that will reach Waters of the United States, including discharges to MS4 systems and privately owned separate storm sewer systems that drain to Waters of the United States, to identify and address potential sources of pollution that are reasonably expected to affect the quality of discharges from the construction site, including off-site material storage areas, overburden and stockpiles of dirt, borrow areas, equipment staging areas, vehicle repair areas, fueling areas, etc., used solely by the permitted project. The SWP3 must describe and ensure the implementation of practices that will be used to reduce the pollutants in storm water discharges associated with construction activity at the construction site and assure compliance with the terms and conditions of this permit.

Individual operators at a site may develop separate SWP3s that cover only their portion of the project provided reference is made to the other operators at the site. Where there is more than one SWP3 for a site, permittees must coordinate to ensure that BMPs and controls are consistent, and do not negate or impair the effectiveness of each other. Regardless of whether a single comprehensive SWP3 is developed, or separate SWP3s are developed for each operator, it is the responsibility of each operator to ensure that compliance with the terms and conditions of this general permit is met in the areas of the construction site where that operator has operational control over construction plans and specifications or day-to-day operational control.

Section A. Shared SWP3 Development

For more effective coordination of BMPs and opportunities for cost sharing, a cooperative effort by the different operators at a site is encouraged. Operators must independently submit an NOI and obtain authorization, but may work together to prepare and implement a single comprehensive SWP3 for the entire construction site.

1. The SWP3 must clearly list the name and, for large construction activities, the general permit authorization numbers, for each operator that participates in the shared SWP3. Until the TCEQ responds to receipt of the NOI with a general permit authorization number, the SWP3 must specify the date that the NOI was submitted to TCEQ by each operator. Each participant in the shared plan must also sign the SWP3.

2. The SWP3 must clearly indicate which operator is responsible for satisfying each shared requirement of the SWP3. If the responsibility for satisfying a requirement is not described in the plan, then each permittee is entirely responsible for meeting the requirement within the boundaries of the construction site where they perform construction activities. The SWP3 must clearly describe responsibilities for meeting each requirement in shared or common areas.

Section B. Responsibilities of Operators

1. Operators with Control Over Construction Plans and Specifications

All operators with operational control over construction plans and specifications to the extent necessary to meet the requirements and conditions of this general permit must:

(a) ensure the project specifications allow or provide that adequate BMPs may be developed to meet the requirements of Part III of this general permit;

(b) ensure that the SWP3 indicates the areas of the project where they have operational control over project specifications (including the ability to make modifications in specifications);

(c) ensure all other operators affected by modifications in project specifications are notified in a timely manner such that those operators may modify best management practices as are necessary to remain compliant with the conditions of this general permit; and

(d) ensure that the SWP3 for portions of the project where they are operators indicates the name and TPDES permit numbers for permittees with the day-to-day operational control over those activities necessary to ensure compliance with the SWP3 and other permit conditions. In the case that responsible parties have not been identified, the permittee with operational control over project specifications must be considered to be the responsible party until such time as the authority is transferred to another party and the plan is updated.

2. Operators with Day-to-Day Operational Control

Operators with day-to-day operational control of those activities at a project that are necessary to ensure compliance with a SWP3 and other permit conditions must:

(a) ensure that the SWP3 for portions of the project where they are operators meets the requirements of this general permit;

(b) ensure that the SWP3 identifies the parties responsible for implementation of best management practices described in the plan;

(c) ensure that the SWP3 indicates areas of the project where they have operational control over day-to-day activities;

(d) ensure that the SWP3 indicates, for areas where they have operational control over day-to-day activities, the name and TPDES permit number of the parties with operational control over project specifications (including the ability to make modifications in specifications).

Section C. Deadlines for SWP3 Preparation and Compliance

1. The SWP3 must be:

(a) completed prior to obtaining authorization under this general permit;

(b) implemented prior to commencing construction activities that result in soil disturbance;

(c) updated as necessary to reflect the changing conditions of new operators, new areas of responsibility, and changes in best management practices; and

(d) prepared so that it provides for compliance with the terms and conditions of this general permit.

Section D. Plan Review and Making Plans Available

1. The SWP3 must be retained on-site at the construction site or, if the site is inactive or does not have an on-site location to store the plan, a notice must be posted describing the location of the SWP3. The SWP3 must be made readily available at the time of an on-site inspection to: the executive director; a federal, state, or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; and the operator of a municipal separate storm sewer receiving discharges from the site.

2. Operators of a large construction activity obtaining authorization to discharge through submission of a NOI must post a notice near the main entrance of the

construction site. If the construction project is a linear construction project (e.g. pipeline, highway, etc.), the notice must be placed in a publicly accessible location near where construction is actively underway. Notice for these linear sites may be relocated, as necessary, along the length of the project. The notice must be readily available for viewing by the general public, local, state, and federal authorities, and contain the following information:

(a) the TPDES general permit number for the project (or a copy of the NOI that was submitted to the TCEQ if a permit number has not yet been assigned);

(b) the name and telephone number of a representative for the operator;

(c) a brief description of the project; and

(d) the location of the SWP3.

3. This permit does not provide the general public with any right to trespass on a construction site for any reason, including inspection of a site; nor does this permit require that permittees allow members of the general public access to a construction site.

Section E. Keeping Plans Current

The permittee must revise or update the storm water pollution prevention plan whenever:

1. there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants and that has not been previously addressed in the SWP3; or

2. results of inspections or investigations by site operators, operators of a municipal separate storm sewer system receiving the discharge, authorized TCEQ personnel, or a federal, state or local agency approving sediment and erosion plans indicate the SWP3 is proving ineffective in eliminating or significantly minimizing pollutants in discharges authorized under this general permit.

Section F. Contents of SWP3

The SWP3 must include, at a minimum, the information described in this section.

1. A site description, or project description must be developed to include:

(a) a description of the nature of the construction activity, potential pollutants and sources;

(b) a description of the intended schedule or sequence of major activities that will disturb soils for major portions of the site;

(c) the total number of acres of the entire property and the total number of acres where construction activities will occur, including off-site material storage areas, overburden and stockpiles of dirt, and borrow areas;

(d) data describing the soil or the quality of any discharge from the site;

(e) a map showing the general location of the site (e.g. a portion of a city or county map);

(f) a detailed site map (or maps) indicating the following:

(i) drainage patterns and approximate slopes anticipated after major grading activities;

(ii) areas where soil disturbance will occur;

(iii) locations of all major structural controls either planned or in place;

(iv) locations where stabilization practices are expected to be used;

(v) locations of off-site material, waste, borrow, fill, or equipment storage areas;

(vi) surface waters (including wetlands) either adjacent or in close proximity; and

(vii) locations where storm water discharges from the site directly to a surface water body.

(g) the location and description of asphalt plants and concrete plants providing support to the construction site and authorized under this general permit;

(h) the name of receiving waters at or near the site that will be disturbed or that will receive discharges from disturbed areas of the project; and

(i) a copy of this TPDES general permit.

2. The SWP3 must describe the best management practices that will be used to minimize pollution in runoff. The description must identify the general timing or sequence for implementation. At a minimum, the description must include the following components:

(a) Erosion and Sediment Controls

(i) Erosion and sediment controls must be designed to retain sediment on-site to the extent practicable with consideration for local

topography, soil type, and rainfall. Controls must also be designed and utilized to reduce the offsite transport of suspended sediments and other pollutants if it is necessary to pump or channel standing water from the site.

(ii) Control measures must be properly selected, installed, and maintained according to the manufacturer's or designer's specifications. If periodic inspections or other information indicates a control has been used incorrectly, or that the control is performing inadequately, the operator must replace or modify the control as soon as practicable after discovery that the control has been used incorrectly, is performing inadequately, or is damaged.

(iii) Sediment must be removed from sediment traps and sedimentation ponds no later than the time that design capacity has been reduced by 50%.

(iv) If sediment escapes the site, accumulations must be removed at a frequency to minimize further negative effects, and whenever feasible, prior to the next rain event.

(v) Controls must be developed to limit, to the extent practicable, offsite transport of litter, construction debris, and construction materials.

(b) Stabilization Practices

The SWP3 must include a description of interim and permanent stabilization practices for the site, including a schedule of when the practices will be implemented. Site plans should ensure that existing vegetation is preserved where it is possible.

(i) Stabilization practices may include but are not limited to: establishment of temporary vegetation, establishment of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of existing trees and vegetation, and other similar measures.

(ii) The following records must be maintained and either attached to or referenced in the SWP3, and made readily available upon request to the parties in Part III.D.1 of this general permit:

(a) the dates when major grading activities occur;

(b) the dates when construction activities temporarily or permanently cease on a portion of the site; and

(c) the dates when stabilization measures are initiated.

(iii) Stabilization measures must be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, and except as provided in (a) through (c) below, must be initiated no more than fourteen (14) days after the construction activity in that portion of the site has temporarily or permanently ceased.

(a) Where the initiation of stabilization measures by the 14th day after construction activity temporarily or permanently ceased is precluded by snow cover or frozen ground conditions, stabilization measures must be initiated as soon as practicable.

(b) Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within twenty-one (21) days, temporary stabilization measures do not have to be initiated on that portion of site.

(c) In arid areas (areas with an average rainfall of 0 to 10 inches), semiarid areas (areas with an average annual rainfall of 10 to 20 inches), and areas experiencing droughts where the initiation of stabilization measures by the 14th day after construction activity has temporarily or permanently ceased is precluded by seasonably arid conditions, stabilization measures must be initiated as soon as practicable.

3. Structural Control Practices

The SWP3 must include a description of any structural control practices used to divert flows away from exposed soils, to limit the contact of runoff with disturbed areas, or to lessen the off-site transport of eroded soils.

(a) Sediment basins are required, where feasible for common drainage locations that serve an area with ten (10) or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from a 2-year, 24-hour storm from each disturbed acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. Where rainfall data is not available or a calculation cannot be performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained is required where attainable until final stabilization of the site. When calculating the volume of runoff from a 2-year, 24-hour storm event, it is not required to include the flows from offsite areas and flow from onsite areas that are either undisturbed or have already undergone final stabilization, if

these flows are diverted around both the disturbed areas of the site and the sediment basin. In determining whether installing a sediment basin is feasible, the permittee may consider factors such as site soils, slope, available area on site, public safety, precipitation patterns, site geometry, site vegetation, infiltration capacity, geotechnical factors, depth to groundwater and other similar considerations. Where sediment basins are not feasible, equivalent control measures, which may include a series of smaller sediment basins, must be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction area.

(b) Sediment traps and sediment basins may also be used to control solids in storm water runoff for drainage locations serving less than ten (10) acres. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction. Alternatively, a sediment basin that provides storage for a calculated volume of runoff from a 2-year, 24-hour storm from each disturbed acre drained, or equivalent control measures, may be provided or where rainfall data is not available or a calculation cannot be performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained may be provided.

4. Permanent Storm Water Controls

A description of any measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed must be included in the SWP3. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site or prior to submission of an NOT.

5. Other Controls

(a) Off-site vehicle tracking of sediments and the generation of dust must be minimized.

(b) The SWP3 must include a description of construction and waste materials expected to be stored on-site and a description of controls to reduce pollutants from these materials.

(c) The SWP3 must include a description of pollutant sources from areas other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.

(d) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

6. Approved State and Local Plans

(a) Permittees must ensure the SWP3 is consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by federal, state, or local officials.

(b) SWP3s must be updated as necessary to remain consistent with any changes applicable to protecting surface water resources in sediment erosion site plans or site permits, or storm water management site plans or site permits approved by state or local official for which the permittee receives written notice.

7. Maintenance

All erosion and sediment control measures and other protective measures identified in the SWP3 must be maintained in effective operating condition. If through inspections the permittee determines that BMPs are not operating effectively, maintenance must be performed before the next anticipated storm event or as necessary to maintain the continued effectiveness of storm water controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable. Erosion and sediment controls that have been intentionally disabled, run-over, removed, or otherwise rendered ineffective must be replaced or corrected immediately upon discovery.

8. Inspections of Controls

In the event of flooding or other uncontrollable situations which prohibit access to the inspection sites, inspections must be conducted as soon as access is practicable

(a) Personnel provided by the permittee and familiar with the SWP3 must inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, and structural controls for evidence of, or the potential for, pollutants entering the drainage system. Sediment and erosion control measures identified in the SWP3 must be inspected to ensure that they are operating correctly. Locations where vehicles enter or exit the site must be inspected for evidence of off-site sediment tracking. Inspections must be conducted at least once every fourteen (14) calendar days and within twenty four (24) hours of the end of a storm event of 0.5 inches or greater.

Where sites have been finally or temporarily stabilized, where runoff is unlikely due to winter conditions (e.g. site is covered with snow, ice, or frozen ground exists), or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (areas with an average annual rainfall of 10 to 20 inches), inspections must be conducted at least once every month.

As an alternative to the above-described inspection schedule of once every fourteen (14) calendar days and within twenty four (24) hours of a storm event of 0.5 inches or greater, the SWP3 may be developed to require that these inspections will occur at least once every seven (7) calendar days. If this alternative schedule is developed, the inspection must occur on a specifically defined day, regardless of whether or not there has been a rainfall event since the previous inspection.

(b) Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may provide inspection personnel with limited access to the areas described in Part III.F.8.(a) above. Inspection of these areas could require that vehicles compromise temporarily or even permanently stabilized areas, cause additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected at least once every fourteen (14) calendar days and within twenty four (24) hours of the end of a storm event of 0.5 inches, but representative inspections may be performed. For representative inspections, personnel must inspect controls along the construction site for 0.25 mile above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the areas described in Part III.F.8.(a) above. The conditions of the controls along each inspected 0.25 mile segment may be considered as representative of the condition of controls along that reach extending from the end of the 0.25 mile segment to either the end of the next 0.25 mile inspected segment, or to the end of the project, whichever occurs first.

As an alternative to the above-described inspection schedule of once every fourteen (14) calendar days and within twenty four (24) hours of a storm event of 0.5 inches or greater, the SWP3 may be developed to require that these inspections will occur at least once every seven (7) calendar days. If this alternative schedule is developed, the inspection must occur on a specifically defined day, regardless of whether or not there has been a rainfall event since the previous inspection.

(c) The SWP3 must be modified based on the results of inspections, as necessary, to better control pollutants in runoff. Revisions to the SWP3 must be completed within seven (7) calendar days following the inspection. If existing BMPs are modified or if additional BMPs are necessary, an implementation schedule must be described in the SWP3 and wherever

possible those changes implemented before the next storm event. If implementation before the next anticipated storm event is impracticable, these changes must be implemented as soon as practicable.

(d) A report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the dates of the inspection, and major observations relating to the implementation of the SWP3 must be made and retained as part of the SWP3. Major observations should include: The locations of discharges of sediment or other pollutants from the site; locations of BMPs that need to be maintained; locations of BMPs that failed to operate as designed or proved inadequate for a particular location; and locations where additional BMPs are needed.

Actions taken as a result of inspections must be described within, and retained as a part of, the SWP3. Reports must identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report must contain a certification that the facility or site is in compliance with the SWP3 and this permit. The report must be signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports)

9. The SWP3 must identify and ensure the implementation of appropriate pollution prevention measures for all eligible non-storm water components of the discharge.

Part IV. Numeric Effluent Limitations

Section A. Limitations

All discharges of storm water runoff from concrete batch plants that qualify for coverage, and that are authorized to discharge storm water under the provisions of this general permit must be monitored at the following monitoring frequency and comply with the following numeric effluent limitations:

	Limitations	Monitoring
Parameter	Daily Maximum	Frequency
Total Suspended Solids	65 mg/l	1/Year*
Oil and Grease	15 mg/l	1/Year*
pH	between 6 and 9 standard units	1/Year*

* If discharge occurs.

Section B. Reporting Requirements

Results of monitoring for determining compliance with numeric effluent limitations must be recorded on a discharge monitoring report (DMR). The DMR must either be an original EPA No. 3320-1 form (Attachment 3 of this general permit), a duplicate of the form, or as otherwise provided by the executive director. Monitoring must be conducted prior to December 31st for each annual

monitoring period. A copy of the DMR must either be retained at the facility or shall be made readily available for review by authorized TCEQ personnel upon request, by March 31st following the end of each annual monitoring period. If the results indicate the violation of one or more of these numeric limitations, the permittee must also submit the DMR to the TCEQ's Information Resources Center (MC 212) by March 31st of each annual monitoring period.

Part V. Retention of Records

The permittee must retain the following records for a minimum period of three (3) years from the date that a NOT is submitted as required by Part II.D. For activities that are not required to submit an NOT, records shall be retained for a minimum period of three (3) years from the date that either: final stabilization has been achieved on all portions of the site that is the responsibility of the permittee; or another permitted operator has assumed control according to over all areas of the site that have not been finally stabilized. Records include:

1. A copy of the SWP3 plan.
2. All reports and actions required by this permit, including a copy of the construction site notice.
3. All data used to complete the NOI, if an NOI is required for coverage under this general permit.

Part VI. Standard Permit Conditions

1. The permittee has a duty to comply with all permit conditions. Failure to comply with any permit condition is a violation of the permit and statutes under which it was issued, and is grounds for enforcement action, for terminating coverage under this general permit, or for requiring a discharger to apply for and obtain an individual TPDES permit.

2. Authorization under this general permit may be suspended or revoked for cause. Filing a notice of planned changes or anticipated non-compliance by the permittee does not stay any permit condition. The permittee must furnish to the executive director, upon request and within a reasonable time, any information necessary for the executive director to determine whether cause exists for revoking, suspending, or terminating authorization under this permit. Additionally, the permittee must provide to the executive director, upon request, copies of all records that the permittee is required to maintain as a condition of this general permit.

3. It is not a defense for a discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the permit conditions.

4. Inspection and entry shall be allowed under Texas Water Code Chapters 26-28, Health and Safety Code §§ 361.032-361.033 and 361.037, and 40 Code of Federal Regulations (CFR) §122.41(i). The statement in Texas Water Code § 26.014 that commission entry of a facility shall occur according to an establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the

facility or site, but merely describes the commission's duty to observe appropriate rules and regulations during an inspection.

5. The discharger is subject to administrative, civil, and criminal penalties, as applicable, under Texas Water Code §§ 26.136, 26.212, and 26.213 for violations including but not limited to the following:

   a. negligently or knowingly violating CWA, §§ 301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA, § 402, or any requirement imposed in a pretreatment program approved under CWA, §§ 402(a)(3) or 402(b)(8);

   b. knowingly making any false statement, representation, or certification in any record or other document submitted or required to be maintained under a permit, including monitoring reports or reports of compliance or noncompliance.

6. All reports and other information requested by the executive director must be signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports).

7. Authorization under this general permit does not convey property or water rights of any sort and does not grant any exclusive privilege.

Part VII. Fees

Section A. Application Fees

An application fee of $100 must be submitted with each NOI for coverage of a large construction activity. A fee is not required for submission of an NOT or NOC letter.

Section B. Water Quality Fees

Large construction activities authorized under this general permit must pay an annual Water Quality Fee of $100 under Texas Water Code 26.0291 and according to TAC Chapter 205 (relating to General Permits for Waste Discharges).

Appendix A.
Periods of Low Erosion Potential by County

Start Date - End Date
Dec. 15 - Feb. 14
Archer
Baylor
Brown
Callahan
Childress
Coke
Coleman
Concho
Cottle
Dimmit
Eastland
Edwards
Fisher
Foard
Hardeman
Haskell
Irion
Jones
Kerr
Kimble
King
Kinney
Knox
Mason
Maverick
McCulloch
Menard
Nolan
Real
Runnels
Schleicher
Shackelford
Stephens
Stonewall
Sutton
Taylor
Throckmorton
Tom Green
Uvalde
Wichita
Wilbarger
Young
Zavala

Start Date - End Date
Nov. 15 - Apr. 30
Andrews
Armstrong
Borden
Brewster
Briscoe
Carson
Castro
Crane
Crosby
Dawson
Deaf Smith
Ector
Floyd
Gaines
Garza
Glasscock
Hale
Hansford
Hartley
Howard
Hutchinson
Lubbock
Lynn
Martin
Midland
Mitchell
Moore
Oldham
Pecos
Potter
Randall
Reagan
Scurry
Sherman
Sterling
Swisher
Terrell
Terry
Upton

Start Date - End Date
Feb. 1 - Mar. 30
Hall

Start Date - End Date
Nov. 15 - Jan. 14 or **Feb. 1 - Mar. 30**
Crockett
Dickens
Kent
Motley
Val Verde

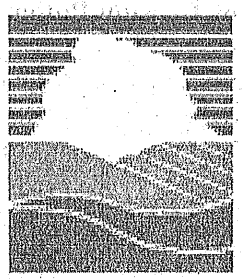
Start Date - End Date
Nov. 1 - Apr. 14 or **Nov. 15 - Apr. 30**
Dallam
Hockley
Lamb
Parmer
Ward

Start Date - End Date
Nov. 1 - Apr. 30 or **Nov. 15 - May. 14**
Bailey
Cochran
Jeff Davis
Loving
Presidio
Reeves
Winkler
Yoakum

Start Date - End Date
Nov. 1 - May. 14
Culberson
Hudspeth

Start Date - End Date
Jan. 1 - Jul. 14 or **May. 15 - Jul. 31** or
Jun. 1 - Aug. 14 or **Jun. 15 - Sept. 14** or
Jul. 1 - Oct. 14 or **Jul. 15 - Oct. 31** or
Aug. 1 - Apr. 30 or **Aug. 15 - May. 14** or
Sept. 1 - May. 30 or **Oct. 1 - Jun. 14** or
Nov. 1 - Jun. 30 or **Nov. 15 - Jul. 14**
El Paso

Start Date - End Date
Jan. 1 - Mar. 30 or **Dec. 1 - Feb. 28**
Collingsworth Wheeler
Donley
Gray
Hemphill
Lipscomb
Ochiltree
Roberts



CONSTRUCTION SITE NOTICE

FOR THE
Texas Commission on Environmental Quality (TCEQ)
Storm Water Program
TPDES GENERAL PERMIT TXR150000

The following information is posted in compliance with **Part II.D.1.** of the TCEQ General Permit Number TXR150000 for discharges of storm water runoff from construction sites. Additional information regarding the TCEQ storm water permit program may be found on the internet at:
http://www.tceq.state.tx.us/nav/permits/wq_construction.html

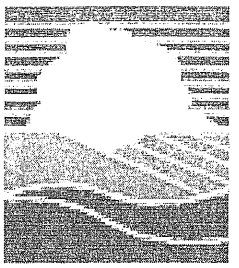
Contact Name and Phone Number:	
Project Description: (Physical address or description of the site's location, estimated start date and projected end date, or date that disturbed soils will be stabilized)	

For Construction Sites Authorized Under Part II.D.1. the following certification must be completed:

I _____ (Typed or Printed Name Person Completing This Certification) certify under penalty of law that I have read and understand the eligibility requirements for claiming an authorization by waiver under Part II.D.1. of TPDES General Permit TXR150000 and agree to comply with the terms of this permit. Construction activities at this site shall occur within a time period listed in Appendix A of the TPDES general permit for this county, that period beginning on _____and ending on _____. I understand that if construction activities continue past this period, all storm water runoff must be authorized under a separate provision of this general permit. A copy of this signed notice is supplied to the operator of the MS4 if discharges enter an MS4 system. I am aware there are significant penalties for providing false information or for conducting unauthorized discharges, including the possibility of fine and imprisonment for knowing violations.

_____ _____

Signature and Title Date



CONSTRUCTION SITE NOTICE

FOR THE

Texas Commission on Environmental Quality (TCEQ)

Storm Water Program

TPDES GENERAL PERMIT TXR150000

The following information is posted in compliance with **Part II.D.2.** of the TCEQ General Permit Number TXR150000 for discharges of storm water runoff from construction sites. Additional information regarding the TCEQ storm water permit program may be found on the internet at:

http://www.tceq.state.tx.us/nav/permits/wq_construction.html

Contact Name and Phone Number:	
Project Description: ((Physical address or description of the site's location, estimated start date and projected end date, or date that disturbed soils will be stabilized)	
Location of Storm Water Pollution Prevention Plan :	

For Construction Sites Authorized Under Part II.D.2. (Obtaining Authorization to Discharge) the following certification must be completed:

I _____ (Typed or Printed Name Person Completing This Certification) certify under penalty of law that I have read and understand the eligibility requirements for claiming an authorization under Part II.D.2. of TPDES General Permit TXR150000 and agree to comply with the terms of this permit. A storm water pollution prevention plan has been developed and implemented according to permit requirements. A copy of this signed notice is supplied to the operator of the MS4 if discharges enter an MS4 system. I am aware there are significant penalties for providing false information or for conducting unauthorized discharges, including the possibility of fine and imprisonment for knowing violations.

_____ _____

Signature and Title Date

CONCRETE BATCH FACILITIES

STW/ TXR15_____/ CO

PERMITTEE NAME/ADDRESS (Include Facility Name/Location if Different)

NAME

ADDRESS

FACILITY LOCATION

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
DISCHARGE MONITORING REPORT (DMR)

NOTE: Enter your permit number in the underlined space in the upper right hand corner of this page. Example: STW/TXR15 00123/ CO

Mail to: TCEQ (MC 212)
P.O. Box 13087
Austin, TX 78711-3087

(2-16) PERMIT NUMBER	(17-19) DISCHARGE NUMBER

MONITORING PERIOD					
YEAR	MO	DAY	YEAR	MO	DAY
	01	01		12	31
(20-21)	(22-23)	(24-25)	(26-27)	(28-29)	(30-31)

☐

PARAMETER (32-37)		(3 Card Only) QUANTITY OR LOADING (46-53) AVERAGE	(54-61) MAXIMUM	UNITS	(4 Card Only) QUALITY OR CONCENTRATION (38-45) MINIMUM	(46-53) AVERAGE	(54-61) MAXIMUM	UNITS	NO. EX (62-63)	FREQUENCY OF ANALYSIS (64-68)	SAMPLE TYPE (69-70)
Total Suspended Solids	SAMPLE MEASUREMENT	*******	*******	*******	*******	*******					
	SAMPLE REQUIREMENT	*******	*******	*******	*******	*******	65 Daily Max	mg/l		1/Year	Grab
Oil & Grease	SAMPLE MEASUREMENT	*******	*******	*******	*******	*******					
	SAMPLE REQUIREMENT	*******	*******	*******	*******	*******	15 Daily Max	mg/l		1/Year	Grab
pH	SAMPLE MEASUREMENT	*******	*******	*******	*******	*******					
	SAMPLE REQUIREMENT	*******	*******	*******	*******	*******	6.0 - 9.0 Range	S.U.		1/Year	Grab
	SAMPLE MEASUREMENT										
	SAMPLE REQUIREMENT										

NAME/TITLE PRINCIPAL EXECUTIVE OFFICER			TELEPHONE		DATE		
	I CERTIFY UNDER PENALTY OF LAW THAT THIS DOCUMENT AND ALL ATTACHMENTS WERE PREPARED UNDER MY DIRECTION OR SUPERVISION IN ACCORDANCE WITH A SYSTEM DESIGNED TO ASSURE THAT QUALIFIED PERSONNEL PROPERLY GATHER AND EVALUATE THE INFORMATION SUBMITTED. BASED ON MY INQUIRY OF THE PERSON OR PERSONS WHO MANAGE THE SYSTEM, OR THOSE PERSONS DIRECTLY RESPONSIBLE FOR GATHERING THE INFORMATION, THE INFORMATION SUBMITTED IS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE, ACCURATE, AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT FOR KNOWING VIOLATIONS.		AREA CODE	NUMBER	YEAR	MO	DAY
TYPED OR PRINTED		SIGNATURE OF PRINCIPAL EXECUTIVE OFFICER OR AUTHORIZED AGENT					

COMMENTS AND EXPLANATION OF ANY VIOLATIONS (Reference all attachments here)

EPA Form 3320-1 (3-99) (REPLACES EPA FORM T-40 WHICH MAY NOT BE USED) PAGE OF
Form Approved OMB No. 2040-004